

Fill in this information to identify the case:

Debtor 1 OCB Restaurant Company, LLC  
Debtor 2 \_\_\_\_\_  
(Spouse, if filing)  
United States Bankruptcy Court for the: Northern District of Texas, Dallas Division  
Case number 21-30726-11

E-Filed on 08/30/2021  
Claim # 390

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 DBPPROP001, LLC  
Name of the current creditor (the person or entity to be paid for this claim)  
Other names the creditor used with the debtor \_\_\_\_\_

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

3. Where should notices and payments to the creditor be sent?  
Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)  
Where should notices to the creditor be sent? c/o Kutak Rock LLP  
Name  
Attn: Lisa M. Peters, Esq. 1650 Farnam Street  
Number Street  
Omaha NE 68102  
City State ZIP Code  
Contact phone (402) 346-6000  
Contact email lisa.peters@kutakrock.com  
Where should payments to the creditor be sent? (if different)  
Name  
Number Street  
City State ZIP Code  
Contact phone  
Contact email  
Uniform claim identifier for electronic payments in chapter 13 (if you use one):  
-----

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? \$ 2,323,509.73. 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.  
Non-residential real property lease (terminated prepetition) (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. \$ 0.00

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 - Buffets GL Master Lease Proof of Claim Exhibit.pdf  
Description -

## EXHIBIT A

The Claim set forth herein is for lease amounts under that certain Amended and Restated Master Land and Building Lease dated as of June 17, 2016 (collectively with all amendments, addenda, attachments, and exhibits thereto, the “Master Lease”) between ARC DBPPROP001, LLC (“Landlord”), as landlord, and each of Fire Mountain Restaurants, LLC (“FMR”), Hometown Buffet, Inc. (“HTB”), and OCB Restaurant Company, LLC (“OCB”; FMR, HTB, and OCB are, collectively, “Debtors”), as tenant.

The Lease relates to the following real properties and improvements (collectively, the “Properties”), all as more particularly described therein:

- 1314 North Main Street, Summerville, South Carolina (identified by Debtors as Ryans #2138) (the “Summerville Property”);
- 103 RHL Boulevard, Charleston, West Virginia (identified by Debtors as Ryans #2418) (the “Charleston Property”);
- 519 Emily Drive, Clarksburg, West Virginia (identified by Debtors as Ryans #2416) (the “Clarksville Property”);
- 127 West Valley Boulevard, Rialto, California (identified by Debtors as Hometown Buffet #753) (the “Rialto Property”);
- 1431 South Bradley Road, Santa Maria, California (identified by Debtors as Hometown Buffet #785) (the “Santa Maria Property”);
- 2513 Main Street, Union Gap, West Virginia (identified by Debtors as Hometown Buffet #811) (the “Union Gap Property”);
- 1850 West Empire Avenue, Burbank, California (identified by Debtors as Old Country Buffet #256) (the “Burbank Property”); and
- 1325 New Churchmans Road, Newark, Delaware (identified by Debtors as Old Country Buffet #794) (the “Newark Property”).

A true and correct copy of the Master Lease is attached hereto as ***Exhibit B*** and is incorporated herein by this reference. The Master Lease was terminated effective January 19, 2021, pursuant to that certain termination notice dated as of January 20, 2021 (the “Termination Date”) and all Properties were surrendered by Debtors to Landlord prior to the April 20, 2021 petition date.

The Claim set forth herein is for the amounts outstanding under the Master Lease on the Termination Date, including amounts paid by Landlord to third party ground lessors as a result of Debtors’ failure to pay such amounts as required by the Master Lease. The documentation for the amounts included herein are voluminous and, in some cases, confidential. Accordingly, copies are not attached but can be obtained by contacting Landlord’s counsel of record (see notice party information on Proof of Claim) and, in some instances, subject to appropriate confidentiality measures and/or agreements.

### Claim Amount Calculation

Base Rent	\$1,061,458.63
Property Taxes – Rialto Property	\$ 161,764.36
Property Taxes – Santa Maria Property	\$ 12,799.44
Late Fees	\$ 68,806.02
Ground Lease Rent – Summerville Property	\$ 76,043.80
Ground Lease Rent – Charleston Property	\$ 99,080.34
Ground Lease Rent – Clarksburg Property	\$ 20,787.48
Ground Lease Obligations – Burbank Property	\$ 70,000.00

Ground Lease Obligations – Newark Property	\$ 248,500.00
Ground Lease Obligations – Santa Maria Property	\$ 38,249.52
Ground Lease Obligations – Union Gap Property	\$ 316,020.14
Removal Fee – Rialto Property	\$ 50,000.00
Removal Fee – Charleston Property	\$ 50,000.00
Removal Fee – Clarksburg Property	\$ 50,000.00
<b>Total Claim Amount</b>	<b><u>\$2,323,509.73</u></b>

### **Reservation of Rights**

Claimant reserves the right to amend this Proof of Claim at any time and in any manner nothing herein shall prejudice or be deemed to waive such rights.

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.

**EXHIBIT B**  
**MASTER LEASE**  
[SEE ATTACHED]

**AMENDED AND RESTATED MASTER LAND AND BUILDING LEASE**

**between**

**ARC DBPPROP001, LLC,  
a Delaware limited liability company,**

**as LANDLORD**

**and**

**FIRE MOUNTAIN RESTAURANTS, LLC,  
an Ohio limited liability company,**

**HOMETOWN BUFFET, INC.,  
a Minnesota corporation**

**and OCB RESTAURANT COMPANY, LLC,  
a Minnesota limited liability company**

**collectively, as TENANT**

**June 17, 2016**

AMENDED AND RESTATED MASTER LAND AND BUILDING LEASE



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Exhibit A	Location/Address/Legal Descriptions of Real Properties
Exhibit B	Form of Tenant’s Estoppel Certificate
Exhibit C	Form of Memorandum of Lease
Exhibit D	Form of Individual Lease
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Exhibit F	Form of Guaranty
Exhibit G	Form of SNDA
Schedule 1	Restaurant Equipment

## AMENDED AND RESTATED MASTER LAND AND BUILDING LEASE

THIS AMENDED AND RESTATED MASTER LAND AND BUILDING LEASE (the "Lease") is made and entered into as of June 17, 2016 (the "Commencement Date"), by and between ARC DBPPROP001, LLC, a Delaware limited liability company ("Landlord") and Fire Mountain Restaurants, LLC, an Ohio limited liability company, HomeTown Buffet, Inc., a Minnesota corporation, and OCB Restaurant Company, LLC, a Minnesota limited liability company (collectively, "Tenant").

### RECITALS

A. Landlord has a leasehold interest in twelve (12) tracts of real property located at the addresses set forth on Exhibit A attached hereto (each such tract, "Real Property" and collectively the "Real Properties"). Each Real Property is more particularly described in Exhibit A attached hereto and for purposes hereof shall include all of Landlord's right, title and interest in and to all easements, appurtenances and rights relating to the Real Property, including without limitation, Landlord's right, title, and interest, if any, in and to all (1) adjacent streets, alleys, rights-of-way and any adjacent strips or gores of real estate; (2) the Buildings (as defined below); and (3) the Building Equipment (as defined below). Each building, together with all improvements on or to each tract of Real Property, including but not limited to all site work, landscaping, fixtures, utilities, and other improvements, is individually referred to as the "Building," and collectively referred to as the "Buildings". The machinery, equipment and systems necessary for the operation of the Buildings that are "fixtures" pursuant to applicable law, including, but not limited to any heating, ventilation and air-conditioning equipment, canopies, fire sprinklers and fire suppression equipment, lighting, built in walk-in coolers and grill hoods, built-in freezers, built-in sinks, built-in shelving, awnings, and supports for signs (but specifically excluding any such items that are not "fixtures" pursuant to applicable law), are referred to herein collectively as the "Building Equipment." Each Real Property, together with the related Buildings and Building Equipment are referred to herein individually as a "Demised Property," and collectively as the "Demised Properties."

B. The personal property, equipment and trade fixtures owned or leased by Tenant located at the Buildings on any Demised Properties (other than the Building Equipment) and used in connection with the operation of the business at the Demised Properties are referred to herein collectively as the "Restaurant Equipment", which shall include, but not be limited to, those items set forth on Schedule 1.

C. Landlord currently leases the Demised Properties to Tenant pursuant to the following leases (collectively, the "Existing Leases"): (i) that certain Lease Agreement dated as of December 11, 2002 originally between FP1 LLC, as landlord, and HomeTown Buffet, Inc. ("HomeTown") and OCB Restaurant Company, LLC ("OCB Restaurant"), as tenant, as amended, (ii) that certain Lease Agreement dated as of December 11, 2002 originally between FP2 LLC, as landlord, and HomeTown and OCB Restaurant, as tenant, as amended, and (iii) that certain Lease Agreement dated as of December 11, 2002 originally between FP3 LLC, as landlord, and HomeTown and OCB Restaurant, as tenant, as amended.

D. Landlord and Tenant desire to amend and restate the Existing Leases in their entirety on the terms and conditions set forth in this Lease.

E. This Lease constitutes a single and indivisible lease of all the Demised Properties collectively, and is not an aggregation of leases for the separate Demised Properties. Neither Landlord nor Tenant would have entered into this Lease except as a single and indivisible lease.

NOW, THEREFORE, in consideration of the lease of the Demised Properties and the rents, covenants and conditions herein set forth, Landlord and Tenant do hereby covenant, promise and agree as follows:

## ARTICLE I

### **AMENDMENT AND RESTATEMENT; DEMISE OF PREMISES**

**Section 1.01** This Lease amends and restates the Existing Leases and replaces and supersedes each and every term and condition of the Existing Leases as of the Commencement Date; provided, however, the amendment and restatement of the Existing Leases by this Lease is not intended to limit any liability or obligation of Tenant which accrued under the Existing Leases prior to the Commencement Date, including, without limitation, any indemnification and/or hold harmless provision in the Existing Leases. It is understood and acknowledged by Landlord and Tenant that any liability or obligation of Tenant which accrued under the Existing Leases prior to the Commencement Date with respect to properties other than the Demised Properties are subject to the chapter 11 of the United States Bankruptcy Code (the "Code") and any relevant court order from the United States Bankruptcy Court for the Western District of Texas, San Antonio Division (the "Bankruptcy Court") with respect to the voluntary petitions filed by Tenant and certain of its affiliates (each, a "Debtor," and collectively with Tenant, the "Debtors") in Bankruptcy Court on March 7, 2016 (the "Petition Date").

**Section 1.02** Subject to the terms and conditions contained herein, Landlord does hereby lease unto Tenant, and Tenant does hereby lease from Landlord, for the term hereinafter provided in Article II, the Demised Properties for the use thereof by Tenant, Tenant's employees, customers, invitees and permitted assigns.

## ARTICLE II

### **TERM**

#### **Section 2.01**

(a) This Lease shall commence on the Commencement Date and terminate as to each Demised Property on the date set forth next to such Demised Property on Exhibit A (the "Original Lease Term") unless sooner terminated as hereinafter set forth. The "Lease Term," as such term is used herein, shall mean the Original Lease Term as extended (or as may be extended) pursuant to Section 2.02 below, unless sooner terminated as hereinafter set forth.

(b) This Lease shall be deemed to be in full force and effect upon the Commencement Date. Tenant shall be deemed in possession of the Demised Properties upon the Commencement Date.

## **Section 2.02**

(a) With respect to each Demised Property, Tenant shall have options to extend the term of this Lease for such Demised Property for option terms which are equal in length to the next option period in the corresponding Prime Lease (as hereinafter defined) (collectively, the “Option Periods” and individually as an “Option Period”). By way of example, if a particular Prime Lease has three (3) option periods of five (5) years each remaining at the end of the Original Lease Term for the corresponding Demised Property, Tenant shall have the option to extend the term of this Lease with respect to such Demised Property for up to three (3) separate option periods of five (5) years each. Except as otherwise expressly provided herein, all of the terms and conditions of this Lease applicable to the Original Lease Term shall continue to apply during each Option Period.

(b) To validly extend the Lease Term for any Option Period for a particular Demised Property (i) Tenant must have validly extended this Lease for such Demised Property for any and all prior Option Periods, (ii) Tenant must and shall deliver to Landlord written notice of Tenant’s election to so extend not later than ninety (90) days prior to the last day that the corresponding extension option under the corresponding Prime Lease may be exercised (such date, the “Decision Date”), and (iii) as of the date such written notice is delivered to Landlord, there shall be no existing Event of Default under this Lease. Any notice from Tenant to Landlord exercising any option to extend this Lease for any particular Demised Property for any Option Period shall be irrevocable.

(c) If Tenant elects not to exercise any option to extend this Lease for any particular Demised Property for any Option Period, Tenant shall (i) provide Landlord with written notice of such intent prior to the applicable Decision Date, (ii) remit to Landlord (x) a pro-rated amount of Real Estate Taxes (as hereinafter defined) for such Demised Property and other recurring expenses required to be paid under the Prime Lease for such Demised Property for the period through the expiration date of the Lease Term with respect to such Demised Property (less any amounts that have previously been escrowed with the corresponding Prime Landlord for such purposes and period), and (y) a \$50,000 removal fee for each such Demised Property, and (iii) close its store at such Demised Property and vacate and surrender such Demised Property to Landlord in accordance with the provisions of Article XXIII of this Lease not later than thirty (30) calendar days prior to the expiration date of the Lease Term with respect to such Demised Property. If Tenant fails to notify Landlord prior to any applicable Decision Date with respect to any Demised Property whether or not Tenant is electing to exercise the corresponding option to extend this Lease for such Demised Property, such failure shall be deemed an election by Tenant not to exercise such extension option.

(d) If Tenant elects (or is deemed to have elected) not to exercise any option to extend this Lease for any particular Demised Property for any Option Period and Tenant complies with its obligations under clauses (ii) and (iii) of subsection (c) above and there shall be

no existing Event of Default under this Lease, such Demised Property shall be removed from this Lease upon the expiration date of the Lease Term corresponding to such Demised Property (each such Demised Property, a "Removed Property"). Upon such removal, (i) the Base Rent under this Lease shall be reduced by the rent reduction amount set forth on Exhibit A attached hereto that corresponds to the Removed Property (with such rent reduction amount increasing on each Adjustment Date (as defined below) in the same manner as Base Rent increases in accordance with Section 3.02(b) hereof), such reduction to commence on the first day of the month immediately following such removal, and (ii) the Removed Property shall no longer be included within the meaning of the term "Demised Properties" as defined and used in this Lease and Tenant shall have no further obligations or liabilities under this Lease with respect to the Removed Property; provided, however, that (x) the foregoing shall not limit any liability or obligation of Tenant with respect to the Removed Property which has accrued prior to such removal or relates to the period of time prior to such removal under any provision of this Lease, including, without limitation, any indemnification and/or hold harmless provision, that expressly survives as provided in this Lease, and (y) this Lease shall continue in full force and effect with respect to the other Demised Properties.

(e) To the extent that there are no longer any extension options remaining in any Prime Lease, Tenant shall not have the option to further extend the term of this Lease for the corresponding Demised Property. In such event, Tenant shall (i) remit to Landlord a pro-rated amount of Real Estate Taxes for such Demised Property and other recurring expenses required to be paid under the Prime Lease for such Demised Property for the period through the expiration date of the Lease Term with respect to such Demised Property (less any amounts that have previously been escrowed with the corresponding Prime Landlord for such purposes and period), and (ii) close its store at such Demised Property and vacate and surrender such Demised Property to Landlord in accordance with the provisions of Article XXIII of this Lease not later than thirty (30) calendar days prior to the expiration date of the Lease Term with respect to such Demised Property. If Tenant complies with its obligations under the preceding sentence and there shall be no existing Event of Default under this Lease, such Demised Property shall be removed from this Lease upon the expiration date of the Lease Term corresponding to such Demised Property and, upon such removal, the provisions of the last sentence of subsection (d) above shall be applicable.

(f) Landlord shall have the right to exercise any extension option under any Prime Lease, regardless of whether such extension option is necessary in order to have such Prime Lease be coterminous with the Lease Term for the corresponding Demised Property.

(g) As used herein, the following terms have the meanings indicated:

"Prime Landlord" shall mean, individually, each of the landlords under a Prime Lease (or a specific landlord under a specific Prime Lease) and, collectively, all of the landlords under all of the Prime Leases, as the case may be.

"Prime Lease(s)" shall mean any and all ground leases or other underlying leases demising any Demised Properties (or portion thereof) from time to time which are superior to this Lease with respect to such Demised Properties, and all renewals, extensions,

supplements, amendments, modifications, consolidations and replacements thereto. Individually, Prime Lease shall mean each superior lease demising an individual Demised Property (or a specific superior lease demising specific Demised Properties) and, collectively, all of the superior leases demising all of the Demised Properties, as the case may be.

(h) Without limiting anything contained in Article XXXVI hereof, time is of the strictest essence in the performance of each provision of this Section 2.02. Either party, upon request of the other, shall execute and acknowledge, in form suitable for recording, an instrument confirming any Option Period, with Tenant paying all applicable recording costs.

### ARTICLE III

#### RENT

**Section 3.01** Rent. As used herein, “Rent” means Base Rent (as defined below) plus Additional Rent (as defined below). Tenant shall pay all Rent, from and after the Commencement Date and thereafter throughout the Lease Term, without offset, deduction, or abatement except as may be otherwise expressly provided herein. Notwithstanding the foregoing, any amounts due by Tenant to Landlord hereunder for which no due date is expressly specified herein shall be due within thirty (30) days following the delivery to Tenant by Landlord of written notice of such amounts due. Except as otherwise expressly provided herein, in the event of nonpayment by Tenant of any Rent, Landlord shall have the same rights and remedies in respect thereof regardless of whether such Rent is Base Rent or Additional Rent. All payments of Rent due to Landlord shall be paid to Landlord by electronic deposit into an account designated by Landlord (a “Landlord’s Account”).

**Section 3.02** Base Rent.

(a) As used herein, subject to the annual increases as hereinafter provided, the “Base Rent” for the Demised Properties for each month of the Lease Term shall be ONE HUNDRED THIRTY-FIVE THOUSAND SIX HUNDRED THIRTY-FOUR and 00/100 DOLLARS (\$135,634.00). Tenant shall pay to Landlord Base Rent, in advance, without demand therefor, on or before the first day of each and every calendar month during the Lease Term (each a “Payment Date”) and if the Commencement Date is not the first day of a calendar month, Tenant shall pay to Landlord pro-rated Base Rent on the Commencement Date for the partial calendar month in which the Commencement Date occurs. Tenant authorizes Landlord to establish arrangements whereby payments of the Base Rent and impound payments under Section 3.03(h) hereof are transferred by Automated Clearing House Debit directly from an account at a U.S. bank in the name of Tenant to such account as Landlord may designate or as Landlord may otherwise designate; provided, however, upon written notice from Landlord to Tenant, Tenant shall deliver all payments of Base Rent and impound payments under Section 3.03(h) hereof as specified in such written notice from Landlord.

(b) Subject to the terms of this Section, on each Adjustment Date (as defined below) throughout the Lease Term, the monthly Base Rent shall increase by the Base Rent

Escalation (as defined below), and such increased Base Rent shall apply for the ensuing twelve (12) month period.

(c) The following terms shall have the following meanings:

(1) “Adjustment Date” shall mean each July 1 throughout the Lease Term, commencing July 1, 2017.

(2) “Base Rent Escalation” shall mean the product of the then-current Base Rent multiplied by 1.50%.

**Section 3.03** Additional Rent.

(a) As used herein, “Additional Rent” means any and all fees, expenses, taxes and charges of every kind and nature arising in connection with or relating to the Demised Properties (other than Base Rent), including without limitation (i) any and all taxes (including, without limitation, Real Estate Taxes (as defined below)), fees, utility service charges, insurance premiums, and other costs, and any amounts owed by Tenant under any indemnity to Landlord hereunder, including, without limitation under Article X and Article XXXVII; (ii) all fees and penalties that may accrue on any amounts due from Tenant hereunder if Tenant fails to pay such amounts in a timely manner; (iii) all other damages, costs and expenses (including, without limitation, reasonable attorneys’ fees and other legal and court costs) which Landlord may suffer or incur in enforcing this Lease (whether or not any formal action is brought by Landlord against Tenant) or in otherwise taking actions permitted under this Lease following a Default by Tenant (including, without limitation, making Repairs and fulfilling other obligations of Tenant as provided in Section 7.01, and purchasing insurance required to be maintained by Tenant under this Lease, as provided in Section 11.07); (iv) any and all other sums which may become due, or costs and expenses that may be incurred by Landlord, by reason of any Default or Event of Default under this Lease; and (v) any and all costs of maintaining, repairing and restoring the Demised Properties. In addition, “Additional Rent” shall include any rent or other income received by Tenant from any subtenant of any Demised Property to the extent applicable to periods after the expiration or termination of this Lease as to the Demised Properties.

(b) Without limiting anything contained in subsection 3.03(a), Tenant shall pay, as Additional Rent all “Real Estate Taxes” (as hereinafter defined). As used herein, the term “Real Estate Taxes” means all taxes and general and special assessments and other impositions in lieu thereof, as a supplement thereto and any other tax which is measured by the value of land and assessed on a uniform basis against the owners of land, including any substitution in whole or in part therefor due to a future change in the method of taxation, in each case assessed against, or allocable or attributable to, the Demised Properties and accruing during or prior to the Lease Term. Nothing contained in this Lease, however, shall require Tenant to pay any estate, inheritance, corporate, franchise, income or similar taxes of Landlord, nor shall any of same be deemed Real Estate Taxes, unless same shall be specifically imposed in substitution for, or in lieu of, Real Estate Taxes. In addition, Tenant shall not be required to pay any tax imposed (except as otherwise required under Article XXV) with respect to the sale, exchange, mortgage, encumbrance, or other disposition by Landlord, in whole or in part, of any



of the Demised Properties or Landlord's interest in this Lease (provided, however, that the foregoing shall not limit Tenant's obligation to pay any increase in Real Estate Taxes resulting from any such sale, exchange, mortgage, encumbrance, or other disposition by Landlord). If by law, any general or special assessment or like charge may be paid in installments without any penalty whatsoever, then such assessment may be paid in such installments and Tenant shall only be liable for the portion thereof that is allocable or attributable to the Lease Term or any portion thereof. If such assessment or charge may be payable in installments with interest, Tenant may pay such assessment or charge in installments, provided that if such installments extend beyond the Lease Term, Landlord shall have the option to repay all remaining installments coming due following the Lease Term without interest.

(c) Tenant shall pay all Real Estate Taxes directly to the collecting authority no less than thirty (30) days prior to the delinquency date thereof and shall provide Landlord not less than ten (10) business days prior to such delinquency date a copy of the paid receipt for each installment of Real Estate Taxes so paid. Notwithstanding the foregoing, upon the occurrence of both of the following events, in lieu of payment directly to the applicable collecting authority, Tenant shall pay to Landlord an amount, when added to the monthly payments due under this subsection 3.03(c), shall be sufficient to pay the Real Estate Taxes next coming due (collectively, the "Real Estate Taxes Pass-Throughs") on the Payment Date immediately following both of the following events: (A) delivery to Tenant of a written request therefor from Landlord, and (B) the existence of any default or breach of this subsection 3.03(c) by Tenant, or any Event of Default under any provision in this Lease (the foregoing clause (B) may be hereinafter referred to as a "Real Estate Taxes Pass-Throughs Trigger"). On every Payment Date thereafter, Tenant shall pay to Landlord one-twelfth of the amount of the Real Estate Taxes that Landlord reasonably estimates will be payable during the next ensuing twelve (12) months. Funds in the Real Estate Taxes Pass-Throughs shall be used for payment of the Real Estate Taxes next coming due. Following the imposition of a Real Estate Tax Reserve, in the event Tenant completes a twelve (12) month consecutive period without the occurrence of a Real Estate Taxes Pass-Throughs Trigger, then following written request by Tenant, Landlord shall disburse any funds in the Real Estate Taxes Pass-Throughs Trigger to Tenant and Tenant shall no longer be obligated to make the monthly payments of the Real Estate Taxes to Landlord in lieu of the applicable collecting authority until the occurrence of another Real Estate Taxes Pass-Through Trigger. If Tenant fails to pay the appropriate party (Landlord or the collecting authority, as provided herein) all Real Estate Taxes when due hereunder, then Tenant shall, without limiting any other remedies available to Landlord, reimburse Landlord for any and all penalties or interest, or portion thereof, incurred by Landlord as a result of such nonpayment or late payment by Tenant.

(d) Tenant shall have the right to undertake an action or proceeding against the applicable collecting authority seeking an abatement of Real Estate Taxes or a reduction in the valuation of the Demised Properties and/or contest the applicability of any Real Estate Taxes; provided, however, that Tenant has paid timely (and continues to pay timely) all Real Estate Taxes as provided in this Lease to the extent required by applicable law. Landlord may deliver to Tenant written requests from time to time, not more than once in any thirty (30) day period, for information regarding any such action or proceeding by Tenant. Tenant shall respond in good faith with all information reasonably requested by Landlord within 5 business

days after receipt of Landlord's written request. In any instance where any such permitted action or proceeding is being undertaken by Tenant, Landlord shall cooperate reasonably with Tenant, at no cost or expense to Landlord, and execute any and all documents approved by Landlord and reasonably required in connection therewith. Tenant shall be entitled to any refund (after the deduction therefrom of all expenses incurred by Landlord in connection therewith) of any Real Estate Taxes (including, without limitation, penalties or interest thereon) received by Tenant or Landlord, whether or not such refund was a result of actions or proceedings instituted by Tenant.

(e) Without limiting anything contained in subsection 3.03(a), Tenant shall be solely responsible for, and shall pay directly to the applicable service providers, the cost of all utility services provided to the Demised Properties throughout the Lease Term.

(f) Without limiting any of Tenant's other obligations set forth in this Article, Tenant shall pay to Landlord, with each payment due to Landlord hereunder (and as a part of Rent due hereunder), all sales and excise tax on rental income and all other similar taxes imposed upon Landlord with respect to rental or other payments in the nature of a gross receipts tax, sales tax, privilege tax or the like, whether imposed by a federal, state or local taxing authority, which when added to such payment shall yield to Landlord after deduction of all such tax payable by Landlord with respect to all such payments a net amount which Landlord would have realized from such payment had no such tax been imposed.

(g) Without limiting anything contained in subsection 3.03(a), Tenant shall pay, as Additional Rent, all Prime Lease Rent (hereinafter defined) and shall comply with all obligations of the tenant under each Prime Lease. Tenant shall be responsible for directly paying to the applicable Prime Landlord, during the Lease Term, the Prime Lease Rent, and shall indemnify Landlord from any liability, cost or expense incurred in connection with the Prime Lease. Upon making any payment of Prime Lease Rent, Tenant shall promptly provide Landlord with written confirmation thereof. Tenant shall also promptly send to Landlord any notices that Tenant receives from any Prime Landlord. Except as expressly provided in Sections 2.02(d) and (e), the termination or expiration of a Prime Lease shall not result in any diminution of Base Rent due hereunder or any other modification of this Lease. "Prime Lease Rent" shall mean, for all of the Demised Properties, collectively (i) all Prime Lease Base Rent and (ii) all Prime Lease Additional Rent. The term Prime Lease Rent may individually refer only to the amounts required to be paid under a specific Prime Lease if the context so indicates; "Prime Lease Additional Rent" shall mean, for all of the Demised Properties, collectively any monetary obligation of Landlord under any Prime Lease (including any percentage rent obligations thereunder), other than the Prime Lease Base Rent, but including any indemnity obligations of the "tenant" thereunder. The term Prime Lease Additional Rent may individually refer only to the amounts required to be paid under a specific Prime Lease if the context so indicates; and "Prime Lease Base Rent" shall mean, for all of the Demised Properties, collectively any monthly scheduled "base rent" or "fixed rent" payments required to be paid under the terms of all of the Prime Leases. The term Prime Lease Base Rent may individually refer only to the amounts required to be paid under a specific Prime Lease if the context so indicates.

(h) In the event of any default under any Prime Lease, Landlord shall have the right to pay any amounts that are due thereunder and may require Tenant to pay to Landlord sums which will provide an impound account (which shall not be deemed a trust fund) for paying any Real Estate Taxes and other recurring expenses required to be paid under any Prime Lease which are not otherwise being escrowed by the corresponding Prime Landlord. Upon such requirement, 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 this Lease. Should additional funds be required at any time, Tenant shall pay the same to Landlord on demand. Tenant shall advise Landlord of all bills for Real Estate Taxes or such other recurring expenses which are required to be paid under the Prime Leases 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 Tenant fails to make any payments required under this subsection 3.03(h) when due, then Tenant shall, without limiting any other remedies available to Landlord, reimburse Landlord for any and all penalties or interest, or portion thereof, incurred by Landlord as a result of such nonpayment or late payment by Tenant. If an Event of Default shall occur, Landlord may apply all impounded funds against any sums due from Tenant to Landlord in such order and priority as Landlord may elect in its sole discretion. Landlord shall give to Tenant an annual accounting showing all credits and debits to and from such impounded funds received from Tenant.

## ARTICLE IV

### USE

**Section 4.01** Tenant may use the Demised Properties to operate a RYAN'S STEAKHOUSE restaurant, FIRE MOUNTAIN STEAKHOUSE restaurant, OLD COUNTRY BUFFET restaurant, and HOMETOWN BUFFET restaurant, and for any other lawful purpose, provided that any such usage shall comply fully with all applicable covenants, conditions and restrictions of record, and the following uses shall in any event be prohibited: strip clubs and other adult entertainment venues, option or swapmeet venues, carry-out liquor stores and any other specially regulated uses that would be considered deleterious to the value of commercial real property in otherwise generally desirable locations. Notwithstanding any other provision of this Article, Tenant shall not use, or suffer or permit any person or entity to use, the Demised Properties or any portion thereof for any purpose in violation of any applicable law, ordinance or regulation applicable to the Demised Properties or in violation of any covenants or restrictions of record. From the Commencement Date and thereafter throughout the Lease Term, Tenant shall conduct its business in a commercially reasonable and reputable manner with respect to the Demised Properties and otherwise in compliance with the terms and provisions of this Lease. The character of the occupancy of the Demised Properties is an additional consideration and a material inducement for the granting of this Lease by Landlord to Tenant.

**Section 4.02** Without limiting any other provision of this Lease, all obligations of Tenant under this Article IV shall apply also to any subtenant of any of the Demised Properties.

**Section 4.03** Notwithstanding anything to the contrary contained herein, except as provided below, Tenant shall at all times during the Lease Term occupy each of the Demised Properties and diligently operate its business on each of the Demised Properties as one of the restaurants under the Ovation Brands umbrella. Notwithstanding the foregoing, (i) at any time prior to December 31, 2018, Tenant may cease diligent operation of business at the Demised Property located in Fresno, California, and (ii) at any time prior December 31, 2017, Tenant may cease diligent operation of business at the Demised Property located in Oxnard, California, provided that, in each case, there shall be no existing Event of Default under this Lease and Tenant shall (i) obtain the prior written consent thereto of the corresponding Prime Landlord to the extent required under the corresponding Prime Lease, (ii) give written notice thereof to Landlord not less than thirty (30) days prior to Tenant ceasing operations at such Demised Property, (iii) provide adequate protection and maintenance of such Demised Property during any period of vacancy, and (iv) comply with all applicable laws, ordinances or regulations applicable to such Demised Property and otherwise comply with all of the terms and conditions of this Lease, including, without limitation, the payment of all amounts due under this Lease and the Prime Leases.

## **ARTICLE V**

### **ACCEPTANCE OF DEMISED PROPERTIES**

Tenant acknowledges that it has had access to the Demised Properties prior to execution of this Lease and has had the opportunity to perform all tests, studies, inspections and investigations (including, without limitation, any investigations regarding zoning and use issues regarding all Demised Properties) that it desires, and that Tenant is accepting each Demised Property in its AS IS condition existing on the date Tenant executes this Lease. Tenant hereby accepts each Demised Property in its condition as of the date of possession hereunder, subject to all applicable zoning, municipal, county, and state laws, ordinances, and regulations, including private easements and restrictions, governing and regulating the use of the Demised Properties, whether or not of record (collectively, the “Diligence Matters”), and accepts this Lease subject thereto and to all matters disclosed hereby. Tenant acknowledges that neither Landlord nor any of Landlord’s Affiliates (as defined below) have made any representation or warranty as to the suitability of any Demised Property for the conduct of the Tenant’s business and that Tenant is entering into this Lease solely on the basis of its own investigations and familiarity with the Demised Properties and not on the basis of any representation, warranty, covenant, agreement, undertaking, promise, statement, arrangement or understanding by, on behalf of, or with, Landlord, except as expressly set forth in this Lease.

## ARTICLE VI

### ALTERATIONS

Subject to the provisions of this Article VI, Tenant shall have no right to make changes, alterations or additions (collectively, "Alterations") to the Buildings on any single Real Property which involve structural changes or which cost in the aggregate in excess of Four Hundred Thousand Dollars (US\$400,000.00) per Demised Property, which amount shall be adjusted annually in proportion to increases in the CPI, in each case without prior written consent of Landlord, which Landlord agrees it will not unreasonably withhold, condition or delay; provided, however, in no event shall any Alterations be made which, after completion, would: (i) reduce the value of the Buildings as they existed prior to the time that said Alterations are made; or (ii) adversely affect the structural integrity of the Buildings. Notwithstanding the foregoing, Tenant shall be permitted to implement the structural (hoods, vents) and nonstructural Alterations required to implement ongoing conversion to the grill program already instituted in many OLD COUNTRY BUFFET, HOMETOWN BUFFET or RYAN'S STEAKHOUSE restaurants provided such Alterations do not adversely affect the structural integrity of the Buildings. Any and all Alterations made by Tenant shall be at Tenant's sole cost and expense. Prior to the commencement of construction, including Alterations which cost less than US\$400,000.00 per Demised Property, which amount shall be adjusted annually in proportion to increases in the CPI (but excluding non-structural Alterations costing less US\$250,000.00 (which amount shall be adjusted annually in proportion to increases in the CPI) in the aggregate per Demised Property, minor maintenance or repair projects and cosmetic refresh projects involving only painting, carpeting, floor covering and installation of moveable replacement Restaurant Equipment (collectively, a "Minor Project"), Tenant shall deliver promptly to Landlord detailed cost estimates for any such proposed Alterations, as well as all drawings, plans and other information regarding such Alterations (such estimates, drawings, plans and other information are collectively referred to herein as the "Alteration Information"). Landlord's review and/or approval (if required) of any Alteration Information shall in no event constitute any representation or warranty of Landlord regarding (x) the compliance of any Alteration Information with any governmental or legal requirements, (y) the presence or absence of any defects in any Alteration Information, or (z) the safety or quality of any of the Alterations constructed in accordance with any plans or other Alteration Information. Landlord's review and/or approval of any of the Alteration Information shall not preclude recovery by Landlord against Tenant based upon the Alterations, the Alteration Information, or any defects therein. In making any and all Alterations, Tenant also shall comply with all of the following conditions:

(a) No Alterations shall be undertaken until Tenant shall have (i) procured and paid for, so far as the same may be required, all necessary permits and authorizations of all governmental authorities having jurisdiction over such Alterations, and (ii) except for Minor Projects, delivered to Landlord at least fifteen (15) days prior to commencing any such Alterations written evidence acceptable to Landlord, in its commercially reasonable discretion, of all such permits and authorizations. Landlord shall, to the extent necessary (but at no cost, expense, or risk of loss to Landlord), join in the application for such permits or authorizations whenever necessary, promptly upon written request of Tenant.

(b) Any and all structural Alterations of the Building shall be performed under the supervision of an architect and/or structural engineer.

(c) Except for Minor Projects, Tenant shall notify Landlord at least fifteen (15) days prior to commencing any Alterations so as to permit, and Tenant shall permit, Landlord access to the relevant Demised Property(ies) in order to post and keep posted thereon such notice(s) as may be provided or required by applicable law to disclaim responsibility for any construction on the relevant Demised Property(ies). Landlord may deliver to Tenant written requests from time to time, not more than once in any thirty (30) day period, for information regarding any Alterations that that Tenant has then undertaken. Tenant shall respond in good faith with all information reasonably requested by Landlord within 5 days after receipt of Landlord's written request.

(d) Any and all Alterations shall be conducted and completed in a commercially reasonable time period (subject to the terms of Article XVII), in a good and workmanlike manner, and in compliance with all applicable laws, municipal ordinances, building codes and permits, and requirements of all governmental authorities having jurisdiction over the relevant Demised Property(ies), and of the local Board of Fire Underwriters, if any; and, upon completion of any and all Alterations, Tenant shall obtain and deliver to Landlord a copy of the amended certificate of occupancy for the relevant Demised Property(ies), if required under applicable law or by governmental authority. To the extent reasonably practicable, any and all Alterations shall be made and conducted so as not to disrupt Tenant's business.

(e) The cost of any and all Alterations shall be promptly paid by Tenant so that the Demised Properties at all times shall be free of any and all liens for labor and/or materials supplied for any Alterations subject to the next succeeding sentence. In the event any such lien shall be filed, Tenant shall, within ten (10) days after receipt of notice of such lien, deliver written notice to Landlord thereof, and Tenant shall, within thirty (30) days after receipt of notice of such lien, discharge the same by bond, title indemnity or payment of the amount due the lien claimant. However, Tenant may in good faith contest such lien provided that within such thirty (30) day period Tenant provides Landlord with a surety bond, title indemnity or other form of security reasonably acceptable to Landlord, protecting against said lien. Tenant shall provide Landlord promptly with evidence satisfactory to Landlord that all contractors, subcontractors or materialmen have been paid in full with respect to such Alterations and that their lien rights have been waived or released. In the event Tenant fails to either discharge such lien or protect against such lien in accordance with the foregoing, then Landlord shall have the option (but not the obligation) to pay such lien or post a bond to protect against such lien and pass through such costs to Tenant as Additional Rent.

## **ARTICLE VII**

### **REPAIRS AND MAINTENANCE**

Except as otherwise provided in this Article, Tenant, at its sole cost and expense, shall maintain each Demised Property and each part thereof, structural and non-structural, in good order and condition, ordinary wear and tear and damage by casualty and condemnation

excepted (such obligations shall include, without limitation, the obligation to maintain all areas outside of the Buildings (including all sidewalks, driveways, landscaping, trash enclosures, and trash compacting and loading areas on the Demised Properties), in a neat and clean condition, and ensuring that debris from the operation of each restaurant on the Demised Properties are cleaned on a regular basis) and, subject to the terms and conditions of Article VI, shall make any necessary Repairs thereto, interior and exterior, whether extraordinary, foreseen or unforeseen but subject to the casualty and condemnation provisions of this Lease. Tenant and Landlord shall each pay one-half of the cost and expense of any Repairs reasonably requested by Landlord which are performed during the last year of the Lease Term. When used in this Article VII, the term "Repairs" shall include all such replacements, renewals, alterations, additions and betterments necessary for Tenant to properly maintain each Demised Property in good order and condition and in compliance with all applicable laws. The adequacy of any and all Repairs to the Demised Properties required or conducted pursuant to this Article VII shall be measured by and meet, at a minimum, all of the following standards: (1) at least equal in quality of material and workmanship to the condition of the relevant Demised Property(ies) prior to the need for such Repairs; (2) avoidance of any and all structural damage or injury to the Building or persons therein; (3) any and all maintenance, service, operation and repair standards and requirements promulgated by Tenant for its (or its subsidiaries' or affiliates') restaurants; and (4) any and all repairs, replacements or upgrades necessary to ensure compliance with the rules and regulations of all governmental agencies having jurisdiction over the relevant Demised Property(ies), including all Environmental Laws (as defined below) and shall conform to the requirements of any covenants, conditions, restrictions or other permitted encumbrances which are of record. Landlord shall have no duty whatsoever to maintain, replace, upgrade, or repair any portion of the Demised Properties, and Tenant hereby expressly waives the right to make repairs at the expense of Landlord, which right may be provided for in any law now or hereinafter in effect. If Tenant fails or neglects to commence and diligently proceed with all necessary Repairs as set forth above (for the purposes hereof, application by Tenant for a building permit (if necessary under applicable law to commence the applicable Repair) shall be deemed to constitute the commencement of a Repair under this Article) within thirty (30) days after receipt of written notice of the need therefor describing the applicable Repair or other obligation (a "Repair Notice") (except in emergency situations involving risk of further damage to the Demised Properties or injury to persons, in which case no such grace period shall be applicable and Tenant shall be obligated to expeditiously commence all necessary Repairs and diligently proceed to complete same), then Landlord or its agents may enter the Demised Properties for the purpose of making such Repairs (with Landlord making commercially reasonable efforts not to unreasonably interfere with Tenant's business operations). All commercially reasonable out of pocket costs and expenses in relation to such Repairs incurred as a consequence of such Landlord's action shall be paid by Tenant to Landlord within thirty (30) days after Landlord delivers to Tenant copies of invoices for such Repairs. These invoices shall be prima facie evidence of the payment of the charges to be paid by Tenant.

## ARTICLE VIII

### COMPLIANCE WITH LAW

Tenant shall, throughout the Lease Term, at its sole cost and expense, comply with all laws and regulations of federal, state, municipal and local governments, departments, commissions and boards pursuant to law, or directives or orders issued pursuant thereto, including without limitation all Environmental Laws and the Americans With Disabilities Act, with respect to, regarding, or pertaining to the Demised Properties, in each case whether now existing or hereafter enacted.

## ARTICLE IX

### QUIET ENJOYMENT SUBJECT TO DILIGENCE MATTERS

From and after the Commencement Date until the expiration or termination of the Lease Term, and provided no Event of Default has occurred and is continuing, Tenant shall have quiet enjoyment of the Demised Properties, subject however, to all Diligence Matters, which shall have priority over the interest of Tenant in this Lease and its leasehold interest in the Demised Properties.

## ARTICLE X

### DISCLAIMER AND INDEMNITY

**Section 10.01** As used in this Lease, (x) “Landlord Parties” means, collectively, Landlord, Landlord’s Affiliates, Landlord’s Lenders and any Fee Mortgagee; (y) “Landlord’s Affiliates” means Landlord’s members, partners, officers, directors, shareholders, employees, or any person or entity that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with Landlord (for purposes of this definition, the term “control,” “controlled by” or “under common control with” means the power, direct or indirect, to direct or cause the direction of the management and policies of Landlord, whether through the ownership of voting stock, by contract, as trustee or executor, or otherwise); and (z) “Landlord’s Lenders” means any persons or entities providing financing or refinancing to Landlord which is secured by a mortgage against any Demised Property or any secured mezzanine lender in the capital structure of any direct or indirect owner in Landlord. To the extent not prohibited by law, none of the Landlord Parties shall be liable, under any circumstances, for any loss, injury, death or damage to person or property (including but not limited to the business or any loss of income or profit therefrom) of Tenant, Tenant’s members, officers, directors, shareholders, agents, employees, contractors, customers, invitees, or any other person in or about the Demised Properties, whether the same are caused by (a) fire, explosion, falling plaster, steam, dampness, electricity, gas, water, rain; or (b) breakage, leakage or other defects of sprinklers, wires, appliances, plumbing fixtures, water or gas pipes, roof, air conditioning, lighting fixtures, street improvements, or subsurface improvements; or (c) theft, acts of God, acts of the public enemy, riot, strike, insurrection, civil unrest, war, court order, requisition or order of governmental body or authority; or (d) any act or omission of any other



occupant of the Demised Properties; or (e) operations in construction of any private, public or quasi-public work; or (f) any other cause, including damage or injury which arises from the condition of the Demised Properties, from occupants of adjacent property, from the public, or from any other sources or places, and regardless of whether the cause of such damage or injury or the means of repairing the same are inaccessible to Tenant, or which may arise through repair, alteration or maintenance of any part of the Demised Properties or failure to make any such repair, from any condition or defect in, on or about the Demised Properties including any “Environmental Conditions” (as defined in Article XXXVII) or the presence of any mold or any “Hazardous Materials” (as defined in Article XXXVII) (other than known environmental problems specifically identified in the environmental site reports described on Schedule 2 to the Existing Leases (the “Environmental Reports”)), or from any other condition or cause whatsoever; provided, however, that the foregoing release set forth in this Section 10.01 shall not be applicable to any claim against a Landlord Party to the extent, and only to the extent, that such claim is attributable to the gross negligence or willful misconduct of such Landlord Party, as determined by a final nonappealable judgment (or by a judgment which such Landlord Party elects not to appeal) by a court of competent jurisdiction.

**Section 10.02** In addition to any and all other obligations of Tenant under this Lease (including without limitation under any indemnity or similar provision set forth herein), to the extent permitted by law, Tenant hereby fully and forever releases, discharges, acquits, indemnifies, protects, and agrees to defend (with counsel selected by Tenant and approved by Landlord (or Landlord’s Lenders), such approval not to be unreasonably withheld, delayed or conditioned) and hold all Landlord Parties wholly free and harmless of, from and against any and all losses, claims, demands, actions, causes of action, settlements, obligations, duties, indebtedness, debts, controversies, remedies, choses in action, liabilities, costs, penalties, fines, damages, injury, judgments, forfeiture, or expenses (including without limitation reasonable attorneys’, consultant, testing and investigation and expert fees and court costs), whether known or unknown, whether liquidated or unliquidated: (a) arising out of or in any way related to or resulting directly or indirectly from: (i) the use, occupancy or activities of Tenant, its subtenants, agents, employees, contractors or invitees in or about the Demised Properties; (ii) any failure on the part of Tenant to comply with any applicable law, code or regulation, including without limitation all Environmental Laws; (iii) any Default or Event of Default under this Lease or any breach or default by Tenant under any other Transaction Document (as defined below) (including without limitation as a result of any termination by Landlord, following an Event of Default, of any sublease, license, concession, or other consensual arrangement for possession entered into by Tenant and affecting the Demised Properties pursuant to Section 16.07); (iv) any other loss, injury or damage described in Section 10.01 above; (v) in connection with mold at any Demised Property (other than known mold problems specifically identified in the Environmental Reports); (vi) work or labor performed, materials or supplies furnished to or at the request of Tenant or in connection with obligations incurred by or performance of any work done for the account of Tenant in, on or about the Demised Properties; (vii) any failure by Tenant to comply with any of the terms and conditions of the Prime Leases, including, without limitation, any costs and expenses incurred by any of the Landlord Parties to cure any such failure; and (b) whether heretofore now existing or hereafter arising out of or in any way related to or resulting directly or indirectly from the presence or “Release” (as defined in Article

XXXVII) at, on, under, to or from the Demised Properties of Hazardous Materials (other than known environmental problems specifically identified in the Environmental Reports). All of the personal or any other property of Tenant kept or stored at, on or about the Demised Properties shall be kept or stored at the sole risk of Tenant. Without limiting the foregoing, Tenant shall pay on demand all fees and costs of Landlord (including, without limitation, attorneys' fees and costs) in connection with any enforcement by Landlord of the terms of this Lease and any amendment to this Lease requested by Tenant. Notwithstanding the foregoing, the indemnity set forth in this Section 10.02 shall not be applicable to any claim against any Landlord Party to the extent, and only to the extent, such claim is attributable to the gross negligence or willful misconduct of such Landlord Party, as determined by a final nonappealable judgment (or by a judgment which such Landlord Party elects not to appeal) by a court of competent jurisdiction. As used herein, "Transactional Documents" means, collectively, this Lease and the Guaranty, and any other agreements entered into by and between Landlord and Tenant regarding the foregoing or the Demised Properties.

**Section 10.03** Landlord and Tenant each (a) represent to the other party that, other than Hilco Real Estate, LLC retained by Tenant ("Hilco") such representing party has dealt with no broker or brokers in connection with the negotiation, execution and delivery of this Lease and (b) agrees to indemnify, defend, protect (with counsel selected by the other party) and holds such other party wholly free and harmless of, from and against any and all claims or demands for any and all brokerage commissions and/or finder's fees due or alleged to be due as a result of any agreement or purported agreement made by such indemnifying party. Tenant shall be responsible for paying any commissions or fees to Hilco and Tenant agrees to indemnify, defend, protect (with counsel selected by Landlord) and hold Landlord wholly free and harmless of, from and against any and all claims or demands for any and all brokerage commissions and/or finder's fees due or alleged to be due as a result of any agreement or purported agreement made by Tenant with Hilco.

**Section 10.04** The provisions of this Article X shall survive the expiration or sooner termination of this Lease. Tenant hereby waives the provisions of any applicable laws restricting the release of claims, or extent of release of claims, which Tenant does not know or suspect to exist at the time of release, which, if known, would have materially affected Tenant's decision to agree to this release. In this regard, Tenant hereby agrees, represents, and warrants to Landlord that Tenant realizes and acknowledges that factual matters now unknown to Tenant may hereafter give rise to causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which are presently unknown, unanticipated and unsuspected, and Tenant further agrees, represents and warrants that the release provided hereunder has been negotiated and agreed upon in light of that realization and that Tenant nevertheless hereby intends to release, discharge and acquit the parties set forth herein above from any such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which are in any manner set forth in or related to this Lease, the Demised Properties and all dealings in connection therewith.

## **ARTICLE XI**

### **INSURANCE**

#### **Section 11.01** INTENTIONALLY DELETED.

**Section 11.02** As of the Commencement Date and throughout the Lease Term, Tenant shall maintain, with financially sound and reputable insurers (as further described in Section 11.03), public liability and other types of insurance with respect to its business and each Real Property (including the Buildings now existing or hereafter erected thereon) against all losses, hazards, casualties, liabilities and contingencies as customarily carried or maintained by persons of established reputation engaged in similar businesses. Without limitation of the foregoing, Tenant shall maintain or cause to be maintained policies of insurance with respect to the Real Property in the following amounts and covering the following risks:

(a) Commercial property coverage for one hundred percent (100%) insurable guaranteed 100% replacement value with no co-insurance penalty (A) “Special Form Causes of Loss” coverage (as such term is used in the insurance industry), at least as broad as ISO Special Form Causes of Loss, CP1030, including coverage for glass breakage, vandalism and malicious mischief, with any deductible (other than related to the property insurance requirement pursuant to Sections 11.02(d) and 11.02(f) below) in excess of One Hundred Thousand Dollars (US\$100,000) to be approved by Landlord and, (B) “Ordinance and Law Coverage” with limits of not less than the building value for Coverage A (loss to the undamaged portion of the Buildings), limits of not less than fifteen percent (15%) of the building value of the Buildings for Coverage B (Demolition Cost Coverage), and limits not less than fifteen percent (15%) of the value of the Buildings for Coverage C (Increased Cost of Construction Coverage).

(b) Commercial General Liability insurance including Product Liability and Liquor Liability (if alcohol is served) covering each Demised Property at least as broad as the most commonly available ISO Commercial General Liability policy form CG0001 (occurrence basis) covering bodily injury, property damage and personal and advertising injury, for the joint benefit of and insuring Tenant and Landlord as set forth below, with limits not less than One Million Dollars (US\$1,000,000) per occurrence, with a general aggregate of not less than One Million Dollars (US\$1,000,000), with any deductible or self-insured retention in excess of Five Hundred Thousand Dollars (US\$500,000) to be approved by Landlord, and a “following form” Umbrella Liability policy or Excess Liability policy to include Product Liability and Liquor Liability (if alcohol is served), in an amount such that the total coverage under both the aforesaid Commercial General Liability policy and the Umbrella Liability policy or Excess Liability policy is not less than Five Million Dollars (US\$5,000,000) per occurrence.

(c) Worker’s compensation insurance covering all persons employed by Tenant at each Demised Property in connection with any work done on or about any of the Demised Property for which claims for death or bodily injury could be asserted against Landlord, Tenant or any of the Demised Property.

(d) In the event a Demised Property is 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 the full replacement value of such Demised Property, with any deductible in excess of the greater of (i) Two Hundred Fifty Thousand Dollars (US\$250,000.00) or five percent (5%) of property value to be approved by Landlord.

(e) Insurance against loss or damage from explosion of any steam or pressure boilers or similar apparatus located in or about the Buildings with limits of not less than Ten Million Dollars (US\$10,000,000) for consequential damages, covering the Buildings and Fixtures (excluding footings and foundations and other parts of the Buildings which are not insurable), with any deductible in excess of One Hundred Thousand Dollars (US\$100,000) to be approved by Landlord.

(f) In the event any Demised Property is located in a major earthquake damage area and earthquake insurance is available, Tenant shall maintain throughout the Term applicable to such Demised Property earthquake insurance for the full replacement value of the Demised Property, with any deductible in excess of the greater of (i) Two Hundred Fifty Thousand Dollars (US\$250,000) or (ii) five percent (5%) of property value to be approved by Landlord.

(g) Such additional and/or other insurance with respect to the Buildings located on the applicable Demised Property and in such amounts as at the time is customarily carried by prudent owners or tenants with respect to improvements and equipment similar in character, location and use and occupancy to the Buildings located on each of the Demised Property.

(h) All insurance policies, endorsements and coverages required for each of the Demised Properties under the terms of the applicable Prime Lease.

**Section 11.03** Each carrier providing any insurance, or portion thereof, required by this Article shall have the legal right to conduct its business in the jurisdiction in which the applicable Real Property is located, and shall have a claims paying ability rating by S&P of not less than “A-” and an A.M. Best Company, Inc. rating of not less than A and financial size category of not less than X. Tenant shall cause all insurance that it is required to maintain hereunder to contain a mortgagee clause and loss payee clause in favor of Landlord’s Lender in accordance with this Section to be payable to Landlord’s Lender as a mortgagee and not as a co-insured, as its interest may appear.

**Section 11.04** All insurance policies required to be maintained by Tenant hereunder and renewals thereof (a) shall be in a form reasonably acceptable to Landlord, (b) shall provide for a term of not less than six months (except for any short term extensions granted by the relevant insurance carriers while Tenant and such insurance carriers work on a longer term policy renewal), (c) if the same are insurance policies covering any property (i) shall include a standard non-contributory mortgagee endorsement or its equivalent in favor of and in form acceptable to Landlord’s Lender, (ii) shall contain an agreed value clause updated periodically

and (iii) shall designate Landlord's Lender as "mortgagee and loss payee" as their interest may appear, and (d) shall provide that the policy of insurance shall not be terminated, cancelled, substantially modified or allowed to lapse on any renewal date without at least thirty (30) days' prior written notice to Landlord, Landlord's Lender and to any other party covered by any standard mortgage clause, loss-payee or additional insured endorsement. In addition, all property insurance policies (except for flood and earthquake limits) must either automatically reinstate after each loss or Tenant must otherwise provide for uninterrupted coverage. Furthermore, all property insurance policies shall reflect that Landlord and Landlord's Lender (the "Landlord Insured Parties") are loss payees to the extent that their respective interests appear. With respect to commercial general liability and umbrella policies, the Landlord Insured Parties shall be named as additional insureds with respect to the leased Demised Properties. The Landlord Insured Parties shall be provided with evidence of property insurance coverage consistent with this Article XI utilizing an Accord form 27, 28 or equivalent, confirming the loss payee status of the Landlord Insured Parties. The form shall also reflect any business interruption coverage maintained voluntarily by Tenant. With respect to liability and umbrella insurance, the Landlord Insured Parties shall be provided with evidence of coverage utilizing an Accord form 25 or equivalent, reflecting that the Landlord Insured Parties are additional insureds with respect to the leased locations. This form shall also confirm the existence of workers compensation insurance including a waiver of subrogation against Landlord.

**Section 11.05** Any insurance provided for in this Article may be effected by a blanket policy or policies of insurance, or under so-called "all-risk" or "multi-peril" insurance policies, provided that the amount of the total insurance available with respect to the Demised Properties shall provide coverage and indemnity at least equivalent to separate policies in the amounts herein required, and provided further that in other respects, any such policy or policies shall comply with the provisions of this Article. Any increased coverage provided by individual or blanket policies shall be satisfactory, provided the aggregate liability limits covering the Demised Properties under such policies shall otherwise comply with the provisions of this Article.

**Section 11.06** Every property insurance policy carried by either party with respect to the Demised Properties shall (if it can be so written) include provisions waiving the insurer's subrogation rights against the other party to the extent such rights can be waived by the insured prior to the occurrence of damage or loss. Subject to the above, each party hereby waives any rights of recovery against the other party for any property direct damage or associated consequential loss covered by said policies (or by policies required to be carried hereunder by such party) whether or not such damage or loss shall have been caused by any acts or omissions of the other party, but such waiver shall operate only to the extent such waiving party is so protected by such insurance coverage (or would have been protected by maintaining all policies required to be carried hereunder by such party).

**Section 11.07** All insurance policies required under this Article XI shall provide that the beneficial interest of Landlord in such policies shall be fully transferable. In the event Tenant fails to procure or maintain any policy of insurance required under Article XI, or if the insurance company or coverages provided fail to meet the requirements contained in this Article

XI, Landlord may, at its option, purchase such insurance and charge Tenant all costs and expenses incurred in procuring and maintaining such insurance.

## ARTICLE XII

### DAMAGE OR DESTRUCTION

**Section 12.01** If at any time during the Lease Term, any Demised Properties or any part thereof shall be damaged or destroyed by fire or other casualty of any kind or nature, Tenant shall promptly apply for all necessary permits, and promptly after issuance of such permits and receipt of insurance proceeds, diligently proceed to repair, replace or rebuild such Demised Properties as nearly as possible to their condition and character immediately prior to such damage with such variations and Alterations as may be permitted under (and subject to the provisions of) Article VI (the "Restoration Work"). Notwithstanding the foregoing, if Tenant has not exercised its renewal option, Tenant shall have no obligation to repair, replace or rebuild such Demised Properties during the last two (2) years of the Lease Term, so long as (i) no Event of Default exists, including without limitation any Event of Default under the insurance provisions, (ii) Landlord shall have received any and all insurance proceeds relating to such casualty (other than insurance proceeds on account of Tenant's trade fixtures, Restaurant Equipment or inventory) and (iii) Tenant shall have paid the deductible for the insurance policy covering such casualty. Tenant shall have the right to receive any and all insurance proceeds on account of Tenant's trade fixtures, Restaurant Equipment or inventory.

**Section 12.02** All property and casualty insurance proceeds payable to Landlord or Tenant (except (i) insurance proceeds payable to Tenant on account of Tenant's trade fixtures, Restaurant Equipment or inventory; and (ii) insurance proceeds payable from comprehensive general public liability insurance, or any other liability insurance) at any time as a result of casualty to the Demised Properties shall be paid to Tenant if less than \$100,000 (which amount shall be adjusted annually in proportion to increases in the CPI), otherwise jointly to Landlord and Tenant for purposes of payment for the cost of the Restoration Work, except as may be otherwise expressly set forth herein. Landlord shall make such insurance proceeds available to Tenant based on a commercially reasonable draw schedule. Landlord and Tenant shall cooperate in order to obtain the largest possible insurance award lawfully obtainable and shall execute any and all consents and other instruments and take all other actions necessary or desirable in order to effectuate same and to cause such proceeds to be paid as hereinbefore provided. The proceeds of any such insurance in the case of loss shall, to the extent necessary, be used first for the Restoration Work with the balance, if any, payable to Landlord. If insurance proceeds as a result of a casualty to the relevant Demised Property(ies) are insufficient to complete the Restoration Work necessary by reason of such casualty, then Tenant shall be responsible for the payment of such amounts necessary to complete such work.

**Section 12.03** This Lease shall not be affected in any manner by reason of the total or partial destruction to any Demised Property or any part thereof and Tenant, notwithstanding any law or statute, present or future, waives all rights to quit or surrender any Demised Property or any portion thereof because of the total or partial destruction of any Demised Property (prior to

the expiration of this Lease). Base Rent and Additional Rent required to be paid by Tenant hereunder shall not abate as a result of any casualty.

## ARTICLE XIII

### EMINENT DOMAIN

**Section 13.01** Landlord and Tenant hereby agree that in no event shall any taking of any Demised Property for any public or quasi-public use under any statute or by right of eminent domain, or by purchase in lieu thereof, in any way relieve Tenant of any obligations under this Lease (as to the applicable Demised Property or otherwise) except as explicitly provided in this Article.

**Section 13.02** The parties hereto agree to cooperate in applying for and in prosecuting any claim for any taking regarding any Demised Property and further agree that the aggregate net award shall be distributed to Landlord for the condemned Demised Property. Tenant shall be entitled to claim and receive any award or payment from the condemning authority expressly granted for the taking of Tenant's trade fixtures, Restaurant Equipment or inventory, the interruption of its business and moving expenses, but only if such claim or award does not adversely affect or interfere with the prosecution of Landlord's claim for the taking or otherwise reduce the amount recoverable by Landlord for the taking.

**Section 13.03** In case of a taking of any portion of any Demised Property (except if this Lease is terminated with respect to such Demised Property pursuant to Section 13.04), Tenant at its own expense shall proceed with diligence (subject to reasonable time periods for purposes of adjustment of any award and unavoidable delays) to repair or reconstruct (or cause to be repaired and reconstructed) the affected Building to a complete architectural unit (all such repair, reconstruction and work being referred to in this Article as "Reconstruction Work"). Landlord shall make such condemnation award available to Tenant based on a commercially reasonable draw schedule for Reconstruction Work up to and not exceeding the net compensation amount realized by Landlord as a result of such taking (i.e., the gross amount of the compensation received by Landlord from the taking authority less all reasonable costs and expenses incurred by Landlord in pursuing, prosecuting, and/or recovering its claim to such award). All Reconstruction Work shall be performed in accordance with the standards and requirements for Alterations set forth in Article VI.

**Section 13.04** In case of a taking of any portion of any Demised Property, the Base Rent payable hereunder regarding the Demised Properties shall be equitably reduced as of the Impact Date (as hereinafter defined) by a percentage equal to the percentage of the diminution in value of such Demised Property, as reasonably determined by Tenant and Landlord (however, Tenant shall not reduce the payment of Base Rent until such determination of the equitable reduction in Base Rent, or until determination by an arbitration as set forth below, and then Tenant shall be entitled to a credit for any excess payments of Base Rent made by Tenant). "Impact Date" shall mean the date on which Tenant is no longer legally permitted to use the portion of the Demised Property that was taken. In determining the equitable reduction in Base Rent, the parties shall utilize the fair market value of such Demised Property, as of the date of

inception of this Lease, as determined by an MAI Appraiser mutually acceptable to the parties. If the parties fail to agree on the reduction in Base Rent due to the applicable taking with respect to the Demised Properties within fifteen (15) business days after the applicable taking, then either party, by written notice delivered to the other party (the date when such notice is delivered to the other party is referred to herein as the “Notice Date”), may cause the following procedure to be utilized in determining such reduction in Base Rent:

(1) Submission of Proposed Base Rent Reduction. Within fifteen (15) days after the Notice Date, each of Landlord and Tenant shall deliver to the other party its calculation of its proposed equitable reduction in the Base Rent as a result of the applicable taking (a “Base Rent Reduction”), which calculation shall include (a) the Base Rent properly allocated to the Demised Properties prior to the taking, (b) the percentage diminution in value of the applicable Demised Property as a result of the taking, and (c) the resulting reduction in Base Rent hereunder as a result of such taking.

(2) Appointment and Qualifications of Appraiser. Within thirty (30) days after the Notice Date, Landlord and Tenant shall each appoint one licensed real estate appraiser who has been active over the previous five-year (5-year) period in the appraisal of single tenant restaurants within the county in which the Demised Properties are located (each such appraiser chosen pursuant to this subsection (2), an “Appraiser”). Each of Landlord and Tenant shall notify the other party, in writing, of its Appraiser (and the business address thereof) within two (2) business days after the appointment thereof (collectively, the “Appraiser Appointment Notices”). Each of Landlord and Tenant agree that any Appraiser may be (but is not required to be) an appraiser who assisted either party in determining such party’s calculation of the Base Rent Reduction pursuant to subsection (1), above.

(3) Appointment of Third Appraiser. If each party appoints an Appraiser and notifies the other party in accordance with subsection (2), above, then the two (2) Appraisers shall, within ten (10) business days after delivery of the later of the two Appraiser Appointment Notices, agree on and appoint a third Appraiser (whom shall be a licensed real estate appraiser with all other qualifications for the initial two Appraisers chosen by the parties as set forth in subsection (2), above) and provide prompt written notice to Landlord and Tenant of such third Appraiser and the business address thereof. If the two (2) Appraisers fail to agree on and appoint a third Appraiser within such ten (10) business day period, then either party may elect to have the third Appraiser selected by the AAA by delivering written notice thereof to the other party. In such event, the electing party shall petition the AAA (with a copy to the other party) to so determine the third Appraiser and the parties shall cooperate reasonably with each other and the AAA (including, without limitation, by responding



promptly to any requests for information made by the AAA) in connection with such determination. The decision of the AAA shall be final and conclusive as to the identity of the third Appraiser.

(4) Appraisers' Decision. Within thirty (30) days after the appointment of the third Appraiser, each of the three (3) Appraisers shall decide whether the Base Rent Reduction as proposed by Landlord or Tenant pursuant to subsection (1), above, is closer to the actual Base Rent Reduction as determined by each such Appraiser. The decision of the majority of the three (3) Appraisers shall be binding on Landlord and Tenant (subject to subsection (5), below). The determination of each Appraiser shall be limited to the sole issue of, and each Appraiser shall have neither the right nor the power to determine any issue other than, whether the Base Rent Reduction as proposed by Landlord or Tenant pursuant to subsection (1), above, is closer to the actual Base Rent Reduction as determined by each such Appraiser.

(5) If Only One Appraiser Is Appointed. If either Landlord or Tenant fails to appoint an Appraiser within thirty (30) days after the Tenant Notice Date or fails to deliver an Appraiser Appointment Notice in accordance with subsection (2), above, and the other party does appoint an Appraiser within such thirty (30) day period and delivers an Appraiser Appointment Notice in accordance with subsection (2), above, then the Appraiser timely appointed by such other party shall reach a decision regarding whether the Base Rent Reduction as proposed by Landlord or Tenant pursuant to subsection (1), above, is closer to the actual Base Rent Reduction as determined by each such Appraiser, and notify Landlord and Tenant of that decision within thirty (30) days after such Appraiser's appointment. In such event, such Appraiser's decision shall be binding on Landlord and Tenant.

(6) Cost of Arbitration. If the Appraisers (or Appraiser, pursuant to subsection (5), above) determine that Tenant's proposed Base Rent Reduction is closer to the actual Base Rent Reduction, then Landlord shall be deemed the "Losing Party" and Tenant shall be deemed the "Prevailing Party." If the Appraisers (or Appraiser, pursuant to subsection (5), above) determine that Landlord's proposed Base Rent Reduction is closer to the actual Base Rent Reduction, then Tenant shall be deemed the "Losing Party" and Landlord shall be deemed the "Prevailing Party." Each party shall initially pay the fees and expenses of its legal counsel, appointed appraiser, appraisals, one-half of the fees of the third appraiser, and one-half the fees of the AAA (if applicable), provided, however, that the Losing Party shall be obligated to reimburse the Prevailing Party for all costs of the arbitration paid by the Prevailing Party promptly upon the completion of the arbitration procedure set forth in this Section (including fees and expenses of the Prevailing Party's legal counsel, appointed

appraiser, appraisals, and its one-half share of the fees of the third appraiser, and the AAA (if applicable)).

In the event of a total taking of a Demised Property, (i) this Lease shall terminate with respect to such Demised Property, (ii) Tenant's obligations with respect to such Demised Property shall terminate from and after the Total Taking Date (as hereinafter defined) and (iii) Landlord shall be entitled to the entire condemnation award for such total taking of such Demised Property. In the event of the taking of more than twenty-five (25%) percent of the square footage of the restaurant building located on a Demised Property, Tenant shall have the right to terminate this Lease with respect to such Demised Property by written notice given to Landlord no later than the Total Taking Date, and if such termination right is timely exercised, Tenant's obligations with respect to such Demised Property shall terminate from and after the Total Taking Date and Landlord shall be entitled to the entire condemnation award for such taking of such Demised Property. "Total Taking Date" shall mean the date of the actual transfer of title of such Demised Property from Landlord to the applicable condemning authority.

Notwithstanding the foregoing, in connection with any condemnation award received by Landlord in an amount less than US\$100,000 (which amount shall be adjusted annually in proportion to increases in the CPI), Landlord, in its sole discretion, shall either reduce the Base Rent as of the Impact Date (a) in accordance with the foregoing appraisal process or (b) by an amount equal to the product of (1) the actual condemnation award received by Landlord multiplied by (2) 0.667 percent (0.667%).

**Section 13.05** Any compensation for a temporary taking shall be payable to Tenant without participation by Landlord, except to the proportionate extent such temporary taking extends beyond the end of the Lease Term, and there shall be no abatement of Rent as a result of any temporary taking affecting any of the Demised Properties.

## ARTICLE XIV

### PERFORMANCE OF OBLIGATIONS

#### **Section 14.01** Performance of Obligations.

(a) Landlord hereby represents, warrants and covenants to Tenant that Landlord has the right and lawful authority to enter into this Lease and perform Landlord's obligations hereunder.

(b) Tenant hereby represents, warrants and covenants to Landlord that Tenant has the right and lawful authority to enter into this Lease and perform Tenant's obligations hereunder.

#### **Section 14.02** Intentionally Deleted

**Section 14.03** Books and Records. Tenant shall keep accurate books and records of account of all of the Demised Properties. Tenant shall provide, or cause to be provided, to

Landlord, in addition to any other financial statements required under this Lease, the following financial statements and information, all of which must be prepared in a form reasonably acceptable to Landlord:

(i) promptly and in any event within sixty (60) days after the end of each Fiscal Quarter, (x) quarterly statements of EBITDA in respect of each Demised Property for each Fiscal Month in such Fiscal Quarter and year-to-date, to be certified by an officer of Tenant, and (y) total sales figures in respect of each Demised Property for each Fiscal Month in such Fiscal Quarter and year-to-date; and

(ii) promptly and in any event within one hundred and twenty (120) days after the end of each Fiscal Year, an annual statement of financial position of Tenant, including a balance sheet and statement of profits and losses and, to the extent one is prepared, a statement of cash flows, such annual statements of financial position to be certified by an officer of Tenant to fairly represent the financial condition of Tenant as of the date thereof. To the extent such financial statements are audited, Tenant shall provide Landlord with a final copy of that audit within thirty (30) days of completion. Notwithstanding the foregoing, as long as Tenant is a wholly-owned direct or indirect subsidiary of Buffets, LLC, Tenant shall be permitted to satisfy its obligations under this clause (ii) by providing (or causing Buffets, LLC to provide) the financial statements described herein of Buffets, LLC and its subsidiaries on a consolidated basis, rather than of Tenant; and

(iii) in the event that Tenant defaults in making any payment required under this Lease when due and such default is not cured within thirty (30) days, within sixty (60) days of Landlord's request, a quarterly statement of financial position of Tenant, including a balance sheet and statement of profits and losses and a statement of cash flows, for the most recent Fiscal Quarter for which such quarterly statements were prepared by Tenant, such quarterly statements to be certified by an officer of Tenant to fairly represent the financial condition of Tenant as of the date thereof. Notwithstanding the foregoing, as long as Tenant is a wholly-owned direct or indirect subsidiary of Buffets, LLC, Tenant shall be permitted to satisfy its obligations under this clause (iii) by providing (or causing Buffets, LLC to provide) the financial statements described herein of Buffets, LLC and its subsidiaries on a consolidated basis, rather than of Tenant.

“Fiscal Year” shall mean a fiscal year from approximately July to June (subject to change by Tenant); “Fiscal Quarter” shall mean approximately July through September, approximately October through December, approximately January through March, and approximately April through June (subject to change by Tenant). The last day of each Fiscal Year is the Wednesday closest to June 30<sup>th</sup> (subject to change by Tenant); and “Fiscal Month” shall mean either (A) a calendar month or (B) a reporting period equal to 1/13 of a year, whichever shall then be used by Tenant in maintaining its books and records.

Tenant acknowledges that Landlord must comply with certain financial audit requirements and Landlord will suffer damages from Tenant's failure to deliver any of the financial information required in Subsections 14.03(i) and (ii) (the “Key Financial Statements”)

as and when due. If Tenant fails to deliver any Key Financial Statements as and when due, and such failure is not cured within ten (10) days after written notice from Landlord, subject to Force Majeure, Tenant shall pay Landlord a fee equal to US\$500 for each day that Tenant has failed to deliver any such Key Financial Statements (the "Financial Statements Default Fee"). The Financial Statements Default Fee is in addition to, and not in lieu of, any other remedy of Landlord under this Lease regarding Tenant's failure to deliver the Key Financial Statements. Tenant's payment of the Financial Statements Default Fee does not cure any Default or Event of Default caused by the failure to deliver any Key Financial Statement in a timely manner.

## ARTICLE XV

### INTENTIONALLY DELETED

## ARTICLE XVI

### DEFAULT

**Section 16.01** Events Of Default. The occurrence of any of the following shall constitute an event of default under this Lease ("Event of Default") on the part of Tenant:

(a) Nonpayment of Base Rent. Failure to pay any installment of Base Rent hereunder when due, and the continuance of such nonpayment for five (5) days after Tenant's receipt of written notice and demand from Landlord.

(b) Nonpayment of Additional Rent. Failure to pay any amount of Additional Rent on or before the date when due and such failure continuing for seven (7) business days following delivery to Tenant by Landlord of written notice specifying such failure.

(c) Insolvency. If at any time during the Lease Term, (i) proceedings in bankruptcy shall be instituted (voluntarily or involuntarily) by or against Tenant or Buffets, LLC, a Minnesota limited liability company, formerly known as Buffets, Inc. ("Guarantor") that result in the filing of a voluntary petition or the entry of an order for relief, or (ii) Tenant or Guarantor shall file, or any creditor or other person shall file against Tenant or Guarantor, any petition in bankruptcy (i.e., seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief) under the Bankruptcy Code of the United States of America (or under any other present or future federal or state statute, law or regulation of similar intent or application), and such filing is not vacated or withdrawn within sixty (60) days thereafter, or (iii) a trustee or receiver shall be appointed to take possession of any of the Demised Properties, or of all or substantially all of the business or assets of Tenant or Guarantor, and such appointment is not vacated or withdrawn and possession restored to Tenant within sixty (60) days thereafter, or (iv) a general assignment or arrangement is made by Tenant or Guarantor for the benefit of creditors, or (v) any sheriff, marshal, constable or other duly-constituted public official takes possession of any Demised Property, or of all or substantially all of the business or assets of Tenant or Guarantor by authority of any attachment, execution, or other judicial seizure proceedings, and if such attachment or other seizure remains undismissed

or undischarged for a period of sixty (60) days after the levy thereof, or (vi) Tenant or Guarantor shall admit in writing Tenant's or Guarantor's inability to pay its debts as they become due; or (vii) Tenant or Guarantor files an answer admitting or failing timely to contest a material allegation of a petition filed against Tenant or Guarantor, respectively, in any such proceeding; or (viii) within ninety (90) days after the commencement of any proceeding against Tenant or Guarantor seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such proceeding shall not have been dismissed. In the event that under applicable law the trustee in bankruptcy or Tenant has the right to affirm this Lease and continue to perform the obligations of Tenant hereunder, such trustee or Tenant shall, within such time period as may be permitted by the bankruptcy court having jurisdiction, cure all defaults of Tenant hereunder outstanding as of the date of the affirmance of this Lease and provide to Landlord such adequate assurances as may be necessary to ensure Landlord of the continued performance of Tenant's obligations under this Lease.

(d) Misrepresentation. The discovery by Landlord that any representation, warranty or financial statement given to Landlord by Tenant or Guarantor, or any affiliate of Tenant or Guarantor, was intentionally materially false or misleading when given, including without limitation as set forth in any Transaction Document.

(e) Insurance; Patriot Act. Any breach by Tenant under Article XI or Article XLII, provided however, any breach by Tenant under Article XI shall not constitute an Event of Default so long as Tenant cures any such breach within ten (10) days after receipt of written notice of such breach from Landlord (provided further however, that any lapse of any of the insurance policies required under Article XI shall constitute an automatic Event of Default without any notice or cure right).

(f) Delivery of Documents. The failure by Tenant to deliver any of the documents required pursuant to Section 26.01, 28.01 or 38.01 within the time periods required pursuant to such sections (except if the delay is caused by the good faith negotiation between Tenant and Landlord or its Lender with respect to the form and substance of such documents).

(g) Financial Information; Insurance. Tenant fails in any of its obligations set forth in Section 14.03, such failure continuing for a period of ten (10) days after written notice of such failure is delivered by Landlord to Tenant; or any claim of lien is recorded against any Demised Property and such claim of lien continues for thirty (30) days without discharge (by bonding or other means available pursuant to applicable law), satisfaction or provision for payment being made by or on behalf of Tenant.

(h) Cross Default With Guaranty. There is any default by Guarantor, after any applicable notice or cure periods, under the Guaranty.

(i) Intentionally Omitted.

(j) Cross Default With Other Leases. There is any default by the tenant, after any applicable notice or cure periods, under any of the leases listed below (collectively, the

“Crossed Leases”) provided that, this clause (j) shall only apply to any particular Crossed Lease during the time period that Landlord and the landlord under such Crossed Lease are affiliated entities:

(1) the Amended and Restated Master Land and Building Lease dated as of even date herewith between Cole BU Portfolio II, LLC, as landlord, and Fire Mountain Restaurants, LLC, as tenant;

(2) the Land and Building Lease dated as of even date herewith between Landlord and OCB Restaurant Company, LLC, as tenant, with respect to the premises located at 1655 Countryside Drive, Turlock, California; and

(3) the Land and Building Lease dated as of even date herewith between Landlord and OCB Restaurant Company, LLC, as tenant, with respect to the premises located at 4640 Roosevelt Boulevard, Philadelphia, Pennsylvania.

(k) Other Obligations. The failure by Tenant to timely perform any obligation, agreement or covenant under this Lease, other than those matters specified in Sections 16.01(a)-(j) above, and such failure continuing for a period of thirty (30) days after written notice of such failure is delivered to Tenant, or such longer period, up to but not exceeding an additional ninety (90) days, as is reasonably necessary to remedy such default provided, however, that if Tenant has continuously and diligently pursued a remedy at all times during such thirty (30) day period and additional ninety (90) day period, and notwithstanding such efforts by Tenant the applicable Default has not been cured, and if Tenant prior to the expiration of such additional ninety (90) day period delivers to Landlord cash or other collateral, or agrees to other undertakings, in each case reasonably acceptable to Landlord that, in Landlord’s commercially reasonable judgment, fully mitigate any loss that Landlord has suffered, or is reasonably likely to suffer, as a result of such Default, then such Default shall be deemed cured by Tenant for all purposes hereunder; provided, however, that if at any time thereafter Landlord determines in its commercially reasonable discretion that additional cash, collateral or other undertakings by Tenant are required in order to fully mitigate any loss that Landlord has suffered, or is reasonably likely to suffer, as a result of such Default, then Tenant shall deliver such cash or collateral to Landlord, or agree to such other undertakings, within thirty (30) days after Landlord’s written request therefor (and any failure to do so shall constitute an immediate Event of Default hereunder), and Landlord and Tenant agree that Landlord’s actions in accordance with this subsection 16.01(k) shall satisfy any obligation of Landlord pursuant to applicable law to mitigate its damages following any Default.

As used in this Lease, “Default” means any breach or default under this Lease, whether or not the same is an Event of Default, and also any breach or default under this Lease, that after notice or lapse of time or both, would constitute an Event of Default if that breach or default were not cured within any applicable grace or cure period.

**Section 16.02** Remedies Upon Event of Default. If an Event of Default by Tenant occurs and during the continuance thereof, in addition to any other remedies available to Landlord at law or in equity or elsewhere hereunder, Landlord shall have the following remedies:

(a) Termination. Landlord shall have the right, with or without notice or demand, immediately upon expiration of any applicable grace period specified herein, to terminate this Lease (or Tenant's possession to any of the Demised Properties), and at any time thereafter recover possession of all or any portion of the Demised Properties or any part thereof and expel and remove therefrom Tenant and any other person occupying the same by any lawful means, and repossess and enjoy all or any portion of the Demised Properties without prejudice to any of the remedies that Landlord may have under this Lease. If Landlord elects to terminate this Lease (or to terminate Tenant's right of possession), Landlord shall also have the right to reenter the Demised Properties and take possession of and remove all personal property of Tenant, if any, in such Demised Properties. In connection with any such repossession Tenant (and any affiliate of Tenant holding a liquor license, if any, with respect to the Demised Properties) shall cooperate reasonably with Landlord and any applicable government agency in transferring its liquor license to Landlord, or in assisting Landlord in obtaining a liquor license, all at no cost or expense to Tenant. If Landlord elects to terminate this Lease and/or Tenant's right to possession, or if Tenant's right to possession is otherwise terminated by operation of law, Landlord may recover as damages from Tenant the following: (i) all Rent then due under this Lease through the date of termination; (ii) the Rent due for the remainder of the Lease Term in excess of the fair market rental value of the Demised Properties for the remainder of the Lease Term, including without limitation any and all Additional Rent (each discounted by the discount rate of the Federal Reserve Bank of San Francisco plus one percent (1%)); (iii) the cost of reletting the Demised Properties, including without limitation the anticipated period of vacancy until such Demised Properties can be re-let at their fair market rental values; and (iv) any other costs and expenses that Landlord may reasonably incur in connection with the Event of Default. Efforts by Landlord to mitigate the damaged caused by the Event of Default (or Tenant's Default under this Lease) shall not waive Landlord's right to recover damages under the foregoing provisions.

(b) Continuation after Event of Default. If Landlord does not elect to terminate this Lease, then this Lease shall continue in effect, and Landlord may enforce all of its rights and remedies under this Lease, including, without limitation, the right to recover Rent as it becomes due, and Landlord, without terminating this Lease, may exercise all of the rights and remedies of a landlord under law, subject to Article XXXII hereof. Landlord shall not be deemed to have terminated this Lease except by an express statement in writing. Acts of maintenance or preservation, efforts to relet the Demised Properties, or the appointment of a receiver upon application of Landlord to protect Landlord's interest under this Lease shall not constitute an election to terminate Tenant's right to possession unless such election is expressly stated in writing by Landlord. Notwithstanding any such reletting without such termination, Landlord may at any time thereafter elect to terminate Tenant's right to possession and this Lease. If Landlord elects to relet the Demised Properties for the account of Tenant, the rent received by Landlord from such reletting shall be applied as follows: first, to the payment of any and all costs of such reletting (including, without limitation, reasonable attorneys' fees, brokers' fees, alterations and repairs to the Demised Properties, and tenant improvement costs); second, to the payment of any and all indebtedness other than Rent due hereunder from Tenant to Landlord; third, to the payment of any and all Rent due and unpaid hereunder; and the balance, if any, shall be held by Landlord and applied in payment of future Rent as it becomes

due. If the rent received from the reletting is less than the sum of the costs of reletting, other indebtedness due by Tenant, and the Rent due by Tenant, then Tenant shall pay the deficiency to Landlord promptly upon demand by Landlord. Such deficiency shall be calculated and paid monthly.

(c) State-Specific Remedy. Landlord may pursue any other remedy now or hereafter available to Landlord under the laws and judicial decisions of the state in which the Demised Properties are located in addition to and not as an alternative remedy to those provided hereunder.

**Section 16.03** Indemnification. Nothing in this Article shall be deemed to affect Tenant's obligation to indemnify, defend, protect and hold harmless Landlord and the other Landlord Parties under this Lease (including, without limitation, under Article X and Article XXXVII), and such obligation shall survive the termination or expiration of this Lease.

**Section 16.04** Waiver of Notice/Performance by Landlord. Notwithstanding any provision herein, (a) if Tenant is required to comply with any governmental requirement, Tenant shall not be entitled to notice of default from Landlord and right to cure beyond the period within which such compliance may be required by applicable law or government agency or (b) if in Landlord's reasonable determination the continuance of any default by Tenant for the full period of notice provided for herein will constitute a threat of injury or harm to persons or property, Landlord may, with or without notice, elect to perform those acts with respect to which Tenant is in default for the account and at the expense of Tenant. If by reason of such governmental requirement or default by Tenant, Landlord is compelled or elects to pay any sum of money, (including without limitation reasonable attorneys' fees, consultant fees, testing and investigation fees, expert fees and court costs), such sums so paid by Landlord shall be due to Landlord from Tenant within thirty (30) days after written demand therefor from Landlord, in addition to any other amounts to be paid by Tenant under this Lease.

**Section 16.05** Late Fee. In addition to any interest charged to Tenant under Section 16.06, if any payment of Base Rent or Additional Rent is not received by Landlord from Tenant within five (5) days after such payment is due to Landlord hereunder, such payment shall be deemed delinquent and cause Tenant to incur a late fee of seven percent (7%) on each such delinquent payment (the "Late Fee"), due and payable immediately with the delinquent Base Rent or delinquent Additional Rent, as the case may be.

**Section 16.06** Interest. Tenant hereby acknowledges that late payment by Tenant of Base Rent, Additional Rent and/or any other sums due by Tenant hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges and late charges which may be imposed on Landlord by the terms of any mortgage or trust deed covering the Demised Properties. Accordingly, in addition to any Late Fee due from Tenant hereunder, any sum due by Tenant under this Lease which is not paid when due shall bear interest at the lesser of ten percent (10%) per annum of such sums or the maximum rate allowed under applicable law, from the date such sum becomes due and payable by Tenant hereunder until paid, unless otherwise expressly provided in this Lease.



**Section 16.07** Tenant's Subleases. If Landlord elects to terminate this Lease on account of any Event of Default, then Landlord may: (i) terminate any sublease and any license, concession, or other consensual arrangement for possession entered into by Tenant and affecting any of the Demised Properties which is not the subject of a nondisturbance agreement executed by Landlord; or (ii) choose to succeed to Tenant's interest in such arrangement. Absent a nondisturbance agreement between Landlord and such subtenant, no payment by a subtenant with respect to a sublease shall entitle such subtenant to possession of any Demised Property after termination of this Lease and Landlord's election to terminate the sublease by the subtenant. If Landlord elects to succeed to Tenant's interest in such arrangement, then Tenant shall, as of the date of notice given by Landlord to Tenant of such election, have no further right to, or interest in, any rent or other consideration receivable under that arrangement.

**Section 16.08** Other Effects of Events of Default.

(a) Upon the occurrence of an Event of Default, Landlord shall have all rights and remedies hereunder and under applicable law immediately. Except only as may be required by statute which cannot be waived lawfully, Landlord shall have no obligation to give any notice after an Event of Default as a condition to Landlord's pursuit of any right or remedy.

(b) This Section is in all respects subject to any applicable statute that provides rights in favor of Tenant that are contrary to this Section. Notwithstanding anything else herein (but subject to any such applicable statute), Landlord shall have no obligation to accept the attempted or purported cure of, or to waive, any Event of Default, regardless of tender of delinquent payments or other performance by Tenant, or any other event or condition whatsoever; and Tenant shall not have any right to cure any Event of Default, and no right to cure shall be implied.

(c) Without limiting the foregoing, after the occurrence of any Event of Default (irrespective of whether or not the same consists of an ongoing condition, a one-time occurrence, or otherwise), the same shall be deemed to continue at all times thereafter; provided, however, that such Event of Default shall cease to continue only if Landlord shall accept performance of the defaulted obligation or shall execute and deliver a written agreement in which Landlord expressly states that such Event of Default has ceased to continue. Landlord shall not be obligated under any circumstances whatsoever to accept such performance or execute and deliver any such writing.

(d) Without limitation, this Section shall govern in any case where reference is made in this Lease to (i) any "cure" (whether by use of such word or otherwise) of any Event of Default, (ii) "during an Event of Default" or "the continuance of an Event of Default" (in each case, whether by use of such words or otherwise), or (iii) any condition or event which continues beyond the time when the same becomes an Event of Default.

**Section 16.09** Acceptance of Rent Without Waiving Rights. No payment by Tenant shall be deemed to be other than on account of the earliest sum due from Tenant hereunder, nor shall any endorsement or statement by Tenant on any check or any letter accompanying such payment be deemed an accord and satisfaction of any amount in dispute between Tenant and

Landlord or otherwise. Landlord may accept any and all of Tenant's payments without waiving any right or remedy under this Lease, including but not limited to the right to commence and pursue an action to enforce rights and remedies under a previously served notice of default, without giving Tenant any further notice or demand.

**Section 16.10** Waiver by Tenant. Tenant hereby waives all claims for damages that may be caused by Landlord's lawful reentering and taking possession of the Demised Properties in accordance with the provisions of this Lease or removing and storing the property of Tenant as herein provided.

**Section 16.11** Remedies Cumulative. All rights, privileges, elections, and remedies of Landlord and Tenant are cumulative and not alternative with all other rights and remedies hereunder, at law or in equity to the fullest extent permitted by law. The exercise of one or more rights or remedies by Landlord or Tenant shall not impair Landlord's or Tenant's rights to exercise any other right or remedy to the fullest extent permitted by law.

**Section 16.12** Survival. The remedies available to Landlord pursuant to this Article shall survive expiration or termination of this Lease.

## ARTICLE XVII

### UNAVOIDABLE DELAYS, FORCE MAJEURE

If either party shall be prevented or delayed from punctually performing any obligation or satisfying any condition under this Lease by any condition beyond the control of such party, exclusive of financial inability of a party (including without limitation any of the following if beyond the control of (and not caused by) such party ("Force Majeure"): strike, lockout, labor dispute, civil unrest, inability to obtain labor, materials or reasonable substitutes thereof, acts of God, present or future governmental restrictions, regulations or control, insurrection, and sabotage), then the time to perform such obligation or satisfy such condition shall be extended by the delay caused by such event, but only for a reasonable period of time not to exceed, in any event, three hundred sixty-five (365) days (the "Force Majeure Deadline"). The provisions of this Article shall in no event operate to delay the Commencement Date or to excuse Tenant from the payment of all Rent as and when due under this Lease.

## ARTICLE XVIII

### NO WAIVER

The failure of Landlord or Tenant to insist upon strict performance of any of the terms and conditions hereof shall not be deemed a waiver of any rights or remedies that party or any other such party may have, and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions.

**ARTICLE XIX**

**NOTICES**

Whenever it is provided herein that notice, demand, request or other communication shall or may be given to either of the parties by the other, it shall be in writing and, any law or statute to the contrary notwithstanding, shall not be effective for any purpose unless same shall be given or served as follows:

(a) If given or served by Landlord, (1) by hand delivery to Tenant, (2) by mailing same to Tenant by registered or certified mail, postage prepaid, return receipt requested, or (3) by delivery by overnight courier such as Federal Express, all delivered and addressed to Tenant at the following address:

120 Chula Vista  
Hollywood Park, TX 78232  
Attention: Real Estate Department  
Telephone: (210) 403-3725

with a copy to:

120 Chula Vista  
Hollywood Park, TX 78232  
Attention: President  
Telephone: (210) 403-3725

(b) If given or served by Tenant, (1) by hand delivery to Landlord, (2) by mailing same to Landlord by U.S. registered or certified mail, postage prepaid, return receipt requested, or (3) by delivery by overnight courier such as Federal Express, all delivered and addressed to Landlord at the following address:

c/o VEREIT, Inc.  
2325 East Camelback Road, Suite 1100  
Phoenix, AZ 85016  
Attention: General Counsel, Real Estate  
Telephone: (602) 778-8700  
Facsimile: (480) 449-7012

with a copy to:

Kutak Rock LLP  
8601 N. Scottsdale Road, Suite 300  
Scottsdale, AZ 85253-2742  
Attention: Mitchell Padover, Esq.  
Telephone: (480) 429-4848  
Facsimile: (480) 429-5001

(c) All notices, demands, requests or other communications hereunder shall be deemed to have been given or served: (1) if hand delivered, on the date received (or the date delivery is refused) by the recipient party; (2) if delivered by registered or certified mail, three (3) days after the date of posting as marked on the U.S. postage receipt; and (3) if by Federal Express or similar overnight courier service, on the date of receipt (or the date delivery is refused) by the recipient party.

(d) Either Landlord or Tenant may from time to time change its address for receiving notices under this Lease by providing written notice to the other party in accordance with this Article XIX.

## **ARTICLE XX**

### **ACCESS**

Landlord and its designees shall have the right upon not less than forty-eight hours' prior written notice to Tenant (except in the event of an emergency, where no prior notice shall be required) to enter upon any of the Demised Properties at reasonable hours to inspect such Demised Properties or, during the period commencing one year prior to the end of the Lease Term, for the purpose of exhibiting same to prospective tenants and posting "for lease" or similar signage at the Demised Properties, in Landlord's discretion. Any such entry and/or inspection by Landlord shall not unreasonably interfere with Tenant's ability to conduct its business operations at the Demised Properties. Tenant may provide an escort for Landlord during any such entry and/or inspection, but Landlord's right to such entry and/or inspection shall not be subject to the availability or presence of any such escort provided by Tenant. Landlord agrees to reasonably cooperate with any escort provided by Tenant during any inspection of the Demised Properties.

## **ARTICLE XXI**

### **SIGNS**

No sign shall be installed on any of the Demised Properties until all governmental approvals and permits required therefor are first obtained and all fees pertaining thereto have been paid by Tenant. Except as set forth in the preceding sentence, Tenant may, at Tenant's sole cost and expense, install or erect signs of any height or dimensions and bearing such inscription as Tenant shall reasonably determine. Tenant may at all times remove such signage, subject to the requirements of this Lease. Upon the termination of this Lease following an Event of Default or upon a rejection of this Lease in any bankruptcy, Landlord shall have the right, at its sole option, to retain and use the signage structures (e.g. base, pole) in the future operation of the Demised Properties without payment of any compensation to Tenant.

## ARTICLE XXII

### IMPROVEMENTS AND FIXTURES

**Section 22.01** Any and all portions of the Building, all other improvements on the Real Property at the Commencement Date and all Building Equipment on the Demised Properties at the Commencement Date shall be the property of Landlord (excluding the trade fixtures and the Restaurant Equipment). In the event that Tenant installs or erects fixtures or improvements to the Demised Properties after the Commencement Date (excluding the trade fixtures and Restaurant Equipment), such fixtures or improvements shall at the expiration or earlier termination of this Lease, become the property of Landlord and remain upon and be surrendered with the Demised Properties. Notwithstanding the foregoing provisions, Tenant shall be liable for all property taxes, assessments, and similar charges assessed against or allocable to any fixtures or equipment at the Demised Properties (irrespective of whether such items are Building Equipment owned by Landlord or Restaurant Equipment or other personal property of Tenant) and which are attributable to any period of time during the Lease Term.

**Section 22.02** During the Lease Term, Tenant shall be entitled to use the Building Equipment in Tenant's operations at the Demised Properties. Except as otherwise provided in Section 22.04, Tenant shall keep the Building Equipment in good working order and repair, ordinary wear and tear excepted, shall not remove the Building Equipment from the Demised Properties and shall not permit any lien or other encumbrance to attach to Building Equipment except any such liens that are being contested by Tenant in good faith by appropriate proceedings and that have been bonded over by Tenant to the commercially reasonable satisfaction of Landlord or for which Tenant provides alternative security to the commercially reasonable satisfaction of Landlord. Tenant shall keep (or cause to be kept) the Building Equipment insured and shall be responsible for any casualty or other loss to Building Equipment or occasioned by Building Equipment. Tenant may, from time to time, retire or replace Building Equipment with new or comparable items of equipment purchased by Tenant, in which event such replaced equipment shall constitute Building Equipment. All Building Equipment shall be the property of Landlord, and Tenant shall execute such instruments and documents as Landlord may reasonably require to evidence such ownership by Landlord.

### **Section 22.03**

(a) Without limiting Landlord's rights or Tenant's obligations in subsection (b), Tenant shall deliver to Landlord within thirty (30) days following Tenant's receipt of Landlord's written request (i) to the extent in Tenant's possession and/or control, a complete listing of all Restaurant Equipment, which may be in electronic format, to the extent not previously delivered to Landlord, and (ii) any fixed asset report relating to the Restaurant Equipment in Tenant's possession and/or control, to the extent not previously delivered to Landlord; provided that Landlord shall have the right to deliver such request not more than one time in any 12 month period during the Lease Term and provided that Tenant's delivery of such information in (i) and (ii) shall be without any representation or warranty as to such information's accuracy or completeness.

(b) At any time during the occurrence of any Event of Default, and during the occurrence of any Default caused by the failure of Tenant to pay any amount as and when due from Tenant under this Lease, and within ninety (90) days before the expiration of the Lease Term, Tenant shall deliver to Landlord immediately following Tenant's receipt of Landlord's written request (i) to the extent in Tenant's possession and/or control, a complete listing of all Restaurant Equipment, which may be in electronic format, to the extent not previously delivered to Landlord, and (ii) any fixed asset report relating to the Restaurant Equipment in Tenant's possession and/or control, to the extent not previously delivered to Landlord; provided that Tenant's delivery of such information in (i) and (ii) shall be without any representation or warranty as to such information's accuracy or completeness.

(c) Without limiting Article XX, at any time during the Lease Term, upon not less than forty-eight hours' prior written notice to Tenant, Landlord may enter upon the Demised Property at reasonable hours to inspect and inventory the Restaurant Equipment provided that (i) such inspection and inventory shall not unreasonably interfere with Tenant's ability to conduct its business operations at the Demised Property, (ii) Landlord shall have the right to such inspection and inventory not more than one time in any 12 month period during the Lease Term, (iii) at Tenant's option, such inspection and inventory shall not be conducted during normal business hours and Tenant may provide an escort for Landlord during any such inspection and inventory (provided further that Landlord's right to such inspection and inventory shall not be subject to the availability or presence of any such escort), and (iv) Landlord shall promptly pay the costs of any damage caused by Landlord and/or its agents to any Restaurant Equipment in connection with such inspection and inventory.

(d) Without limiting Article XX, at any time during the occurrence of any Event of Default or any Default in connection with any payment due and payable by Tenant under this Lease and within ninety (90) days before the expiration of the Lease Term, Landlord may enter (without any notice) upon the Demised Property to inspect and inventory the Restaurant Equipment; provided that (i) such inspection and inventory shall not unreasonably interfere with Tenant's ability to conduct its business operations at the Demised Property, (ii) at Tenant's option, such inspection and inventory shall not be conducted during normal business hours and Tenant may provide an escort for Landlord during any such inspection and inventory (provided further that Landlord's right to such inspection and inventory shall not be subject to the availability or presence of any such escort), and (iii) Landlord shall promptly pay the costs of any damage caused by Landlord and/or its agents to any Restaurant Equipment in connection with such inspection and inventory.

(e) Tenant shall not commit waste with respect to the Restaurant Equipment located in each Demised Property and shall not remove the Restaurant Equipment from the Demised Properties (except to the extent it is replaced by equipment of equal or greater quality and utility). Tenant shall keep the Restaurant Equipment insured and shall be responsible for any casualty or other loss to Restaurant Equipment or occasioned by Restaurant Equipment. Tenant may, from time to time, retire or replace Restaurant Equipment with new items of equipment purchased by Tenant, in which event such replaced equipment shall constitute Restaurant Equipment.

(f) Landlord shall execute and deliver a lien waiver agreement in form and substance commercially reasonably satisfactory to Landlord to any lender of the Restaurant Equipment.

Any Restaurant Equipment remaining on the Demised Properties after ten (10) days after the expiration or earlier termination of the Lease Term shall be deemed abandoned and shall become the property of Landlord without payment therefor.

### **ARTICLE XXIII**

#### **END OF TERM**

Upon the expiration or earlier termination of the Lease Term, Tenant shall peaceably and quietly quit and surrender the Demised Properties, and all Alterations which are then part of the Demised Properties, broom clean and in good order and condition, ordinary wear and tear excepted and except as provided in Articles XII and XIII. Tenant shall prior to the end of the Lease Term transfer to Landlord all plans, drawings, other Alteration Information, and technical descriptions of the Demised Properties (if available), and shall assign to Landlord all assignable permits, licenses, authorizations and warranties necessary for the operation of the Demised Properties (in each case to the extent not previously transferred or assigned to Landlord). Upon the expiration or earlier termination of this Lease Tenant shall have the obligation to remove all Restaurant Equipment, except that Tenant may elect to abandon any trade fixtures or equipment which is attached or connected to the Demised Properties. Any such items or other items of Restaurant Equipment or personal property which are not removed upon the expiration or earlier termination of this Lease shall be deemed abandoned and may be removed, disposed of or used by Landlord without payment of any compensation to Tenant. Upon the expiration or earlier termination of the Lease Term with respect to any Demised Property, Tenant shall remit to Landlord a pro-rated amount of Real Estate Taxes for such Demised Property and other recurring expenses required to be paid under the Prime Lease for such Demised Property for the period through the expiration or earlier termination of the Lease Term with respect to such Demised Property (less any amounts that have previously been escrowed with the corresponding Prime Landlord for such purposes and period). This Article XXIII shall survive the expiration or termination of this Lease.

### **ARTICLE XXIV**

#### **HOLDING OVER**

If Tenant holds over in possession after the expiration of the Lease Term, then such holding over shall not be deemed to extend the Lease Term or renew this Lease, but rather the tenancy thereafter shall continue as a tenancy at sufferance pursuant to the terms and conditions herein contained, at One Hundred Fifty percent (150%) of the Base Rent otherwise then applicable (in addition to all Additional Rent); and Tenant shall be responsible for the consequences of any unauthorized holdover and shall indemnify, defend, protect (with counsel selected by Landlord) and hold Landlord Parties wholly free and harmless of, from and against

any and all damages, losses, costs, expenses and claims arising therefrom, including reasonable attorneys fees and costs. This Article shall survive expiration or termination of this Lease.

## ARTICLE XXV

### TENANT ASSIGNMENT AND SUBLETTING

#### Section 25.01

(a) Except as otherwise explicitly provided in this Article, neither Tenant, nor Tenant's successors or assigns, shall assign in whole or in part, by operation of law or otherwise, this Lease, or sublet the Demised Properties, in whole or in part, or permit the Demised Properties or any portion of it to be used or occupied by others, or enter into a management contract or other arrangement whereby the Demised Properties shall be managed or operated by anyone other than the owner of the Tenant's leasehold estate, without the prior written consent of Landlord in each instance, such consent not to be unreasonably withheld or conditioned so long as Landlord has received all information reasonably requested. Notwithstanding the foregoing, Tenant may assign or transfer this Lease in its entirety or sublease all or a portion of the Demised Properties, with prior written notice to Landlord, but without Landlord's prior written consent, if such assignment, transfer or sublease is to a Tenant Affiliate (as defined below), in which case neither the Tenant nor the Guarantor shall be released of its obligations under this Lease, provided, however, no consent shall be required only so long as such Tenant Affiliate which holds such interest in this Lease shall remain a Tenant Affiliate. In the event such Tenant Affiliate which holds such interest in this Lease ceases to be a Tenant Affiliate during the Lease Term, then such cessation shall be an automatic Event of Default, subject to the terms of this Lease. "Tenant Affiliate" shall mean any person or entity that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with Tenant (for purposes of this section, the term "control," "controlled by" or "under common control with" means the power, direct or indirect, to direct or cause the direction of the management and policies of Tenant, whether through the ownership of voting stock, by contract, as trustee or executor, or otherwise). Any disposition of an ownership interest in Tenant, either directly or indirectly, in such a manner that the ultimate beneficial owners of Tenant, through one or more tiers of ownership, transfer "control" of Tenant, shall be deemed to be an assignment of this Lease. Notwithstanding the foregoing, the following may be made with prior written notice to Landlord, but without Landlord's prior written consent: (i) the sale or transfer of all or any portion of the equity ownership interests of Guarantor (or its parent) or all or substantially all of Guarantor's (or its parents') assets, provided that all of Tenant's obligations hereunder and Guarantor's obligations under the Guaranty shall be expressly assumed by the entity acquiring all or substantially all of the assets of Guarantor, (ii) an initial public offering ("IPO") of stock in Guarantor, Buffets Holdings, Inc. and/or any subsidiary of either of them and (iii) the transfer of shares of stock in any entity after its IPO. Provided Tenant remains liable for all its obligations under this Lease and there shall not exist any Event of Default or event that, with the passage of time or the giving of notice or both, could become an Event of Default, Landlord shall not unreasonably withhold consent to: (X) an assignment of this Lease for the purposes permitted herein to an individual, partnership or corporation if (i) such individual, partnership or corporation (together with any



affiliates that will agree to guaranty the Tenant's obligations and liabilities under this Lease pursuant to a guaranty substantially in the form of Exhibit F hereto) has, in the reasonable opinion of Landlord at least five (5) years' experience in managing and operating restaurants, as well as a record of timely payment of obligations and compliance with applicable laws; (ii) such individual, partnership or corporation (together with any affiliates that will agree to guaranty the Tenant's obligations and liabilities under this Lease pursuant to a guaranty substantially in the form of Exhibit F hereto) is commercially and financially sound; and (iii) the restaurant use meets the standards and criteria set forth in Article IV; or (Y) a sublease of any Demised Property in its entirety to retailer or restaurant operator if (i) the proposed sublease will not take effect until after the expiration of the Original Lease Term for the applicable Demised Property, (ii) the proposed subtenant will not engage in any use prohibited by Section 4.01 hereof and would not be anticipated to receive in excess of seventy-five (75%) percent of its revenues from such Demised Property from the sale of alcoholic beverages, (iii) the proposed subtenant has a record of timely payment of obligations and compliance with applicable laws, and is commercially and financially sound, (iv) neither the proposed subtenant nor any of its officers, directors, and direct or indirect owners regardless of the number of tiers of ownership is a Person (as hereinafter defined) (1) whose property or interest in property is blocked or subject to blocking pursuant to Section 1 of Executive Order 13224 of September 23, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)), (2) who engages in any dealings or transactions prohibited by Section 2 of such executive order, or is otherwise associated with any such person in any manner violative of Section 2, or (3) on the list of Specially Designated Nationals and Blocked Persons or subject to the limitations or prohibitions under any other U.S. Department of Treasury's Office of Foreign Assets Control regulation or executive order, (v) the proposed subtenant and each of its officers, directors, and direct or indirect owners regardless of the number of tiers of ownership, is in compliance with (1) the Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, and (2) the Uniting And Strengthening America By Providing Appropriate Tools Required To Intercept And Obstruct Terrorism (USA Patriot Act of 2001), (vi) to the extent the base rent payable under such sublease exceeds the amount of base rent payable under the corresponding Prime Lease, Tenant shall be obligated to (1) remit such excess first to the corresponding Prime Landlord to the extent required under the corresponding Prime Lease, and then remit 50% of any remaining excess to Landlord as additional Rent, or (2) if the corresponding Prime Lease does not require that such excess be remitted to the corresponding Prime Landlord, remit 50% of such excess to Landlord as additional Rent, and (vii) the proposed subtenant has delivered to Landlord and any Landlord's Lender, upon request, a subordination, non-disturbance and attornment agreement in form and substance reasonably acceptable to Landlord and any Landlord's Lender (to which Tenant shall not be required to be a party to the extent such agreement is also executed by Landlord's Lender (provided, however, that Tenant may be required to execute a separate instrument evidencing its consent to and agreement with the provisions of such agreement)). Notwithstanding the foregoing, (x) after any such assignment or sublease, Tenant shall remain liable for all its obligations under this Lease, Guarantor shall remain liable under the Guaranty, and Tenant shall execute and deliver to Landlord a guaranty in form and substance reasonably acceptable to both

Landlord and Tenant (which shall contain surety and guarantor waivers similar to those contained in the Guaranty), whereby Tenant explicitly guarantees all of the assignee's or subtenant's obligations under this Lease, and (y) Landlord may condition its consent to any sublease regarding the Demised Premises upon the sublease containing the following provisions, in form and substance acceptable to Landlord and Landlord's Lender (collectively, the "Subordination and Attornment Provisions"): (i) that the sublease is subordinate in all respects to this Lease; (ii) that in the event of the cancellation or termination of this Lease for any reason whatsoever or of the surrender of this Lease by operation of law prior to the expiration date of the sublease, subtenant shall make full and complete attornment to Landlord under either the terms of this Lease or the terms of the sublease, in Landlord's sole and absolute discretion, for the balance of the term of the sublease; (iii) that subtenant waives the provisions of any law then or thereafter in effect which may give subtenant any right of election to terminate the sublease or to surrender possession of the Demised Properties in the event any proceeding is brought by Landlord to terminate this Lease; and (iv) that all of the foregoing provisions in (i) through (iv) are for the benefit of both Tenant and Landlord and Landlord is a third party beneficiary thereof. Notwithstanding the foregoing, Landlord and Tenant agree that upon the request of any subtenant, Landlord or Landlord's Lender, Landlord, Tenant and such subtenant will execute and deliver to each other a separate subordination, attornment and nondisturbance agreement regarding the sublease, in form and substance reasonably acceptable to all parties thereto.

(b) Tenant shall submit current financial statements of any proposed assignee or sublessee together with Tenant's request for Landlord's approval of any proposed assignment or sublease which requires Landlord's approval hereunder.

(c) Notwithstanding anything to the contrary contained herein, no assignment or transfer of this Lease by Tenant and no sublease of any Demised Property shall be permitted hereunder if such assignment, transfer or sublease is not permitted by the corresponding Prime Lease or if the consent of the corresponding Prime Landlord to such assignment, transfer or sublease is required and such consent has not been obtained.

(d) If this Lease is assigned or transferred, or if all or any part of the Demised Properties is sublet or occupied by any party other than Tenant, Landlord may collect rent from the assignee, transferee, subtenant or occupant, and apply the net amount collected to the Rent reserved in this Lease, but no such assignment, subletting, occupancy or collection shall be deemed a waiver of any covenant or condition of this Lease, or the acceptance of the assignee, transferee, subtenant or occupant as tenant, or a release of Tenant from the performance or further performance by Tenant of its obligations under this Lease. Without limiting the generality of the foregoing, Tenant expressly acknowledges and agrees that in the event of any assignment of this Lease, Tenant shall remain jointly and severally liable with the assignee for all of the obligations under this Lease, and in all other cases of any transfer of Tenant's interest under this Lease, Tenant shall remain primarily liable for such obligations. Subject to the foregoing, the consent by Landlord to an assignment, transfer, management contract or subletting shall not in any way be construed to relieve Tenant from obtaining the express written consent of Landlord in each instance to any subsequent similar action that Tenant may intend to take.

**Section 25.02** Upon any sublease or assignment permitted as provided in this Article XXV, Tenant shall deliver to Landlord copies of such sublease agreement or assignment in form and substance reasonably satisfactory to Landlord (including, without limitation, assumption language reasonably satisfactory to Landlord in any assignment agreement) promptly after the execution thereof by Tenant. An assignment made with Landlord's consent or as otherwise permitted hereunder shall not be effective until Tenant delivers to Landlord an executed counterpart of such assignment containing an agreement, in recordable form, executed by the assignor and the proposed assignee, in which the assignee assumes the performance of the obligations of the assignor under this Lease throughout the Lease Term. In no event shall Tenant be entitled to amend, extend or otherwise modify any sublease without the prior written consent of Landlord, which Landlord may withhold in its commercially reasonable discretion.

**Section 25.03** This Lease shall be binding upon, enforceable by, and inure to the benefit of the parties hereto and their respective heirs, successors, representatives and assigns.

## **ARTICLE XXVI**

### **FINANCINGS**

**Section 26.01** Except as provided herein, without the necessity of any additional document being executed by Tenant for the purpose of effecting a subordination, this Lease and any and all subleases and similar arrangements shall be subject and subordinate to all ground leases and the lien of all mortgages and deeds of trust which now or hereafter affect Landlord's interest in the Demised Properties, and all amendments thereto, all without the necessity of Tenant's (or any subtenant's) executing further instruments to effect subordination. In the event that any mortgage or deed of trust is foreclosed or a deed in lieu of foreclosure is made for any reason, Tenant shall, notwithstanding any subordination, attorn to and become the Tenant of the successor in interest to Landlord at the option of and on terms acceptable to such successor in interest. So long as no Event of Default exists under this Lease, Tenant's possession of the Demised Properties shall not be disturbed as a result of such foreclosure or deed in lieu of foreclosure. Notwithstanding the foregoing, as of the Commencement Date (or if no mortgages, deeds of trust or other security instruments encumber Landlord's interest in any of the Demised Properties as of the Commencement Date, then at such time as any such instrument does encumber the Demised Properties after the Commencement Date), Landlord, Landlord's Lender, and Tenant shall execute and deliver to each other a subordination, non-disturbance and attornment agreement in the form attached hereto as Exhibit G (an "SNDA"). The interest in the Demised Properties of any such future ground lessee or lienholder shall have priority over the interest of Tenant in this Lease and in the Demised Properties, subject to Landlord, Landlord's Lender and Tenant entering into a subordination, non-disturbance and attornment agreement reasonably required by Landlord or Landlord's Lender. Tenant shall execute and deliver to Landlord and Landlord's Lender, and Tenant shall cause any subtenant to execute and deliver to Landlord and Landlord's Lender, in each case within fifteen (15) days after Landlord's written request therefor, an SNDA or other subordination, nondisturbance and attornment agreement reasonably required by Landlord or Landlord's Lender. If Tenant fails to deliver such SNDA within such 15 day period, then Landlord shall deliver a subsequent written request of such

SNDA (the “SNDA Second Request”) and Tenant shall be required to deliver such SNDA within five (5) days after the SNDA Second Request.

**Section 26.02** Subject to the terms of this Article, Landlord agrees that Tenant shall have the right to encumber or hypothecate Tenant’s interest in the leasehold estate created by this Lease. As used in this Article, “Leasehold Mortgage” shall mean any leasehold deed of trust, mortgage, assignment of leases and rents, assignment, security agreement, or other security document securing the applicable financing from Tenant’s lender or Tenant Affiliates’ lender (collectively, “Tenant’s Lender”). Landlord shall not be obligated to subordinate any or all of Landlord’s right, title or interest in and to the Demised Properties and this Lease to the lien of any Leasehold Mortgage. A Leasehold Mortgage shall encumber only Tenant’s leasehold interest in the Demised Properties, and shall not encumber Landlord’s right, title or interest in the Demised Properties. Landlord shall have no liability whatsoever for the payment of any obligation secured by any Leasehold Mortgage or any other provisions of such note or the Leasehold Mortgage or related obligations. Should there be any conflict between the provisions of this Lease and of any Leasehold Mortgage, the provisions of this Lease shall control. No Leasehold Mortgage will be for a term longer than the Original Lease Term or as the Original Lease Term may be extended in accordance with the terms of this Lease. Either prior to or concurrently with the recordation of the Leasehold Mortgage, Tenant shall cause a fully conformed copy thereof and of the financing agreement secured thereby to be delivered to Landlord and Fee Mortgagee, together with a written notice containing the name and post office address of Tenant’s Lender. Without limiting anything contained in this Section, within fifteen (15) days after written request from Tenant, Landlord shall deliver an estoppel certificate in favor of Tenant’s Lender regarding this Lease, in form and substance reasonably acceptable to Landlord and Tenant’s Lender. Tenant agrees that a condition precedent to its granting a Leasehold Mortgage to any Tenant’s Lender shall be the execution and delivery by such Tenant’s Lender to Landlord and Landlord’s Lender of a subordination, non-disturbance and attornment agreement, in form and substance reasonably acceptable to Landlord and Fee Mortgagee, which shall provide, without limitation, that upon a default under the Leasehold Mortgages, Tenant’s Lender may foreclose only on this Lease as an entirety, applicable to all, but not less than all (even if otherwise possible under applicable law) of the Demised Properties. If Landlord obtains financing secured by mortgages, deeds of trust or other security instruments encumbering Landlord’s interest in the Demised Properties (the “Fee Mortgages”) as of the Commencement Date, then Tenant shall not record a Leasehold Mortgage until after the recordation of the Fee Mortgages. However, if Landlord does not obtain financing secured by Fee Mortgages as of the Commencement Date, Tenant shall be permitted to record the Leasehold Mortgages prior to the Fee Mortgages so long as Tenant has otherwise satisfied the requirements under this Section. A Leasehold Mortgage shall be, and hereafter shall continue at all times to be, subject to each and all of the covenants, conditions and restrictions set forth in this Lease, and junior, subject and subordinate, in each and every respect, to all rights and interests of any Fee Mortgagee (as defined below) now or hereafter affecting any of the Demised Properties. If Landlord delivers to Tenant a Default notice under this Lease, Landlord shall notify any Tenant’s Lender (without any liability for failure to provide such notification) who has given Landlord a prior written request for such notice of such Default by sending a copy of the Default notice to Tenant’s Lender, and Landlord shall recognize and accept the performance of any obligation of

Tenant hereunder by Tenant's Lender (provided said performance occurs within the same cure periods as provided to Tenant under this Lease); provided, however that nothing contained herein shall obligate Tenant's Lender to take any such actions. As used herein, "Fee Mortgagee" means any mortgagee or Landlord's Lender (and its successors and assigns) under any Fee Mortgage.

Any act by Tenant or Tenant's Lender in violation of this Section 26.02 shall be null and void and of no force or effect. This Section shall survive termination of this Lease.

## **ARTICLE XXVII**

### **INTENTIONALLY DELETED**

## **ARTICLE XXVIII**

### **CERTIFICATES**

#### **Section 28.01**

(a) Tenant or Landlord, as applicable (the "Certifying Party") shall, without charge, at any time and from time to time, within fifteen (15) days after requested in writing by the other party (the "Requesting Party"), deliver a written instrument (the "Estoppel Certificate") to the Requesting Party or any other person, firm or corporation specified by the Requesting Party, duly executed and acknowledged, certifying such information as is reasonably requested by the Requesting Party, which may include confirmation that:

(i) This Lease is unmodified and in full force and effect, or if there has been any modification, that this Lease is in full force and effect as modified and stating any such modification;

(ii) Whether or not there are then existing, to the actual knowledge of the executing officer, any defenses against the enforcement of any of the agreements, terms, covenants or conditions of this Lease upon the part of the Certifying Party to be performed or complied with, and, if so, specifying same (including, without limitation, whether the Certifying Party knows or does not know of any default by the Requesting Party in the Requesting Party's performance of all agreements, terms, covenants and conditions to be performed by the Requesting Party, and if such default does exist, specifying same);

(iii) The amounts and dates to which the Base Rent and Additional Rent and any and all other charges due by Tenant hereunder have been paid, the amounts of any and all outstanding balances of such items, if any, known to the Certifying Party; and

(iv) such other accurate statements as may be reasonably requested by the Requesting Party.

If the Certifying Party fails to deliver such Estoppel Certificate within such fifteen (15) day period, then the Requesting Party shall deliver a subsequent written request of such Estoppel Certificate (the "Estoppel Certificate Second Request") and the Certifying Party shall be required to deliver such Estoppel Certificate within five (5) days after the Estoppel Certificate Second Request.

(b) Delivery of a completed Estoppel Certificate in substantially the form as set forth on Exhibit B attached hereto ("Estoppel Certificate") shall satisfy the requirements of this Section.

## **ARTICLE XXIX**

### **RELATIONSHIP OF PARTIES**

Nothing contained in this Lease shall be construed to create the relationship of principal and agent, partnership, joint venture or any other relationship between the parties hereto other than the relationship of Landlord and Tenant.

## **ARTICLE XXX**

### **RECORDING**

Neither Landlord nor Tenant shall record this Lease; however, upon the request of either party hereto, the other party shall join in the execution and recordation of a memorandum of lease (or other document that serves the same purpose) in a form substantially similar to the form attached hereto as Exhibit C or a substantially equivalent form complying with state-specific recording requirements (collectively, the "Memoranda" and each individually a "Memorandum"). Each Memorandum shall describe the parties, the relevant Demised Property, the term of this Lease, any special provisions other than those pertaining to Rent and shall incorporate this Lease by reference. Tenant shall pay all costs charged or collected by the county recorders and other appropriate government offices to record the Memoranda.

## **ARTICLE XXXI**

### **CAPTIONS AND SECTION NUMBERS**

The captions, section numbers, and index appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such sections or articles nor in any way affect this Lease.

## **ARTICLE XXXII**

### **APPLICABLE LAW; WAIVER OF JURY TRIAL**

This Lease shall be governed by, and construed in accordance with the laws of the State of New York without regard to conflicts of law principles; provided, however, that any

forcible entry and detainer action or similar proceeding shall be governed by the laws of the state in which the applicable Real Property is located. If any provision of this Lease or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease shall not be affected thereby, and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by the law.

LANDLORD AND TENANT HEREBY CONSENT TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED WITHIN THE COUNTY OF NEW YORK, STATE OF NEW YORK OR WITHIN THE COUNTY AND STATE IN WHICH ANY DEMISED PROPERTY IS LOCATED AND EACH IRREVOCABLY AGREES THAT (EXCEPT FOR FORCIBLE ENTRY AND DETAINER ACTIONS OR SIMILAR ACTIONS) ALL ACTIONS OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS LEASE SHALL BE LITIGATED IN SUCH COURTS. TENANT ACCEPTS FOR ITSELF AND IN CONNECTION WITH THE DEMISED PROPERTIES, GENERALLY AND UNCONDITIONALLY, THE NONEXCLUSIVE JURISDICTION OF THE AFORESAID COURTS AND WAIVES ANY DEFENSE OF FORUM NON CONVENIENS, AND IRREVOCABLY AGREES TO BE BOUND BY ANY JUDGMENT RENDERED THEREBY IN CONNECTION WITH THIS LEASE.

EACH OF LANDLORD AND TENANT, TO THE FULL EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, WAIVES, RELINQUISHES AND FOREVER FORGOES THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING (WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE) BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO THIS LEASE. TENANT ACKNOWLEDGES THAT THE PROVISIONS OF THIS ARTICLE ARE A MATERIAL INDUCEMENT TO LANDLORD'S ENTERING INTO THE LEASE.

### **ARTICLE XXXIII**

#### **ENTIRE AGREEMENT**

This Lease and the Exhibits attached hereto, all of which form a part hereof, set forth all the covenants, promises, agreements, conditions and understandings between Landlord and Tenant concerning the Demised Properties, and there are no covenants, promises, agreements, conditions or understandings heretofore made, either oral or written, between them other than as herein set forth. No modification, amendment, change or addition to this Lease shall be binding upon Landlord or Tenant unless reduced to writing and signed by each party.

### **ARTICLE XXXIV**

#### **LIABILITY OF PARTIES**

**Section 34.01** The obligations of Landlord under this Lease are not personal obligations of the individual members, partners, directors, officers, shareholders, agents or

employees of Landlord. Tenant shall look solely to the Demised Properties and the proceeds therefrom for satisfaction of any liability of Landlord and shall not look to other assets of Landlord nor seek recourse against the assets of the individual members, partners, directors, officers, shareholders, agents or employees of Landlord. Whenever Landlord transfers its interest, Landlord shall be automatically released from future performance subsequently arising under this Lease and from all liabilities and expenses hereunder.

**Section 34.02** The obligations of Tenant under this Lease are not personal obligations of the individual members, partners, directors, officers, shareholders, agents or employees of Tenant. Landlord shall not seek recourse against the assets of the individual members, partners, directors, officers, shareholders, agents or employees of Tenant, except pursuant to the Guaranty. If more than one person or entity is named as Tenant hereunder, the obligations under this Lease of all such persons and entities as Tenant shall be joint and several.

## **ARTICLE XXXV**

### **ATTORNEYS' FEES**

If any legal action should be commenced in any court regarding any dispute arising between the parties hereto, or their successors and assigns, concerning any provision of this Lease or the rights and duties of any person in relation thereto, then the prevailing party therein shall be entitled to collect its reasonable expenses, attorneys' fees and court costs, including the same on appeal. As used herein, the term "prevailing party" means the party who, in light of the claims, causes of action, and defenses asserted, is afforded greater relief.

## **ARTICLE XXXVI**

### **TIME OF THE ESSENCE; SURVIVAL**

Time is of the essence of every provision of this Lease. Any provision of this Lease explicitly providing for the performance by Tenant of obligations upon or after the expiration or termination of this Lease shall survive any such expiration or termination.

## **ARTICLE XXXVII**

### **ENVIRONMENTAL**

#### **Section 37.01**

(a) For the purpose of this Lease, the following definitions pertaining to environmental matters shall apply:

"De Minimis Amounts" means, with respect to any given level of Hazardous Materials, that level or quantity of Hazardous Materials in any form or combination of forms, the use, storage or release of which does not constitute a violation of, or require regulation or remediation under, any Environmental Laws and is customarily employed in the ordinary course of, or



associated with, similar business located in the states in which the relevant Demised Property is located.

“Environmental Conditions” means the conditions of “Environmental Media” (as defined below), and the conditions of any part of the Demised Properties, including but not limited to building materials, which affect or may affect Environmental Media.

“Environmental Laws” shall mean any federal, state or local law, statute, ordinance, permit condition or regulation pertaining to occupational health and safety, natural resources or environmental protection, including, without limitation: (1) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 *et seq.* as amended (“CERCLA”), the Solid Waste Disposal Act, 42 U.S.C. § 6901 *et seq.* as amended (“RCRA”), the Federal Water Pollution Control Act of 1972, as amended by the Clean Water Act of 1977, as amended, 33 U.S.C. 1251 *et seq.*; the Toxic Substances Control Act of 1976, as amended, 15 U.S.C. 2601 *et seq.*; the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11001 *et seq.*; the Clean Air Act of 1966, as amended by the Clean Air Act Amendments of 1990, 42 USC 7401 *et seq.*; the National Environmental Policy Act of 1970, as amended, 42 USC 4321 *et seq.*; the Rivers and Harbors Act of 1899, as amended, 33 USC 401 *et seq.*; the Mine Safety and Health Act of 1977, as amended, 30 U.S.C. Section 801 *et seq.* the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531, *et seq.*; the Occupational Safety and Health Act of 1970, as amended 29 U.S.C. 651, *et seq.*; the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. 300(f) *et seq.*, the Hazardous Materials Transportation Act, 49 U.S.C. Sections 1801 *et seq.* as amended, and all regulations, published governmental policies, and administrative or judicial orders promulgated under or implementing or enforcing said laws; (2) all state or local laws which implement the foregoing federal laws or which pertain to occupational health and safety, natural resources or environmental protection: all as amended from time to time, and all regulations, published governmental policies, and administrative or judicial orders promulgated under the foregoing laws that are legally binding and; (3) all federal and state common law, including but not limited to the common law of public or private nuisance, trespass, negligence or strict liability, where such common law pertains to occupational health and safety, natural resources, or environmental protection and all legally binding judicial orders promulgated under said laws.

“Environmental Media” means soil, fill material, or other geologic materials at all depths, groundwater at all depths, surface water including storm water and sewerage, indoor and outdoor air, and all living organisms, including without limitation all animals and plants, whether such Environmental Media are located on or off the Demised Properties.

“Hazardous Materials” means any ignitable, reactive, explosive, corrosive, carcinogenic, mutagenic, toxic or radioactive material, whether virgin material, secondary material, by-product, waste or recycled material, defined, regulated or designated as a contaminant, pollutant, hazardous or toxic substance, material, waste, contaminant or pollutant under any Environmental Laws presently in effect or as amended or promulgated in the future, and shall specifically include, without limitation: (a) those materials included within the definitions of “hazardous substances,” “extremely hazardous substances,” “hazardous materials,” “toxic substances” “toxic pollutants,” “hazardous air pollutants” “toxic air contaminants,” “solid waste,” “hazardous

waste,” “pollutants,” “contaminants” or similar categories under any Environmental Laws; and (b) specifically including, without limitation, any material, waste or substance which contains: (i) petroleum or petroleum derivatives byproducts, including crude oil and any fraction thereof and waste oil; (ii) asbestos; (iii) polychlorinated biphenyls; (iv) formaldehyde; and/or (v) radon.

“Release” means any active or passive spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into any Environmental Media. For the purposes of this Lease, “Release” also includes any threatened Release.

“Remedial Activities” means any investigation, work plan preparation removal, repair, cleanup, abatement, remediation, monitored natural attenuation, natural resource damage assessment and restoration, closure, post-closure, detoxification or remedial activity of any kind whatsoever necessary to address Environmental Conditions.

“Unreimbursed Costs” means any fees or other costs which are not reimbursed or subject to reimbursement pursuant to applicable law or regulations, insurance, contractual indemnities or any other means.

“Use” means the receipt, handling, generation, storage, treatment, recycling, disposal, transfer, transportation, introduction, or incorporation into, on, about, under or from the Demised Properties.

(b) Tenant acknowledges that Landlord makes no warranties or representations of any kind, or in any manner or in any form whatsoever, as to the status of Environmental Conditions or Hazardous Materials at the Demised Properties. Tenant will conduct at its own expense any investigations regarding Environmental Conditions of the Properties Property in order to satisfy itself as to the absence or existence of Hazardous Materials contamination of the Demised Properties.

**Section 37.02** From and after the Commencement Date, Tenant shall not be entitled to the Use of any Hazardous Materials at the Demised Properties other than De Minimis Amounts, unless performed in compliance in all material respects with all Environmental Laws and any other applicable local, state and federal statutes, orders, ordinances, rules and regulations. Tenant shall be prohibited from conducting or allowing the Release of Hazardous Materials onto, on, about, under or from the Demised Properties, the exception being sewer or other permitted discharges or Releases or other De Minimis Amounts, in compliance in all material respects with all Environmental Laws. From and after the date of this Lease, Tenant covenants to, and shall, undertake all Remedial Activities required by Environmental Laws or otherwise necessary or appropriate to preserve the value of the Demised Properties or to protect the public health to address any Use or Release of Hazardous Materials after the date of this Lease, caused by Tenant or its agents, employees, representatives, invitees, licensees, subtenants, customers or contractors (“Other Parties”), or otherwise adversely affecting any Demised Property at Tenant’s sole cost and expense, and shall give prompt written notice of same to Landlord. If any Remedial Activities are required by Environmental Laws to be performed at any location other than the

Demised Properties, Tenant shall use its best efforts to obtain any required access agreements from third parties.

**Section 37.03** In addition to any other obligation herein, Tenant shall defend, indemnify and hold Landlord Parties free and harmless from any and all claims, losses, liabilities and other obligations of any kind whatsoever that may be made against or incurred by Landlord Parties in connection with (i) the violation of any Environmental Law by Tenant (other than known environmental problems specifically identified in the Environmental Reports), or (ii) Hazardous Materials or Environmental Conditions at, on, under, about or from the Demised Properties during the Lease Term (and in the event of any holding over by Tenant, during any period which Tenant occupies the relevant Demised Property), including without limitation any and all costs and fees of attorneys or experts incurred by Landlord in defending against same except to the extent that such Release is attributable to the gross negligence or willful misconduct of such Landlord Party, as determined by a final nonappealable judgment (or by a judgment which such Landlord Party elects not to appeal) by a court of competent jurisdiction. This and any other right of Landlord under this Lease shall inure to the benefit of Landlord's successors and assigns, as well as Landlord's Lenders and/or Fee Mortgagees and their respective successors and assigns as third party beneficiaries.

**Section 37.04** Tenant shall promptly inform Landlord in writing of (i) any and all material enforcement actions or initiation of Remedial Activities (where no Remedial Activities are currently being conducted) or other governmental or regulatory enforcement or remedial actions (excluding routine actions such as permit renewals) instituted, completed or threatened pursuant to any Environmental Laws affecting the Demised Properties; (ii) all claims made or threatened by any third person against Tenant or the Demised Properties relating in any way whatsoever to Hazardous Materials or Environmental Conditions (the matters set forth in clauses (i) and (ii) are hereinafter referred to as "Environmental Claims"); (iii) Tenant's knowledge of any material Release of Hazardous Materials at, on, in, under to or from the Demised Properties or on, in or under any adjoining property. Tenant shall also supply to Landlord promptly after Tenant first receives or sends the same, copies of all claims, reports, complaints, notices, warnings, asserted violations or other communications relating in any way to the matters described in this Section.

**Section 37.05** In addition to any other obligations herein, Tenant shall be solely responsible for and shall indemnify and hold harmless all Landlord Parties from and against any and all private or governmental claims, lawsuits, administrative proceedings, judgments, penalties, fines, proceedings, loss, damage, cost, expense or liability arising out of or associated with Tenant's Use or the presence of Hazardous Materials or Release of Hazardous Materials at, on, under, about or from the Demised Properties during the Lease Term (and in the event of any holding over by Tenant, during any period which Tenant occupies the relevant Demised Property) except to the extent that such Release is attributable to the gross negligence or willful misconduct of such Landlord Party, as determined by a final nonappealable judgment (or by a judgment which such Landlord Party elects not to appeal) by a court of competent jurisdiction. Tenant's indemnity and release includes, without limitation: (i) such costs associated with Remedial Activities, including all necessary plans and reports, incurred by the U.S. Environmental Protection Agency, or any other federal, state or local governmental agency or

entity or by any other person, incurred pursuant to the CERCLA, RCRA, or any other applicable Environmental Laws; (ii) any such oversight charges, fines, damages or penalties arising from the presence or Release of Hazardous Materials, and any related Remedial Activities, incurred pursuant to the provisions of CERCLA, RCRA, or any other applicable Environmental Laws; (iii) any such liability to third parties arising out of the presence or Release of Hazardous Materials for personal injury, bodily injury, or property damage arising under any statutory or common law theory, including damages assessed for the maintenance of a public or private nuisance, the costs of Remedial Activities, or for the carrying on of an abnormally dangerous activity; (iv) all such direct or indirect compensatory, consequential, or punitive damages arising out of any claim based on the presence or such Release of Hazardous Materials or damage or threatened damage to Environmental Conditions; (v) any and all reasonable costs, fees and expenses of attorneys, consultants and experts incurred or sustained in making any investigation on account of any claim, in prosecuting or defending any action brought in connection therewith, in obtaining or seeking to obtain a release therefrom, or in enforcing any of the agreements herein contained; (vi) Rent during any period of Remedial Activities equal to the Base Rent then in effect, or if this Lease has terminated, the Base Rent that was in effect on the Termination Date; and (vii) any action or omission or use of the Demised Properties by any subtenant. The foregoing indemnity shall apply to Tenant's Use of Hazardous Materials irrespective of whether any of Tenant's activities were or will be undertaken in accordance with Environmental Laws or other applicable laws, regulations, codes and ordinances. This indemnity is intended to be operable under 42 U.S.C. 9607(e)(1). Tenant specifically agrees that it shall not sue or seek contribution from the Landlord Parties or any successors or assigns thereof for any matter for which Tenant is obligated to provide indemnification under this Section. All reasonable costs and expenses incurred by Landlord for which Tenant is obligated to indemnify Landlord under this Section shall be repaid promptly by Tenant to Landlord. This Section shall survive termination of this Lease.

## ARTICLE XXXVIII

### LANDLORD ASSIGNMENT

**Section 38.01** This Lease shall be fully assignable by the Landlord or its successors and/or assigns, in whole or in part, subject to the terms of Article XXXIV and this Article. In the event that from time to time Landlord desires to partially assign its interest in this Lease with respect to one or more of the Demised Properties, then (a) Landlord will determine the Base Rent allocated to any Demised Properties to be covered by the partial assignment (the "Proposed Allocated Base Rent Amount") and Landlord shall inform Tenant in writing of the Proposed Allocated Base Rent Amount; then Tenant shall reply in writing to Landlord within ten (10) business days after delivery thereof either (i) confirming its acceptance of the Proposed Allocated Base Rent Amount and such confirmed amount shall be the "Allocated Base Rent Amount" or (ii) rejecting such Proposed Allocated Base Rent Amounts due to the same directly causing potential capital lease accounting treatment in a detailed explanation reasonably satisfactory to Landlord and proposing an amount that is as close as possible to the Proposed Allocated Base Rent Amount without triggering potential capital lease accounting treatment and such proposed amount shall be the "Allocated Base Rent Amount," and if Tenant fails to reply to Landlord within such ten business day period, the Proposed Allocated Base Rent Amount shall

be deemed approved and shall be the “Allocated Base Rent Amount”; (b) Landlord, at its cost and expense, shall prepare an individual lease agreement (or individual lease agreements, in Landlord’s discretion) in the form attached hereto as Exhibit D with respect to any such Demised Properties (each, an “Individual Lease Agreement”); (c) upon the assignment by Landlord, this Lease shall be amended to exclude any such Demised Properties from this Lease, the Base Rent hereunder shall be reduced by the Allocated Base Rent Amount; and (d) the Base Rent payable under the Individual Lease Agreement(s) will equal the Allocated Base Rent Amount. In such event, each party (including Landlord’s assignee), shall execute any such new Individual Lease Agreement within five (5) business days after Landlord’s delivery thereof. If Tenant fails to deliver such new Individual Lease Agreement within such 5 business day period, then Landlord shall deliver a subsequent written request of such new Individual Lease Agreement (the “New Individual Lease Agreement Second Request”) and Tenant shall be required to deliver such new Individual Lease Agreement within two (2) business days after the New Individual Lease Agreement Second Request. In addition, Tenant shall execute and deliver to Landlord, any other instruments and documents reasonably requested by Landlord in connection with the sale or assignment, including without limitation a new guaranty (substantially in the form of Exhibit D) of any such Individual Lease Agreement and a commercially reasonable subordination, non-disturbance and attornment agreement that may be requested by Landlord’s assignee’s lenders in form and substance reasonably acceptable to Tenant. In addition, Tenant agrees to cooperate reasonably with Landlord in connection with any such sale or assignment (including, without limitation, agreeing to change the method of payment of Rent if required by Landlord’s assignee). From and after the effective date of any such Individual Lease Agreement, Landlord will be released from any liability thereafter arising with respect to the Demised Properties covered thereby. Without limiting the liability of assignee lessor under this Lease following an assignment by Landlord pursuant to this Section, in no event shall Landlord have any liability under any Individual Lease Agreement.

**Section 38.02** Landlord and Tenant agree that this Lease constitutes a true lease and not a financing or other form of transaction. In furtherance of the foregoing, Landlord and Tenant each waives any claim or defense based upon the characterization of this Lease as anything other than a true lease and irrevocably waive any claim or defense which asserts that this Lease is anything other than a true lease. Landlord and Tenant covenant and agree that they will not assert that this Lease is anything but a true lease. Landlord and Tenant each stipulate and agree not to challenge the validity, enforceability or characterization of this Lease of the Demised Properties as a true lease and further stipulate and agree that nothing contained in this Lease creates or is intended to create a joint venture, partnership (either de jure or de facto), equitable mortgage, trust, financing device or arrangement, security interest or the like. Landlord and Tenant each shall support the intent of the parties that the lease of the Demised Properties pursuant to this Lease is a true lease and does not create a joint venture, partnership (either de jure or de facto), equitable mortgage, trust, financing device or arrangement, security interest or the like, if, and to the extent that, any challenge occurs.

**Section 38.03** Landlord and Tenant agree that this Lease constitutes a single and indivisible lease as to all of the Demised Properties collectively, and shall not be subject to severance or division unless and to the extent, pursuant to Section 38.01, Landlord elects to effect a partial assignment of this Lease. In furtherance of the foregoing, and except as may

result from the amendment of this Lease to eliminate certain properties and reduce Base Rent in conjunction with the execution of Individual Lease Agreements pursuant to the terms of Section 38.01, Landlord and Tenant each (i) waive any claim or defense based upon the characterization of this Lease as anything other than a master lease of all the Demised Properties and irrevocably waive any claim or defense which asserts that this Lease is anything other than a master lease, (ii) covenant and agree that it will not assert that this Lease is anything but a unitary, unseverable instrument pertaining to the lease of all, but not less than all, of the Demised Properties, (iii) stipulate and agree not to challenge the validity, enforceability or characterization of the lease of the Demised Properties as a unitary, unseverable instrument pertaining to the lease of all, but not less than all, of the Demised Properties, and (iv) shall support the intent of the parties that this Lease is a unitary, unseverable instrument pertaining to the lease of all, but not less than all, of the Demised Properties, if, and to the extent that, any challenge occurs.

## **ARTICLE XXXIX**

### **INTENTIONALLY DELETED**

## **ARTICLE XL**

### **GUARANTY**

Guarantor shall guaranty Tenant's obligations under this Lease pursuant to the Guaranty Agreement substantially in the form of Exhibit F, executed and delivered to Landlord as of the Commencement Date (the "Guaranty").

## **ARTICLE XLI**

### **LANDLORD'S RIGHTS UNDER LEASE**

Any and all rights of Landlord under this Lease shall inure to the benefit of Landlord's successors and assigns, as well as Landlord's Lenders and/or any Fee Mortgagees and their respective successors and assigns as third party beneficiaries.

## **ARTICLE XLII**

### **PATRIOT ACT**

**Section 42.01** Tenant represents and warrants that none of Tenant, or Guarantor, their respective officers and directors, and their respective direct or indirect owners regardless of the number of tiers of ownership (each such owner, a "Beneficial Owner") (a) is a Person (as defined below) whose property or interest in property is blocked or subject to blocking pursuant to Section 1 of Executive Order 13224 of September 23, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)), (b) engages in any dealings or transactions prohibited by Section 2 of such executive order, or is otherwise associated with any such person in any manner violative of Section 2, or (c) is a Person on the list of Specially Designated Nationals and Blocked Persons or

subject to the limitations or prohibitions under any other U.S. Department of Treasury's Office of Foreign Assets Control regulation or executive order. If Tenant shall at any time determine that an officer, director or Beneficial Owner of Tenant is or has become subject to Executive Order 13224 or is a Person listed on the list referenced in foregoing clause (c) or subject to the limitations or prohibitions referenced in such clause, Tenant will take such steps as a result of such determination as may be required by applicable law. As used in this Article, "Person" means any individual, corporation, limited liability company, partnership, joint venture, estate, trust, unincorporated association, or any other entity, any government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

**Section 42.02** Tenant represents and warrants that each of Tenant and Guarantor is in compliance with (a) the Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, and (b) the Uniting And Strengthening America By Providing Appropriate Tools Required To Intercept And Obstruct Terrorism (USA Patriot Act of 2001), and each of the officers, directors and Beneficial Owners of Tenant and Guarantor is in compliance with such statutes, enabling legislation or executive orders to the extent applicable to such Persons.

## **ARTICLE XLIII**

### **LIQUOR PROVISIONS**

Landlord may require Tenant to obtain Commercial General Liability insurance regarding liquor liability (in amounts and otherwise consistent with the requirements set forth in Article XI) for any sites that serve liquor or other alcoholic beverages, and in connection with any repossession of the Demised Properties pursuant to Article XVI, Tenant (on behalf of itself and any affiliate of Tenant holding a liquor license with respect to the Demised Properties) shall, at no cost and expense to Tenant, provide reasonable cooperation in transferring any liquor license to Landlord, or in assisting Landlord in obtaining a liquor license where necessary or advisable.

## **ARTICLE XLIV**

### **ADDENDA**

The following exhibits and schedule have been agreed to by the parties and attached hereto or initialed by the parties prior to the execution hereof, it being the intention of the parties that they shall become a binding part of this Lease as if fully set forth herein.

- |           |  |
|-----------|--|
| Exhibit A | Location/Address/Legal Descriptions of Real Properties |
| Exhibit B | Form of Tenant's Estoppel Certificate                  |
| Exhibit C | Form of Memorandum of Lease                            |

Exhibit D	Form of Individual Lease
Exhibit E	Intentionally Deleted
Exhibit F	Form of Guaranty
Exhibit G	Form of SNDA
Schedule 1	Restaurant Equipment

## ARTICLE XLV

### COUNTERPARTS

This Lease may be executed in counterparts and shall be binding on all the parties hereto as if one document had been signed. The delivery of an executed copy of this Lease by facsimile transmission shall have the same force and effect as the delivery of the original, signed copy of this Lease.

## ARTICLE XLVI

### STATE SPECIFIC PROVISIONS

**Section 46.01** California. Without limiting the choice of law provision set forth in Article XXXII, the following provisions shall apply to the extent that the laws of the State of California govern the interpretation or enforcement of this Lease with respect to any Demised Properties located in the State of California:

(a) Effect of Waivers. The provisions of Article V are intended to release Landlord from and against any liability arising from the condition of the Demised Properties. In furtherance thereof, Tenant hereby waives the benefits of California Civil Code Section 1542, which provides as follows: “A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

(b) Eminent Domain. The provisions of this Lease, including those in Article XIII, constitute an express agreement between Landlord and Tenant that applies in the event there is any taking of any part of the Demised Property for any public or quasi-public use under any statute or by right of eminent domain or by purchase in lieu thereof (collectively, “Condemnation”). Tenant hereby waives all rights it may have under California Code of Civil Procedure Section 1265.130, or otherwise, to terminate this Lease based on a total or partial Condemnation.

(c) Damage and Destruction. The provisions of this Lease, including those in Article XII, constitute an express agreement between Landlord and Tenant that applies in the



event that any Demised Property or any part thereof shall be damaged or destroyed by fire or other casualty of any kind or nature (“Casualty”). Tenant, therefore, fully waives the provisions of any statute or regulation, including California Civil Code Sections 1932(2) and 1933(4), relating to any rights or obligations concerning a Casualty.

(d) Notices. When this Lease requires service of a notice, that notice shall replace rather than supplement any equivalent or similar statutory notice, including any notices required by California Code of Civil Procedure Section 1161 or any similar or successor statute. When a statute requires service of a notice in a particular manner, service of that notice (or a similar notice required by this Lease) in the manner required by Article XIX shall replace and satisfy the statutory service-of-notice procedures, including those required by California Code of Civil Procedure Section 1162 or any similar or successor statute.

(e) Remedies. It is intended that Landlord shall have the remedy described in California Civil Code Section 1951.4, which provides that, when a tenant has the right to sublet or assign, the landlord may continue the lease in effect after the tenant’s breach and abandonment and recover rent as it becomes due. Accordingly, if Landlord does not elect to terminate this Lease on account of any default by Tenant, Landlord may enforce all of Landlord’s rights and remedies under this Lease, including the right to recover all rent as it becomes due.

**Section 46.02** Washington. Without limiting the choice of law provisions set forth in Article XXXII, the following provisions shall apply to the extent that the laws of the State of Washington govern the interpretation or enforcement of this Lease with respect to any Demised Premises located in the State of Washington:

(a) Any and all transfers of or applications for liquor licenses provided for under this Lease shall be made pursuant to the provisions of The Washington State Liquor Control Act, codified at RCW Title 66 et seq. and the rules and regulations promulgated by the Washington State Liquor Control Board.

[SIGNATURES FOLLOW ON NEXT PAGE]

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

THIS CONTRACT CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES.

LANDLORD:

**ARC DBPPROP001, LLC,**  
a Delaware limited liability company

By: VEREIT Operating Partnership, L.P.,  
a Delaware limited partnership,  
its sole member,

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

Name: Todd J. Weiss

Title: Authorized Signatory

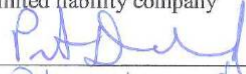
Signature Page

AMENDED AND RESTATED MASTER LAND AND BUILDING LEASE

THIS CONTRACT CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES.

TENANT:


**FIRE MOUNTAIN RESTAURANTS, LLC,**  
an Ohio limited liability company

By:   
Name: Peter Donkavand  
Title: vice president

**HOMETOWN BUFFET, INC.,** a Minnesota corporation

By:   
Name: Peter Donkavand  
Title: vice president

**OCB RESTAURANT COMPANY, LLC,**  
a Minnesota limited liability company

By:   
Name: Peter Donkavand  
Title: vice president

Signature Page

AMENDED AND RESTATED MASTER LAND AND BUILDING LEASE

**ACKNOWLEDGMENTS**

STATE OF ARIZONA            )  
  ) ss.  
COUNTY OF MARICOPA        )

On this 17<sup>th</sup> day of June, 2016, before me, the undersigned, personally appeared Todd J. Weiss, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person, acted, executed the instrument.

(NOTARIAL SEAL)

Mary D. Bates  
Notary Public

My commission expires:  
9/3/16



[ACKNOWLEDGMENTS CONTINUE ON NEXT PAGE]

Acknowledgements  
AMENDED AND RESTATED MASTER LAND AND BUILDING LEASE



**EXHIBIT A**

**LOCATION/ADDRESS/LEGAL DESCRIPTIONS OF REAL PROPERTIES**

#	Unit	Address	City	ST	Original Lease Expiration Date	Initial Rent Reduction Amount*
1	811	2513 Main Street	Union Gap	WA	December 31, 2022	
2	2418	103 RHL Blvd	Charleston	WV	January 3, 2021	
3	256	1850 Empire Avenue	Burbank	CA	December 31, 2026	
4	2416	519 Emily Drive	Clarksburg	WV	May 20, 2020	
5	736	6705 North Fallbrook	Canoga Park	CA	December 31, 2017	
6	2138	1314 N. Main Street	Summerville	SC	April 30, 2022	
7	269	3617 W Shaw Avenue	Fresno	CA	December 31, 2018	
8	794	1325 New Churchman Road	Newark	DE	December 31, 2027	
9	262	10910 Foothill Boulevard	Rancho Cucamonga	CA	December 31, 2016	
10	753	127 West Valley	Rialto	CA	December 31, 2025	
11	785	1431 South Bradley Road	Santa Maria	CA	December 31, 2026	
12	788	1901 Lockwood Street	Oxnard	CA	December 31, 2017	

\*Initial Rent Reduction Amounts are reflected in monthly amounts. Such amounts will be increased on each Adjustment Date in the same manner as Base Rent increases in accordance with Section 3.02(b) of this Lease.

\*Any Initial Rent Reduction Amount stated herein is not and shall not be deemed to be, under any circumstances, an allocation of the Base Rent due under this Lease and Base Rent shall be payable as a single monthly lump sum payment with no allocation among the Demised Properties under this Lease.

[Legal descriptions attached]

AMENDED AND RESTATED MASTER LAND AND BUILDING LEASE

LA1 2037116

4815-1665-5921.7

1850 Empire Avenue, Burbank, California

The Premises consists of approximately eight thousand three hundred and twenty-seven (8,327) square feet of gross land area that corresponds to the footprint of Tenant's Building, situated within "Parcel 16" as described below.

A PORTION OF THE NORTHEAST QUARTER OF SECTION 10, IN TOWNSHIP 1 NORTH, RANGE 14 WEST, SAN BERNARDINO MERIDIAN, IN THE CITY OF BURBANK, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA.

DESCRIBED AS A WHOLE AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF LOT 1 OF TRACT NO. 11702 IN THE CITY OF BURBANK, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 249 PAGE 35 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE SOUTH 77°25'04" EAST 1352.52 FEET ALONG THE NORTHEASTERLY RIGHT OF WAY LINE OF THE SOUTHERN PACIFIC RAILROAD COMPANY'S 100 FOOT RIGHT-OF-WAY (COAST LINE); THENCE NORTH 12°34'56" EAST 115.62 FEET; THENCE NORTH 77°25'04" WEST 60.65 FEET; THENCE NORTH 12°34'57" EAST 34.54 FEET; THENCE NORTH 77°25'03" WEST 9.66 FEET; THENCE NORTH 12°36'53" EAST 242.50 FEET; THENCE SOUTH 77°25'03" EAST 132.97 FEET; THENCE NORTH 12°34'57" EAST 237.33 FEET; THENCE NORTH 77°25'03" WEST 148.66 FEET; THENCE NORTH 12°34'57" EAST 150.00 FEET; THENCE NORTH 77°25'03" WEST 450.20 FEET TO THE TRUE POINT OF BEGINNING, THENCE NORTH 12°34'57" EAST 176.10 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 887.60 FEET, A RADIAL TO SAID BEGINNING BEARS SOUTH 07°05'23" WEST; THENCE EASTERLY ALONG SAID CURVE 213.53 FEET THROUGH A CENTRAL ANGLE OF 13°47'00"; THENCE SOUTH 13°20'01" WEST 221.80 FEET; THENCE NORTH 77°25'03" WEST 205.99 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINS 40,157 SQUARE FEET

AMENDED AND RESTATED MASTER LAND AND BUILDING LEASE

LA1 2037116

4815-1665-5921.7

6705 North Fallbrook, Canoga Park, California

A PORTION OF LOT 8 TRACT NO. 43447, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA AS PER MAP RECORDED IN BOOK 1074 PAGES 58 TO 64 INCLUSIVE OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 8, SAID CORNER ALSO BEING THE NORTHEAST CORNER OF LOT 10 OF SAID TRACT; THENCE ALONG THE SOUTHERLY LINE OF SAID LOT 8 NORTH 89° 58' 19" WEST 374.77 FEET TO THE SOUTHEAST CORNER OF LOT 9 OF SAID TRACT; THENCE ALONG THE EASTERLY LINE OF SAID LOT 9 NORTH 00° 01' 41" EAST 218.58 FEET TO THE NORTHEAST CORNER OF SAID LOT 9; THENCE CONTINUING ALONG THE NORTHERLY PROLONGATION OF SAID EASTERLY LINE OF LOT 9 NORTH 00° 01' 41" EAST 314.35 FEET TO THE NORTHERLY LINE OF SAID LOT 8; THENCE ALONG THE NORTHERLY LINE OF SAID LOT 8 SOUTH 89° 58' 19" EAST 242.40 FEET TO THE WESTERLY LINE OF LOT 7 OF SAID TRACT; THENCE ALONG SAID WESTERLY LINE SOUTH 00° 01' 41" WEST 45.68 FEET TO THE SOUTHWEST CORNER OF SAID LOT 7; THENCE ALONG THE SOUTHERLY LINE OF SAID LOT 7 SOUTH 89° 58' 19" EAST 132.35 FEET TO THE EASTERLY LINE OF SAID LOT 8 AND THE WESTERLY LINE OF FALLBROOK AVENUE, 100.00 FEET WIDE, AS SHOWN ON SAID TRACT; THENCE ALONG THE EASTERLY LINE OF SAID LOT 8 SOUTH 00° 01' 30" WEST 487.25 FEET TO THE POINT OF BEGINNING.

CONTAINS 193,673 SQ. FT.

Together with a right to use the non-exclusive easement described as follows:

EASEMENTS FOR INGRESS, EGRESS, AUTOMOBILE PARKING, PEDESTRIAN USES, CONSTRUCTION, INSTALLATION, OPERATION AND MAINTENANCE OF SEPARATE AND COMMON UTILITY LINES, STRUCTURE SUPPORT, SIGNS AND OTHER USES, AS MORE PARTICULARLY DEFINED AND DESCRIBED IN THAT CERTAIN DOCUMENT ENTITLED "FIRST AMENDMENT TO AND RESTATEMENT OF DECLARATION OF ESTABLISHMENT OF RESTRICTIONS AND COVENANTS AFFECTING LAND" DATED AS OF OCTOBER 1, 1985 AND RECORDED OCTOBER 2, 1986 AS INSTRUMENT NO. 86-1326494.

AMENDED AND RESTATED MASTER LAND AND BUILDING LEASE



3617 W. Shaw Avenue, Fresno, California

Proposed Parcel "B" of Parcel Map No. 2002-03

That portion of the Northwest quarter of Section 13, Township 13 South, Range 19 East, Mount Diablo Base and Meridian, according to the Official Government Plat thereof; also being that portion of Parcel "C" of Lot Line Adjustment 1000-17 as per instrument recorded September 15, 2000 as Document NO. 200-0112588 of Official Records, being more particularly described as follows:

COMMENCING at the most Northeasterly corner of Parcel "C" of said Lot Line Adjustment 2000-17; thence South 00°36'23" East, a distance of 284.15 feet; thence South 52°07'45" West, a distance of 35.13 feet to the TRUE POINT OF BEGINNING for this description; thence North 89°23'37" East, a distance of 121.67 feet; thence South 00°36'23" East, a distance of 105.00 feet; thence South 89°23'37" West, a distance of 121.67 feet; thence North 00°36'23" West, a distance of 105.00 feet to the TRUE POINT OF BEGINNING.

Contains 0.29± acres.

AMENDED AND RESTATED MASTER LAND AND BUILDING LEASE

LA1 2037116

4815-1665-5921.7

1314 N. Main Street, Summerville, South Carolina

ALL that certain piece, parcel or tract of land, with the buildings and improvements located thereon, situate, lying and being on the northern Right of Way of U. S. Highway 17-A, within the town limits of the Town of Summerville, County of Berkeley, State of South Carolina, MEASURING AND CONTAINING Two and Five Hundred Eighty Six Thousandths (2.586) acres, more or less, and BUTTING AND BOUNDING as follows, to-wit: Commencing at a point designated as POB, a one (1.0") inch open pipe, thence running North 12 degrees 05 minutes 30 seconds West, a distance of 255 feet along lands of Louis J. Dimuzio, to a one (1.0") inch open pipe; thence turning and running South 54 degrees 23 minutes 49 seconds West, a distance of 101.46 feet along the property of Louis J. DiMuzio, to a one (1.0") inch open pipe; thence turning and running North 06 degrees 38 minutes 32 seconds West, a distance of 202.23 feet along lands now or formerly of William McLeod Rhodes, etal to a one-half (1/2") inch open pipe; thence turning and running North 65 degrees, 36 minutes 29 seconds East a distance of 88.03 feet along property now or formerly of William McLeod Rhodes, etal, to a railroad iron; thence turning and running North 65 degrees 43 minutes 50 seconds East a distance of 220.28 feet to a 5/8 inch rebar along lands now or formerly of William McLeod Rhodes, etal; thence turning and running South 08 degrees 45 minutes 05 seconds East a distance of 483.75 feet along lands of Louis J. DiMuzio to a 5/8 inch rebar; thence turning and running South 80 degrees 40 minutes 22 seconds West a distance of 95.42 feet to a 5/8 inch rebar along the Highway 17-A Right of Way; thence turning and running South 09 degrees 19 minutes 38 seconds East a distance of 5.0 feet to a 5/8 inch rebar; thence turning and running counterclockwise along an arc having a radius of 1,959.86 feet a length of 103.81 feet and a chord of South 79 degrees 09 minutes 20 seconds West 103.79 feet to the point of beginning. Said tract of land is more fully shown and delineated as "TRACT "A" - (2.586 Ac.) Louis J. DiMuzio, TMS #232 00 01 005" on plat entitled, PLAT SHOWING A SUBDIVISION OF A TRACT OF LAND TMS #232 00 01 005 (5,127 ACRES) INTO TRACT A (2.586 ACRES) AND TRACT B (2.541 ACRES). PROPERTY OF LOUIS J. DIMUZIO, LOCATED IN THE TOWN OF SUMMERVILLE, BERKELEY COUNTY, SOUTH CAROLINA, dated July 15, 1996, prepared by Hoffman Lester Associates, Inc., a copy of which is recorded in the RMC Office for Berkeley County in Plat Cabinet M, at Page 203, reference to which plat is hereby craved for a more accurate and complete description of the tract of land conveyed herein.

TMS #232 00 01 005

AMENDED AND RESTATED MASTER LAND AND BUILDING LEASE

LA1 2037116

4815-1665-5921.7

2513 Main Street, Union Gap, Washington

That portion of the Southeast quarter of the Southwest quarter of Section 32, Township 13 North, Range 19 East, W.M. described as follows:

Beginning at the Southeast corner of said subdivision; thence South  $89^{\circ}59'40''$  West, along the South line thereof, 363.13 feet to the Northeasterly right of way line of Main Street, said right of way line being 50 feet Northeasterly as measured perpendicular to the centerline thereof; thence North  $38^{\circ}07'45''$  West, along said Northeasterly right of way line, 1154.56 feet to the True Point of Beginning; thence North  $51^{\circ}52'15''$  East 20.28 feet; thence along the arc of a curve concave to the left having a radius of 5.00 feet, a central angle of  $90^{\circ}00'$  and a length of 7.85 feet; thence North  $38^{\circ}07'45''$  West 16.09 feet; thence North  $51^{\circ}52'15''$  East 122.00 feet; thence South  $38^{\circ}07'45''$  East 13.00 feet; thence along the arc of a curve concave to the left having a radius of 5.00 feet, a central angle of  $90^{\circ}00'$  and a length of 7.85 feet; thence North  $51^{\circ}52'15''$  East 2.64 feet; thence along the arc of a curve concave to the left having a radius of 5.00 feet, a central angle of  $90^{\circ}00'$  and a length of 7.85 feet; thence North  $38^{\circ}07'45''$  West 14.00 feet; thence along the arc of a curve concave to the left having a radius of 5.00 feet, a central angle of  $90^{\circ}00'$  and a length of 7.85 feet; thence South  $51^{\circ}52'15''$  West 13.00 feet; thence North  $38^{\circ}07'45''$  West 72.00 feet; thence North  $51^{\circ}52'15''$  East 13.00 feet; thence along the arc of a curve concave to the left having a radius of 5.00 feet, a central angle of  $90^{\circ}00'$  and a length of 7.85 feet; thence North  $38^{\circ}07'45''$  West 37.31 feet; thence South  $51^{\circ}52'15''$  West 159.92 feet to the Northeasterly right of way line of Main Street; thence South  $38^{\circ}07'45''$  East, along said right of way line, 141.40 feet to the True Point of Beginning.

Containing an area of 18,678 sq. ft.

AMENDED AND RESTATED MASTER LAND AND BUILDING LEASE

LA1 2037116

4815-1665-5921.7

103 RHL Boulevard, Charleston, West Virginia

Legal Description of Outparcels 4 & 5 (consolidated)  
Dudley Farms Development Property

A parcel of land, situate on the waters of the Trace Fork of Davis Creek in the City of Charleston, Charleston South Annex District (formerly Loudon District) of Kanawha County, West Virginia, and being more particularly bounded and described as follows:

Beginning at a point, said point being a concrete monument at Sta. 205+50 on the centerline of U.S. Route No. 119; thence, from said point of beginning and along a reference line; N20°-59'-41"E, a distance of 1761.55' to a point, said point being the true point of beginning; thence from said true point of beginning; N62°-23'-50"W, a distance of 197.42 feet to a point, thence; N27°-36'-10"E, a distance of 195.00 feet to a point, thence; N27°-36'-10"E, a distance of 173.54 feet to a point, thence; S72°-43'-12"E, a distance of 76.33 feet to a point, thence; N05°-11'-03"W, a distance of 18.03 feet to a point, thence; N86°-39'-54"E, a distance of 57.68 feet to a point, thence; S05°-39'-22"E, a distance of 40.14 feet to a point, thence; S72°-43'-12"E, a distance of 62.33 feet to a point, thence; S75°-38'-59"E, a distance of 34.33 feet to a point, thence; S68°-39'-38"E, a distance of 24.74 feet to a point, thence; S29°-09'-23"W, a distance of 181.09 feet to a point, thence; S52°-35'-04"W, a distance of 43.22 feet to a point, thence; N62°-23'-50"W, a distance of 35.23 feet to a point, thence; S27°-42'-22"W, a distance of 195.00 feet to the point of beginning, containing 2.059 acres, more or less.

And being part of the same property conveyed unto Dudley Family Limited Partnership II ('Dudley FLP II'), by the following deeds: (1) that deed dated October 1, 1996, of record in the Office of the Clerk of the County Commission of Kanawha County, West Virginia, in Deed Book 2408, at page 747; and (2) that corrective deed dated April 9, 1997, of record in the aforesaid Clerk's Office in Deed Book 2409, at page 49. And further being the same property leased unto THF-D Charleston Development Limited Liability Company ("THF-D") by that Agreement to Lease by and between Dudley FLP II and THF-D dated October 26, 1995, (which agreement is unrecorded) as amended by that Amendment to Agreement Of Lease by and between THF-D and Dudley FLP II dated October 3, 1997, (which agreement is unrecorded) and as evidenced by that Short Form Lease dated November 1, 1997, between THF-D and Dudley FLP II, of record in the aforesaid Clerk's Office in Lease Book 243, at page 202.

Excluding therefrom that certain parcel of land described as follows:

Being a part of that certain tract or parcel of land, situate on the waters of the Trace Fork of Davis Creek in the City of South Charleston, South Charleston Tax District, (formerly Loudon District), Kanawha County, West Virginia, and being more particularly bounded and described as follows:

AMENDED AND RESTATED MASTER LAND AND BUILDING LEASE

Beginning at a point, said point being a concrete monument at Sta. 225+86.26 on the centerline of U.S. Route No. 119; thence, from said point of beginning and along a reference line; N36°-46'-23"E, a distance of 254.03' to a point, said point being the true point of beginning; thence from said true point of beginning; N72°-43'-12"W, a distance of 62.75' to a point, thence; N5°-11'-03"W, a distance of 18.03' to a point, thence; N86°-39'-54"E, a distance of 57.68' to a point, thence; S5°-39'-22"E, a distance of 40.14' to the point of beginning, containing 1,680 square feet or 0.039 acres, more or less.

And being part of the same real estate and interest therein conveyed unto Dudley Family Limited Partnership II, by the following instruments: (1) that deed dated October 1, 1996, from Margaret Dudley, widow, et al., of record in the Office of the Clerk of the County Commission of Kanawha County, West Virginia, in Deed Book 2408, at page 747; and (2) that corrective deed dated April 9, 1997, from Margaret Dudley, widow, of record in the aforesaid Clerk's Office in Deed Book 2409, at page 49.

AMENDED AND RESTATED MASTER LAND AND BUILDING LEASE

LA1 2037116

4815-1665-5921.7

519 Emily Drive, Clarksburg, West Virginia

A certain tract of land situate in the City of Clarksburg, Clark District, Harrison County, State of West Virginia, being more particularly bounded and described as follows:

BEGINNING at a point on the westerly right of way of Emily Drive; and being a common corner of Outlot 7 and the residual acreage of said Outlot 7;

THENCE with a curve to the right having a delta angle of 04 degrees 56 minutes 35 seconds, a radius of 1572.50 feet, a length of 135.67 feet and a chord bearing of South 29 degrees 14 minutes 24 seconds West, a distance of 135.62 feet to a point, said point being a common corner of said Outlot 7 and Outlot 8.

THENCE leaving said Outlot 7 and with said Outlot 8 by a curve to the right having delta angle of 07 degrees 31 minutes 14 seconds, a radius of 1572.50 feet, a length of 206.40 feet and a chord bearing of South 23 degrees 00 minutes 30 seconds West, a distance of 206.25 feet to a point, said point being a common corner of said Outlot 8 and Outlot 9;

THENCE leaving said westerly right of way of Emily Drive and with a common line of said Outlot 8 and Outlot 9, North 64 degrees 08 minutes 35 seconds West, a distance of 266.64 feet to a point; said point being located on the easterly right of way of Interstate 79;

THENCE leaving said common line of said Outlot 8 and Outlot 9 and with said easterly right of way of Interstate 79 for four calls, North 24 degrees 25 minutes 36 seconds East, a distance of 107.03 feet to a point;

THENCE North 19 degrees 31 minutes 10 seconds East, a distance of 129.22 feet to a point, said point being a common corner of said Outlot 7 and Outlot 8;

THENCE leaving said Outlot 8 and with said Outlot 7, North 37 degrees 33 minutes 06 seconds East, a distance of 100.21 feet to a point;

THENCE North 40 degrees 32 minutes 13 seconds East, a distance of 8.09 feet to a point, said point being a common corner of said Outlot 7 and the residual acreage of said Outlot 7;

THENCE leaving said easterly right of way of Interstate 79 and with said residual acreage of Outlot 7, South 64 degrees 08 minutes 35 seconds East, a distance of 258.98 feet to the PLACE OF BEGINNING, containing 2.07904 acres, more or less, as shown on a plat and made a part of this description.

AMENDED AND RESTATED MASTER LAND AND BUILDING LEASE

10910 Foothill Boulevard, Rancho Cucamonga, California

Parcel 1:

Parcel 8, of Parcel Map No. 14806, in the City of RANCHO CUCAMONGA, County of SAN BERNARDINO, State of California, as per map recorded in Book 181, page(s) 47 through 49, of Parcel Maps, in the office of the County Recorder of said County.

Excepting therefrom all oil, gas, mineral, hydrocarbon and kindred substances lying below a depth of 500 feet, but without the right of surface entry, as granted to Western Supply Corp., by deed recorded September 17, 1979 in Book 9772, page 1262, Official Records.

Parcel 2:

Together with Non-Exclusive Easements rights for ingress and egress, parking and access in Declarations of Covenants, Conditions and Restrictions recorded February 13, 1996 as Document Number 19960051471.

Parcel 3:

Together with Non-Exclusive Easements rights for ingress and egress contained in Declarations Establishing Easement for Ingress and Egress and Common Driveway recorded March 3, 1994 as Document Number 94106215.

Parcel 4:

Together with Non-exclusive easements for ingress, egress, access, and parking as set forth in Ground Lease dated March 27, 1996 by and between Western Development Co. ("Landlord") and OCB Realty Co. ("Tenant") and disclosed by Assignment of Ground Lease dated \_\_\_\_\_, 2002, filed \_\_\_\_\_, 2002 as Instrument Number \_\_\_\_\_.

AMENDED AND RESTATED MASTER LAND AND BUILDING LEASE

LA1 2037116

4815-1665-5921.7

127 West Valley, Rialto, California

Parcel No. 1:

Lot 7 of Tract No. 2300, in the City of RIALTO, County of SAN BERNARDINO, State of California, as per map recorded in Book 33, page(s) 72, of Maps, in the office of the County Recorder of said County.

Except therefrom the interest in the North 10 feet as conveyed to the City of Rialto, by deed recorded April 25, 1958 in Book 4492, Page 453, Official Records.

Parcel No. 2

That portion of Lot 5 and 6 of Tract No. 2300, in the City of RIALTO, County of SAN BERNARDINO, State of California, as per map recorded in Book 33, page(s) 32, of Maps, in the office of the County Recorder of said County, lying Northerly of that 80.00 foot wide strip of land described in deed recorded in Book 9268, page 1655, Official Records of said county.

Excepting therefrom that portion of Lot 5 granted to the San Bernardino County Flood Control District by deed dated September 9, 1981 as Instrument No. 81- 199270, Official Records, described as beginning at the intersection of the centerline of Valley Boulevard with the Easterly line of said 80.00 foot strip of land;

Thence South 10°38'29" East 96.00 feet along said line;

Thence North 0°26'30" West 94.00 feet to a point in the centerline of Valley Boulevard;

Thence South 89°50'22" West 17.00 feet along said centerline to the Point of Beginning.

Except therefrom the interest in the North 10 feet, as conveyed to the City of Rialto by deed recorded February 6, 1963 in Book 5847, Page 848, Official Records.

Parcel 3:

Together with Non-exclusive Rights for Ingress, Egress and Parking as contained in unrecorded lease dated April 14, 1995 by and between Hometown Buffet, Inc. ("Tenant") and Dr. Aurther Selby and Shirley Selby, as individuals and as trustees under the Selby Family Trust, dated as of March 18, 1991, and Alf Bowman and Roberta Bowman, as individuals (collectively "Landlord") and as evidenced by Memorandum of Ground Lease recorded June 5, 1995 as instrument number 19950193627.

AMENDED AND RESTATED MASTER LAND AND BUILDING LEASE



1325 New Churchman Road, Newark, Delaware

THE LAND REFERRED TO HEREON IS SITUATED IN WHITE CLAY CREEK HUNDRED, COUNTY OF NEW CASTLE, STATE OF DELAWARE AN IS DESCRIBED AS FOLLOWS.

PARCEL 1 BEING PART OF NEW CASTLE COUNTY TAX PARCEL NUMBER 09-018.00-006 AS SHOWN ON THE NEW CASTLE COUNTY TAX ASSESMENT MAPS AND BEING PART OF A SHOPPING CENTER COMPLEX KNOWN AS CENTER POINTE PLAZA, PHASE 1. CENTER POINTE PLAZA, PHASE 1 BEING RECORDED IN AND FOR NEW CASTLE COUNTY ON MICROFILM NUMBER 12522 AND MICROFILM NUMBER 13182.

PARCEL 1:

BEGINNING AT A POINT 30.00 FEET NORTHWESTERLY AND PARALLEL WITH NEW CHURCHMANS ROAD, VARIABLE WIDTH PUBLIC RIGHT OF WAY, SAID POINT BEING LOCATED THE FOLLOWING TWO (2) COURSES AND DISTANCES FROM A DELAWARE DEPARTMENT OF TRANSPORTATION RIGHT OF WAY MONUMENT FOUND AT AN ANGLE POINT IN THE NORTHEASTERLY RIGHT OF WAY LINE OF NEW CHURCHMANS ROAD, 1). NORTH 51 DEGREES 03 MINUTES 07 SECONDS WEST 75.00 FEET TO A POINT, 2). NORTH 38 DEGREES 56 MINUTES 53 SECONDS EAST 30.00 FEET TO THE POINT AND PLACE OF BEGINNING. THENCE FROM SAID POINT OF BEGINNING, THROUGH THE LANDS OF CENTER POINTE PLAZA, PHASE 1, THE FOLLOWING FOUR (4) COURSES AND DISTANCES, 1). NORTH 51 DEGREES 03 MINUTES 07 SECONDS WEST 325.00 FEET TO A POINT, 2). NORTH 38 DEGREES 56 MINUTES 53 SECONDS EAST 325.00 FEET TO A POINT, 3). SOUTH 51 DEGREES 03 MINUTES 07 SECONDS EAST 325.00 FEET TO A POINT, 4). SOUTH 38 DEGREES 56 MINUTES 53 SECONDS WEST 325.00 FEET TO THE POINT AND PLACE OF BEGINNING.

PARCEL 2:

TOGETHER WITH NON-EXCLUSIVE EASEMENTS FOR ACCESS, INGRESS, EGRESS AND PARKING AS SET FORTH IN GROUND LEASE EXECUTED ON DECEMBER 22, 1995 AND AUGUST 13, 1996 BY AND BETWEEN CENTER POINTE ASSOCIATES, L.P. ("LANDLORD") AND HOMETOWN BUFFET, INC. ("TENANT") AND EVIDENCED BY MEMORANDUM OF LEASE FILED JANUARY 19, 2001 AS INSTRUMENT NUMBER 20010119-0004126.

AMENDED AND RESTATED MASTER LAND AND BUILDING LEASE

LA1 2037116

4815-1665-5921.7

1431 South Bradley Road, Santa Maria, California

PARCEL ONE:

Parcel 2 of Parcel Map No. 5713 in the City of Santa Maria, County of Santa Barbara, State of California, as per map recorded in Book 53, Pages 27 and 28 of Parcel Maps, in the office of the County Recorder of said County.

EXCEPTING therefrom all oil and mineral rights in and or under said land, together with rights incidental to the development of same, as reserved in deed from W.H. Rice and Florence L. Rice, Husband and Wife, recorded July 11, 1935 in Book 339, Page 213 of Official Records.

ALSO EXCEPTING therefrom all oil, gas and other hydrocarbon substances and minerals in or under said land, or that may at any time be produced or extracted from all of said land, as reserved in the deed from Florence E. Dunn, et al., recorded April 10, 1986 as Instrument No. 1986-020169 of Official Records.

PARCEL TWO:

An easement for common areas for pedestrian and vehicular ingress and egress over, upon and across all those sidewalks, entrances, drives, lanes and parking areas over Parcel One of Parcel Map No. 5559, recorded in Book 48, Pages 37 and 38 of Parcel Maps, in favor of future owners, their successors and assigns, of Parcels One and Two of said Parcel Map and of Lot 7 of Tract 5503, in the City of Santa Maria, as shown on the map recorded in Book 154, Pages 60 through 63, inclusive, of Maps, in the office of the County Recorder of said County.

SAID EASEMENTS WERE CREATED BY THOSE CERTAIN DOCUMENTS RECORDED AS INSTRUMENT NO'S 88-083958, 91-61533 AND 92-49001. ALL OF OFFICIAL RECORDS OF SANTA BARBARA COUNTY

PARCEL THREE:

A Non-Exclusive easement for drainage, ingress and egress and parking as contained in Agreement for Easement, Common Access, Parking Areas & Drainage dated April 24, 1997 recorded March 12, 1998 as Instrument No. 98-015784.

PARCEL FOUR:

Together with Non-exclusive easements for ingress, egress, access, and parking as set forth in Ground Lease Agreement dated May, 1996, by and between Bradley Partnership ("Landlord") and Hometown Buffet, Inc. ("Tenant") and disclosed by Assignment of Lease dated \_\_\_\_\_, 2002, filed \_\_\_\_\_, 2002 as Instrument No. \_\_\_\_\_.

AMENDED AND RESTATED MASTER LAND AND BUILDING LEASE

1901 Lockwood Street, Oxnard, California

Parcel One:

LOT 5 OF TRACT 4983, IN THE CITY OF OXNARD, COUNTY OF VENTURA, STATE OF CALIFORNIA, AS PER MAP THEREOF RECORDED IN BOOK 127, PAGE 75 OF MISCELLANEOUS RECORDS (MAPS), IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT AN UNDIVIDED 3/4THS INTEREST IN AND TO THE OIL, MINERAL AND PETROLEUM SUBSTANCES LYING IN, ON OR UNDER SAID LAND, AS RESERVED BY DOMINICK MCGRATH ESTATE COMPANY, IN DEED RECORDED JUNE 11, 1948 IN BOOK 829, PAGE 321 OF OFFICIAL RECORDS. SUBJECT TO SURFACE RIGHT RESTRICTIONS PER INSTRUMENT NO. 94-171421 OFFICIAL RECORDS AS SET OUT BELOW.

ALSO EXCEPT AN UNDIVIDED 1/8TH INTEREST IN AND TO ALL OF THE OIL, MINERAL AND PETROLEUM SUBSTANCES LYING ON OR UNDER SAID LAND, AS GRANTED TO JOHN FRANCIS MCGRATH, ET AL., IN DEED RECORDED JANUARY 5, 1951 AS DOCUMENT NO. 251, IN BOOK 972, PAGE 484 OF OFFICIAL RECORDS. SUBJECT TO SURFACE RIGHT RESTRICTIONS PER INSTRUMENT NO. 94-171421 OFFICIAL RECORDS AS SET OUT BELOW.

ALSO EXCEPT AN UNDIVIDED 1/8 INTEREST IN AND TO ALL OIL, MINERAL AND PETROLEUM SUBSTANCES LYING IN, ON OR UNDER SAID LAND, AS CONVEYED TO JOHN FRANCIS MCGRATH, ET AL., BY INSTRUMENT RECORDED APRIL 5, 1982 AS INSTRUMENT NO. 82-32556, OFFICIAL RECORDS. SUBJECT TO SURFACE RIGHT RESTRICTIONS PER INSTRUMENT NO. 94-171421 OFFICIAL RECORDS AS SET OUT BELOW.

ALSO EXCEPT ALL OIL, GAS, HYDROCARBON SUBSTANCES AND OTHER MINERAL AND FISSIONABLE SUBSTANCES, BUT WITHOUT THE RIGHT OF ENTRY UPON THE SURFACE OF SAID LAND, OR TO A DEPTH OF FIVE HUNDRED FEET (500') BELOW THE SURFACE THEREOF, FOR THE PURPOSE OF EXPLORING FOR, DRILLING, BORING, MARKETING OR REMOVING SUCH SUBSTANCES, INCLUDING, BUT NOT LIMITED TO THE RIGHT TO PRODUCE AND TAKE SUCH SUBSTANCES BY MEANS OF WELLS LOCATED ON OTHER LANDS, DIRECTIONALLY DRILLED FROM SAID OTHERS INTO OR THROUGH SAID LAND ABOVE BELOW A DEPTH OF FIVE HUNDRED FEET (500') FROM THE SURFACE OF SAID LAND AS PROVIDED IN THE DOCUMENT RECORDED OCTOBER 20, 1994 AS INSTRUMENT NO. 94-171421 OF OFFICIAL RECORDS OF SAID COUNTY.

AMENDED AND RESTATED MASTER LAND AND BUILDING LEASE

LA1 2037116

4815-1665-5921.7

Parcel Two:

Together with Non-exclusive easements for roadways, walkways, ingress and egress, loading and unloading, parking, and access as set forth in Instrument entitled Easements with Covenants and Restrictions Affecting Land recorded July 24, 1995 as Instrument Number 95-085875, and as modified by Instrument recorded August 15, 1996 as Instrument number 96-111789.

Parcel Three:

Together with Non-exclusive easements for parking, ingress and egress, loading and loading as set forth in Ground Lease Agreement dated September 4, 1996 by and between Rose II LLC ("Landlord") and Hometown Buffet ("Tenant") and disclosed by Assignment of Lease dated \_\_\_\_\_, 2002 and filed \_\_\_\_\_, 2002 as Instrument No. \_\_\_\_\_.

AMENDED AND RESTATED MASTER LAND AND BUILDING LEASE

**EXHIBIT B**

**FORM OF TENANT’S ESTOPPEL CERTIFICATE**

**TENANT’S ESTOPPEL CERTIFICATE**

The undersigned, \_\_\_\_\_, whose address is 120 Chula Vista, Hollywood Park, TX 78232 represents and certifies as follows:

1. The undersigned is the tenant (“Tenant”) under that certain Land and Building Lease dated \_\_\_\_\_ with \_\_\_\_\_ as Landlord ( the “Lease”), covering the properties described therein (collectively the “Demised Properties”).

2. The Lease constitutes the only agreement (either written or oral) the undersigned has with respect to the Demised Properties and any right of occupancy or use thereof.

3. The Lease is in full force and effect and has not been assigned, subleased, supplemented, modified or amended except as follows:

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

4. The undersigned presently occupies the Demised Properties and is paying rent on a current basis. No rent has been paid by Tenant in advance except for the monthly rental that became due on \_\_\_\_\_.

5. The monthly rental is the sum of \_\_\_\_\_ Dollars (US\$\_\_\_\_\_).

6. The present Lease term expires on \_\_\_\_\_ and there are no options to renew except: \_\_\_\_\_.

7. To the undersigned’s actual knowledge, there are no defaults under the Lease by Landlord or any events which with the passage of time or giving of notice or both will result in any such default. The undersigned does not presently have (nor with the passage of time or giving of notice or both will have) any offset, charge, lien, claim, termination right or defense under the Lease; provided, however, although Tenant is currently making no claim or exercising any defense or offset against the enforcement of the Lease by Landlord, it does not waive its right to do so.

8. The undersigned occupies and has accepted possession of all of the Demised Properties covered by the Lease. All obligations of Landlord under the Lease required

**EXHIBIT B**

**AMENDED AND RESTATED MASTER LAND AND BUILDING LEASE**

to be performed to date, including any improvements to be constructed by Landlord (or its predecessors or successors) or the granting of any free rent, rent credit, offset, deductions, building allowance or rent reduction have been completed to the satisfaction of the undersigned.

9. Landlord has no personal liability under the Lease (recourse against Landlord being limited to Landlord's interest in the Demised Properties).

10. The undersigned is aware that third parties intend to rely upon this Certificate and the statements set forth herein and that the statements and facts set forth above shall be binding on the undersigned

11. The undersigned and the persons executing this Certificate on behalf of the undersigned have the power and authority to execute and deliver this Certificate.

12. Tenant has no right of first refusal, or option to purchase, with respect to all or any portion of any Demised Properties; and

13. No deposits or prepayments of rent have been made in connection with the Lease, except as follows: \_\_\_\_\_.

14. Pursuant to the Lease, Tenant will not subject and subordinate its rights and interests under the Lease to the lien of any mortgage, unless the mortgagee enters into an SNDA (as defined in the Lease) with Tenant.

15. This Certificate is given for estoppel purposes. All certifications herein made are to the best of Tenant's knowledge and belief as of the date of execution as set forth herein. To the extent there is any inconsistency between this Certificate and the Lease, the terms of the Lease shall control. Tenant does not waive any right for claim not yet known to Tenant.

“TENANT”

\_\_\_\_\_

a \_\_\_\_\_

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

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

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

EXHIBIT B

AMENDED AND RESTATED MASTER LAND AND BUILDING LEASE

**EXHIBIT C**

**FORM OF MEMORANDUM OF LEASE**

---

(Above space reserved for recorder and recording information)

This instrument prepared by and  
after recording return to:

|

---

**MEMORANDUM OF LEASE**

This Memorandum of Lease is made and entered into as of \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ by and between \_\_\_\_\_, a \_\_\_\_\_ (“Landlord”), and \_\_\_\_\_, a \_\_\_\_\_, whose address is 120 Chula Vista, Hollywood Park, TX 78232 (“Tenant”), who agree as follows:

1. Terms and Premises. Pursuant to a certain Land and Building Lease (the “Lease”) dated on or about the date hereof entered into between Landlord and Tenant, Landlord has leased to Tenant and Tenant has leased from Landlord that certain real property, together with all the improvements thereon and appurtenances thereunto belonging (the “Premises”), more particularly described on Exhibit “A” which is attached hereto and incorporated herein, from \_\_\_\_\_, \_\_\_\_\_, expiring on \_\_\_\_\_, \_\_\_\_\_. Tenant has options to extend the term of the Lease, all as more particularly set forth in the Lease.

2. Purpose of Memorandum of Lease. This Memorandum of Lease is executed and recorded to give public notice of the Lease between the parties and all terms and conditions of the Lease are incorporated by reference into this Memorandum and this Memorandum of Lease does not modify the provisions of the Lease. If there are any conflicts between the Lease and this Memorandum of Lease, the provisions of the Lease shall prevail. The rights and obligations set forth herein shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Any initial capitalized term not defined herein shall have the meaning as set forth in the Lease.

[SIGNATURES AND ACKNOWLEDGMENTS ON NEXT PAGE]

EXHIBIT C

AMENDED AND RESTATED MASTER LAND AND BUILDING LEASE

LANDLORD:

TENANT:

\_\_\_\_\_,  
a \_\_\_\_\_

\_\_\_\_\_,  
a \_\_\_\_\_

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Signed, sealed, and delivered this \_\_\_\_  
day of \_\_\_\_, \_\_\_\_ in the presence of:

Signed, sealed, and delivered this \_\_\_\_  
day of \_\_\_\_, \_\_\_\_ in the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Notary Public, County of \_\_\_\_\_,  
State of \_\_\_\_\_

\_\_\_\_\_  
Notary Public, County of \_\_\_\_\_,  
State of \_\_\_\_\_

My commission expires: \_\_\_\_\_

My commission expires: \_\_\_\_\_

(Notary Seal)

(Notary Seal)

EXHIBIT C  
AMENDED AND RESTATED MASTER LAND AND BUILDING LEASE



**EXHIBIT "A"**

[INSERT LEGAL DESCRIPTION OF PROPERTY HERE]

EXHIBIT C  
AMENDED AND RESTATED MASTER LAND AND BUILDING LEASE

**EXHIBIT D**  
**FORM OF INDIVIDUAL LEASE AGREEMENT**

**LAND AND BUILDING LEASE**

**between**

a [ \_\_\_\_\_ ],  
a [ \_\_\_\_\_ ],

**as LANDLORD**

**and**

[ \_\_\_\_\_ ],  
[ \_\_\_\_\_ ],

**as TENANT**

[ \_\_\_\_\_, \_\_\_\_\_ ]

Store # \_\_\_ (City, State)  
LAND AND BUILDING LEASE  
(Individual Lease Form)

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Exhibit A	Location/Address/Legal Descriptions of Real Property
Exhibit B	Form of Tenant’s Estoppel Certificate
Exhibit C	Form of Memorandum of Lease
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Exhibit E	Intentionally Deleted
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Schedule 1	Restaurant Equipment
Schedule 2	Environmental Reports

**LAND AND BUILDING LEASE**

THIS LAND AND BUILDING LEASE (the "Lease") is made and entered into as of [ \_\_\_\_\_ ], 20\_\_ (the "Commencement Date"), by and between [ \_\_\_\_\_ ], a [ \_\_\_\_\_ ] ("Landlord") and [ \_\_\_\_\_ ] ("Tenant").

**RECITALS**

A. Landlord has a leasehold interest in a tract of real property (the "Real Property"). The Real Property is more particularly described in Exhibit A attached hereto and for purposes hereof shall include all of Landlord's right, title and interest in and to all easements, appurtenances and rights relating to the Real Property, including without limitation, Landlord's right, title, and interest, if any, in and to all (1) adjacent streets, alleys, rights-of-way and any adjacent strips or gores of real estate; (2) the Buildings (as defined below); and (3) the Building Equipment (as defined below). The building, together with all improvements on or to the tract of Real Property, including but not limited to all site work, landscaping, fixtures, utilities, and other improvements, is referred to as the "Building." The machinery, equipment and systems necessary for the operation of the Building that are "fixtures" pursuant to applicable law, including, but not limited to any heating, ventilation and air-conditioning equipment, canopies, fire sprinklers and fire suppression equipment, lighting, built in walk-in coolers and grill hoods, built-in freezers, built-in sinks, built-in shelving, awnings, and supports for signs (but specifically excluding any such items that are not "fixtures" pursuant to applicable law), are referred to herein collectively as the "Building Equipment." The Real Property, together with the related Building and Building Equipment are referred to herein as the "Demised Property."

B. The personal property, equipment and trade fixtures owned or leased by Tenant located at the Building on the Demised Property (other than the Building Equipment) and used in connection with the operation of the business at the Demised Property are referred to herein collectively as the "Restaurant Equipment", which shall include, but not be limited to, those items set forth on Schedule 1.

C. Tenant desires to lease from Landlord, and Landlord desires to lease to Tenant, the Demised Property so that Tenant may, in accordance with and subject to the terms, conditions and restrictions of this Lease, operate (or cause the operation of) a RYAN'S STEAKHOUSE restaurant, a FIRE MOUNTAIN STEAKHOUSE restaurant, an OLD COUNTRY BUFFET restaurant, a HOMETOWN BUFFET restaurant or other permitted use as set out in Section 4.01 hereof, at the Real Property.

NOW, THEREFORE, in consideration of the lease of the Demised Property and the rents, covenants and conditions herein set forth, Landlord and Tenant do hereby covenant, promise and agree as follows:

## ARTICLE I

### DEMISE OF PREMISES

Subject to the terms and conditions contained herein, Landlord does hereby lease unto Tenant, and Tenant does hereby lease from Landlord, for the term hereinafter provided in Article II, the Demised Property for the use thereof by Tenant, Tenant's employees, customers, invitees and permitted assigns.

## ARTICLE II

### TERM

#### **Section 2.01**

(a) The Lease shall commence on the Commencement Date and terminate on [ \_\_\_\_\_ ] (the "Original Lease Term") unless sooner terminated as hereinafter set forth. The "Lease Term," as such term is used herein, shall mean the Original Lease Term as extended (or as may be extended) pursuant to Section 2.02 below, unless sooner terminated as hereinafter set forth.

(b) This Lease shall be deemed to be in full force and effect upon the Commencement Date. Tenant shall be deemed in possession of the Demised Property upon the Commencement Date.

#### **Section 2.02**

(a) Tenant shall have options to extend the term of this Lease for option terms which are equal in length to the next option period in the Prime Lease (as hereinafter defined) (collectively, the "Option Periods" and individually as an "Option Period"). By way of example, if the Prime Lease has three (3) option periods of five (5) years each remaining at the end of the Original Lease Term, Tenant shall have the option to extend the term of this Lease for up to three (3) separate option periods of five (5) years each. Except as otherwise expressly provided herein, all of the terms and conditions of this Lease applicable to the Original Lease Term shall continue to apply during each Option Period.

(b) To validly extend the Lease Term for any Option Period (i) Tenant must have validly extended this Lease for any and all prior Option Periods, (ii) Tenant must and shall deliver to Landlord written notice of Tenant's election to so extend not later than ninety (90) days prior to the last day that the corresponding extension option under the Prime Lease may be exercised (such date, the "Decision Date"), and (iii) as of the date such written notice is delivered to Landlord, there shall be no existing Event of Default under this Lease. Any notice from Tenant to Landlord exercising any option to extend this Lease for any Option Period shall be irrevocable.

(c) If Tenant elects not to exercise any option to extend this Lease for any Option Period, Tenant shall (i) provide Landlord with written notice of such intent prior to the applicable Decision Date, (ii) remit to Landlord (x) a pro-rated amount of Real Estate Taxes (as hereinafter defined) and other recurring expenses required to be paid under the Prime Lease for the period through the expiration date of the Lease Term (less any amounts that have previously been escrowed with the Prime Landlord for such purposes and period), and (y) a \$50,000 removal fee, and (iii) close its store at the Demised Property and vacate and surrender the Demised Property to Landlord in accordance with the provisions of Article XXIII of this Lease not later than thirty (30) calendar days prior to the expiration date of the Lease Term. If Tenant fails to notify Landlord prior to any applicable Decision Date whether or not Tenant is electing to exercise the corresponding option to extend this Lease, such failure shall be deemed an election by Tenant not to exercise such extension option.

(d) If Tenant elects (or is deemed to have elected) not to exercise any option to extend this Lease for any Option Period and Tenant complies with its obligations under clauses (ii) and (iii) of subsection (c) above and there shall be no existing Event of Default under this Lease, this Lease shall terminate upon the expiration date of the Lease Term; provided, however, that that such termination shall not limit any liability or obligation of Tenant which has accrued prior to such termination with respect to the Demised Property under any provision of this Lease, including, without limitation, any indemnification and/or hold harmless provision, that expressly survives as provided in this Lease.

(e) To the extent that there are no longer any extension options remaining in the Prime Lease, Tenant shall not have the option to further extend the term of this Lease. In such event, (i) Tenant shall remit to Landlord a pro-rated amount of Real Estate Taxes and other recurring expenses required to be paid under the Prime Lease for the period through the expiration date of the Lease Term (less any amounts that have previously been escrowed with the Prime Landlord for such purposes and period), and close its store at the Demised Property and vacate and surrender the Demised Property to Landlord in accordance with the provisions of Article XXIII of this Lease not later than thirty (30) calendar days prior to the expiration date of the Lease Term, and (ii) this Lease shall terminate upon the expiration date of the Lease Term; provided, however, that that such termination shall not limit any liability or obligation of Tenant with respect to the Demised Property which has accrued prior to such termination or relates to the period of time prior to such termination under any provision of this Lease, including, without limitation, any indemnification and/or hold harmless provision, that expressly survives as provided in this Lease.

(f) Landlord shall have the right to exercise any extension option under the Prime Lease, regardless of whether such extension option is necessary in order to have the Prime Lease be coterminous with the Lease Term.

(g) As used herein, the following terms have the meanings indicated:

“Prime Landlord” shall mean the landlord under the Prime Lease.

“Prime Lease” shall mean the ground lease or other underlying lease demising the Demised Property from time to time which is superior to this Lease, and all renewals, extensions, supplements, amendments, modifications, consolidations and replacements thereto.

(h) Without limiting anything contained in Article XXXVI hereof, time is of the strictest essence in the performance of each provision of this Section 2.02. Either party, upon request of the other, shall execute and acknowledge, in form suitable for recording, an instrument confirming any Option Period, with Tenant paying all applicable recording costs.

### ARTICLE III

#### RENT

**Section 3.01** Rent. As used herein, “Rent” means Base Rent (as defined below) plus Additional Rent (as defined below). Tenant shall pay all Rent, from and after the Commencement Date and thereafter throughout the Lease Term, without offset, deduction, or abatement except as may be otherwise expressly provided herein. Notwithstanding the foregoing, any amounts due by Tenant to Landlord hereunder for which no due date is expressly specified herein shall be due within thirty (30) days following the delivery to Tenant by Landlord of written notice of such amounts due. Except as otherwise expressly provided herein, in the event of nonpayment by Tenant of any Rent, Landlord shall have the same rights and remedies in respect thereof regardless of whether such Rent is Base Rent or Additional Rent. All payments of Rent due to Landlord shall be paid to Landlord by electronic deposit into an account designated by Landlord (a “Landlord’s Account”).

**Section 3.02** Base Rent.

(a) As used herein, subject to the annual increases as hereinafter provided, the “Base Rent” for the Demised Property for each month of the Lease Term shall be \_\_\_\_\_ (US\$ \_\_\_\_\_). Tenant shall pay to Landlord Base Rent, in advance, without demand therefor, on or before the first day of each and every calendar month during the Lease Term (each a “Payment Date”) and if the Commencement Date is not the first day of a calendar month, Tenant shall pay to Landlord pro-rated Base Rent on the Commencement Date for the partial calendar month in which the Commencement Date occurs. Tenant authorizes Landlord to establish arrangements whereby payments of the Base Rent and impound payments under Section 3.03(h) hereof are transferred by Automated Clearing House Debit directly from an account at a U.S. bank in the name of Tenant to such account as Landlord may designate or as Landlord may otherwise designate; provided, however, upon written notice from Landlord to Tenant, Tenant shall deliver all payments of Base Rent and impound payments under Section 3.03(h) hereof as specified in such written notice from Landlord.



(b) Subject to the terms of this Section, on each Adjustment Date (as defined below) throughout the Lease Term, the monthly Base Rent shall increase by the Base Rent Escalation (as defined below), and such increased Base Rent shall apply for the ensuing twelve (12) month period.

(c) The following terms shall have the following meanings:

(1) “Adjustment Date” shall mean each July 1 throughout the Lease Term, commencing July 1, 201\_\_

(2) “Base Rent Escalation” shall mean the product of the then-current Base Rent multiplied by 1.50%.

**Section 3.03** Additional Rent.

(a) As used herein, “Additional Rent” means any and all fees, expenses, taxes and charges of every kind and nature arising in connection with or relating to the Demised Property (other than Base Rent), including without limitation (i) any and all taxes (including, without limitation, Real Estate Taxes (as defined below)), fees, utility service charges, insurance premiums, and other costs, and any amounts owed by Tenant under any indemnity to Landlord hereunder, including, without limitation under Article X and Article XXXVII; (ii) all fees and penalties that may accrue on any amounts due from Tenant hereunder if Tenant fails to pay such amounts in a timely manner; (iii) all other damages, costs and expenses (including, without limitation, reasonable attorneys’ fees and other legal and court costs) which Landlord may suffer or incur in enforcing this Lease (whether or not any formal action is brought by Landlord against Tenant) or in otherwise taking actions permitted under this Lease following a Default by Tenant (including, without limitation, making Repairs and fulfilling other obligations of Tenant as provided in Section 7.01, and purchasing insurance required to be maintained by Tenant under this Lease, as provided in Section 11.07); (iv) any and all other sums which may become due, or costs and expenses that may be incurred by Landlord, by reason of any Default or Event of Default under this Lease; and (v) any and all costs of maintaining, repairing and restoring the Demised Property. In addition, “Additional Rent” shall include any rent or other income received by Tenant from any subtenant of the Demised Property to the extent applicable to periods after the expiration or termination of this Lease as to the Demised Property.

(b) Without limiting anything contained in subsection 3.03(a), Tenant shall pay, as Additional Rent all “Real Estate Taxes” (as hereinafter defined). As used herein, the term “Real Estate Taxes” means all taxes and general and special assessments and other impositions in lieu thereof, as a supplement thereto and any other tax which is measured by the value of land and assessed on a uniform basis against the owners of land, including any substitution in whole or in part therefor due to a future change in the method of taxation, in each case assessed against, or allocable or attributable to, the Demised Property and accruing during or prior to the Lease Term. Nothing contained in this Lease, however, shall require Tenant to pay any estate, inheritance, corporate, franchise, income or similar taxes of Landlord, nor shall any of same be deemed Real Estate Taxes, unless same shall be specifically imposed in

substitution for, or in lieu of, Real Estate Taxes. In addition, Tenant shall not be required to pay any tax imposed (except as otherwise required under Article XXV) with respect to the sale, exchange, mortgage, encumbrance, or other disposition by Landlord, in whole or in part, of the Demised Property or Landlord's interest in this Lease (provided, however, that the foregoing shall not limit Tenant's obligation to pay any increase in Real Estate Taxes resulting from any such sale, exchange, mortgage, encumbrance, or other disposition by Landlord). If by law, any general or special assessment or like charge may be paid in installments without any penalty whatsoever, then such assessment may be paid in such installments and Tenant shall only be liable for the portion thereof that is allocable or attributable to the Lease Term or any portion thereof. If such assessment or charge may be payable in installments with interest, Tenant may pay such assessment or charge in installments, provided that if such installments extend beyond the Lease Term, Landlord shall have the option to repay all remaining installments coming due following the Lease Term without interest.

(c) Tenant shall pay all Real Estate Taxes directly to the collecting authority no less than thirty (30) days prior to the delinquency date thereof and shall provide Landlord not less than ten (10) business days prior to such delinquency date a copy of the paid receipt for each installment of Real Estate Taxes so paid. Notwithstanding the foregoing, upon the occurrence of both of the following events, in lieu of payment directly to the applicable collecting authority, Tenant shall pay to Landlord an amount, when added to the monthly payments due under this subsection 3.03(c), shall be sufficient to pay the Real Estate Taxes next coming due (collectively, the "Real Estate Taxes Pass-Throughs") on the Payment Date immediately following both of the following events: (A) delivery to Tenant of a written request therefor from Landlord, and (B) the existence of any default or breach of this subsection 3.03(c) by Tenant, or any Event of Default under any provision in this Lease (the foregoing clause (B) may be hereinafter referred to as a "Real Estate Taxes Pass-Throughs Trigger"). On every Payment Date thereafter, Tenant shall pay to Landlord one-twelfth of the amount of the Real Estate Taxes that Landlord reasonably estimates will be payable during the next ensuing twelve (12) months. Funds in the Real Estate Taxes Pass-Throughs shall be used for payment of the Real Estate Taxes next coming due. Following the imposition of a Real Estate Tax Reserve, in the event Tenant completes a twelve (12) month consecutive period without the occurrence of a Real Estate Taxes Pass-Throughs Trigger, then following written request by Tenant, Landlord shall disburse any funds in the Real Estate Taxes Pass-Throughs Trigger to Tenant and Tenant shall no longer be obligated to make the monthly payments of the Real Estate Taxes to Landlord in lieu of the applicable collecting authority until the occurrence of another Real Estate Taxes Pass-Through Trigger. If Tenant fails to pay the appropriate party (Landlord or the collecting authority, as provided herein) all Real Estate Taxes when due hereunder, then Tenant shall, without limiting any other remedies available to Landlord, reimburse Landlord for any and all penalties or interest, or portion thereof, incurred by Landlord as a result of such nonpayment or late payment by Tenant.

(d) Tenant shall have the right to undertake an action or proceeding against the applicable collecting authority seeking an abatement of Real Estate Taxes or a reduction in the valuation of the Demised Property and/or contest the applicability of any Real Estate Taxes;

provided, however, that Tenant has paid timely (and continues to pay timely) all Real Estate Taxes as provided in this Lease to the extent required by applicable law. Landlord may deliver to Tenant written requests from time to time, not more than once in any thirty (30) day period, for information regarding any such action or proceeding by Tenant. Tenant shall respond in good faith with all information reasonably requested by Landlord within 5 business days after receipt of Landlord's written request. In any instance where any such permitted action or proceeding is being undertaken by Tenant, Landlord shall cooperate reasonably with Tenant, at no cost or expense to Landlord, and execute any and all documents approved by Landlord and reasonably required in connection therewith. Tenant shall be entitled to any refund (after the deduction therefrom of all expenses incurred by Landlord in connection therewith) of any Real Estate Taxes (including, without limitation, penalties or interest thereon) received by Tenant or Landlord, whether or not such refund was a result of actions or proceedings instituted by Tenant.

(e) Without limiting anything contained in subsection 3.03(a), Tenant shall be solely responsible for, and shall pay directly to the applicable service providers, the cost of all utility services provided to the Demised Property throughout the Lease Term.

(f) Without limiting any of Tenant's other obligations set forth in this Article, Tenant shall pay to Landlord, with each payment due to Landlord hereunder (and as a part of Rent due hereunder), all sales and excise tax on rental income and all other similar taxes imposed upon Landlord with respect to rental or other payments in the nature of a gross receipts tax, sales tax, privilege tax or the like, whether imposed by a federal, state or local taxing authority, which when added to such payment shall yield to Landlord after deduction of all such tax payable by Landlord with respect to all such payments a net amount which Landlord would have realized from such payment had no such tax been imposed.

(g) Without limiting anything contained in subsection 3.03(a), Tenant shall pay, as Additional Rent, all Prime Lease Rent (hereinafter defined) and shall comply with all obligations of the tenant under the Prime Lease. Tenant shall be responsible for directly paying to the Prime Landlord, during the Lease Term, the Prime Lease Rent, and shall indemnify Landlord from any liability, cost or expense incurred in connection with the Prime Lease. Upon making any payment of Prime Lease Rent, Tenant shall promptly provide Landlord with written confirmation thereof. Tenant shall also promptly send to Landlord any notices that Tenant receives from the Prime Landlord. Except as expressly provided in Sections 2.02(d) and (e), the termination or expiration of the Prime Lease shall not result in any diminution of Base Rent due hereunder or any other modification of this Lease. "Prime Lease Rent" shall mean collectively (i) all Prime Lease Base Rent and (ii) all Prime Lease Additional Rent. "Prime Lease Additional Rent" shall mean any monetary obligation of Landlord under the Prime Lease (including any percentage rent obligations thereunder), other than the Prime Lease Base Rent, but including any indemnity obligations of the "tenant" thereunder. "Prime Lease Base Rent" shall mean any monthly scheduled "base rent" or "fixed rent" payments required to be paid under the terms of the Prime Lease.

(h) In the event of any default under the Prime Lease, Landlord shall have the right to pay any amounts that are due thereunder and may require Tenant to pay to Landlord sums which will provide an impound account (which shall not be deemed a trust fund) for paying any Real Estate Taxes and other recurring expenses required to be paid under the Prime Lease which are not otherwise being escrowed by the Prime Landlord. Upon such requirement, 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 this Lease. Should additional funds be required at any time, Tenant shall pay the same to Landlord on demand. Tenant shall advise Landlord of all bills for Real Estate Taxes or such other recurring expenses which are required to be paid under the Prime Lease 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 Tenant fails to make any payments required under this subsection 3.03(h) when due, then Tenant shall, without limiting any other remedies available to Landlord, reimburse Landlord for any and all penalties or interest, or portion thereof, incurred by Landlord as a result of such nonpayment or late payment by Tenant. If an Event of Default shall occur, Landlord may apply all impounded funds against any sums due from Tenant to Landlord in such order and priority as Landlord may elect in its sole discretion. Landlord shall give to Tenant an annual accounting showing all credits and debits to and from such impounded funds received from Tenant.

## ARTICLE IV

### USE

**Section 4.01** Tenant may use the Demised Property to operate [a RYAN'S STEAKHOUSE restaurant, FIRE MOUNTAIN STEAKHOUSE restaurant, OLD COUNTRY BUFFET restaurant, or HOMETOWN BUFFET restaurant, and for any other lawful purpose, provided that any such usage shall comply fully with all applicable covenants, conditions and restrictions of record, and the following uses shall in any event be prohibited: strip clubs and other adult entertainment venues, option or swapmeet venues, carry-out liquor stores and any other specially regulated uses that would be considered deleterious to the value of commercial real property in otherwise generally desirable locations. Notwithstanding any other provision of this Article, Tenant shall not use, or suffer or permit any person or entity to use, the Demised Property or any portion thereof for any purpose in violation of any applicable law, ordinance or regulation applicable to the Demised Property or in violation of any covenants or restrictions of record. From the Commencement Date and thereafter throughout the Lease Term, Tenant shall conduct its business in a commercially reasonable and reputable manner with respect to the Demised Property and otherwise in compliance with the terms and provisions of this Lease. The character of the occupancy of the Demised Properties is an additional consideration and a material inducement for the granting of this Lease by Landlord to Tenant.

**Section 4.02** Without limiting any other provision of this Lease, all obligations of Tenant under this Article IV shall apply also to any subtenant of the Demised Property.

**Section 4.03** Notwithstanding anything to the contrary contained herein, [except as provided below,] Tenant shall at all times during the Lease Term occupy the Demised Property and diligently operate its business on the Demised Property as one of the restaurants under the Ovation Brands umbrella. [FOR FRESNO, CALIFORNIA LEASE -- Notwithstanding the foregoing, at any time prior to December 31, 2018, Tenant may cease diligent operation of business at the Demised Property, provided that, in each case, there shall be no existing Event of Default under this Lease and Tenant shall (i) obtain the prior written consent thereto of the Prime Landlord to the extent required under the Prime Lease, (ii) give written notice thereof to Landlord not less than thirty (30) days prior to Tenant ceasing operations at the Demised Property, (iii) provide adequate protection and maintenance of the Demised Property during any period of vacancy, and (iv) comply with all applicable laws, ordinances or regulations applicable to the Demised Property and otherwise comply with all of the terms and conditions of this Lease, including, without limitation, the payment of all amounts due under this Lease and the Prime Lease.][FOR OXNARD, CALIFORNIA LEASE -- Notwithstanding the foregoing, at any time prior to December 31, 2017, Tenant may cease diligent operation of business at the Demised Property, provided that, in each case, there shall be no existing Event of Default under this Lease and Tenant shall (i) obtain the prior written consent thereto of the Prime Landlord to the extent required under the Prime Lease, (ii) give written notice thereof to Landlord not less than thirty (30) days prior to Tenant ceasing operations at the Demised Property, (iii) provide adequate protection and maintenance of the Demised Property during any period of vacancy, and (iv) comply with all applicable laws, ordinances or regulations applicable to the Demised Property and otherwise comply with all of the terms and conditions of this Lease, including, without limitation, the payment of all amounts due under this Lease and the Prime Lease.]

## ARTICLE V

### ACCEPTANCE OF DEMISED PROPERTY

Tenant acknowledges that it has had access to the Demised Property prior to execution of this Lease and has had the opportunity to perform all tests, studies, inspections and investigations (including, without limitation, any investigations regarding zoning and use issues regarding the Demised Property) that it desires, and that Tenant is accepting the Demised Property in its AS IS condition existing on the date Tenant executes this Lease. Tenant hereby accepts the Demised Property in its condition as of the date of possession hereunder, subject to all applicable zoning, municipal, county, and state laws, ordinances, and regulations, including private easements and restrictions, governing and regulating the use of the Demised Property, whether or not of record (collectively, the “Diligence Matters”), and accepts this Lease subject thereto and to all matters disclosed hereby. Tenant acknowledges that neither Landlord nor any of Landlord’s Affiliates (as defined below) have made any representation or warranty as to the suitability of the Demised Property for the conduct of the Tenant’s business and that Tenant is

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Store # \_\_\_ (City, State)

LAND AND BUILDING LEASE  
(Individual Lease Form)

entering into this Lease solely on the basis of its own investigations and familiarity with the Demised Property and not on the basis of any representation, warranty, covenant, agreement, undertaking, promise, statement, arrangement or understanding by, on behalf of, or with, Landlord, except as expressly set forth in this Lease.

## ARTICLE VI

### ALTERATIONS

Subject to the provisions of this Article VI, Tenant shall have no right to make changes, alterations or additions (collectively, "Alterations") to the Building which involve structural changes or which cost in the aggregate in excess of Four Hundred Thousand Dollars (US\$400,000.00), which amount shall be adjusted annually in proportion to increases in the CPI, in each case without prior written consent of Landlord, which Landlord agrees it will not unreasonably withhold, condition or delay; provided, however, in no event shall any Alterations be made which, after completion, would: (i) reduce the value of the Building as it existed prior to the time that said Alterations are made; or (ii) adversely affect the structural integrity of the Building. Notwithstanding the foregoing, Tenant shall be permitted to implement the structural (hoods, vents) and nonstructural Alterations required to implement ongoing conversion to the grill program already instituted in many OLD COUNTRY BUFFET, HOMETOWN BUFFET or RYAN'S STEAKHOUSE restaurants provided such Alterations do not adversely affect the structural integrity of the Building. Any and all Alterations made by Tenant shall be at Tenant's sole cost and expense. Prior to the commencement of construction, including Alterations which cost less than US\$400,000.00, which amount shall be adjusted annually in proportion to increases in the CPI (but excluding non-structural Alterations costing less US\$250,000.00 (which amount shall be adjusted annually in proportion to increases in the CPI) in the aggregate, minor maintenance or repair projects and cosmetic refresh projects involving only painting, carpeting, floor covering and installation of moveable replacement Restaurant Equipment (collectively, a "Minor Project")), Tenant shall deliver promptly to Landlord detailed cost estimates for any such proposed Alterations, as well as all drawings, plans and other information regarding such Alterations (such estimates, drawings, plans and other information are collectively referred to herein as the "Alteration Information"). Landlord's review and/or approval (if required) of any Alteration Information shall in no event constitute any representation or warranty of Landlord regarding (x) the compliance of any Alteration Information with any governmental or legal requirements, (y) the presence or absence of any defects in any Alteration Information, or (z) the safety or quality of any of the Alterations constructed in accordance with any plans or other Alteration Information. Landlord's review and/or approval of any of the Alteration Information shall not preclude recovery by Landlord against Tenant based upon the Alterations, the Alteration Information, or any defects therein. In making any and all Alterations, Tenant also shall comply with all of the following conditions:

(a) No Alterations shall be undertaken until Tenant shall have (i) procured and paid for, so far as the same may be required, all necessary permits and authorizations of all governmental authorities having jurisdiction over such Alterations, and (ii) except for Minor

Projects, delivered to Landlord at least fifteen (15) days prior to commencing any such Alterations written evidence acceptable to Landlord, in its commercially reasonable discretion, of all such permits and authorizations. Landlord shall, to the extent necessary (but at no cost, expense, or risk of loss to Landlord), join in the application for such permits or authorizations whenever necessary, promptly upon written request of Tenant.

(b) Any and all structural Alterations of the Building shall be performed under the supervision of an architect and/or structural engineer.

(c) Except for Minor Projects, Tenant shall notify Landlord at least fifteen (15) days prior to commencing any Alterations so as to permit, and Tenant shall permit, Landlord access to the Demised Property in order to post and keep posted thereon such notice(s) as may be provided or required by applicable law to disclaim responsibility for any construction on the Demised Property. Landlord may deliver to Tenant written requests from time to time, not more than once in any thirty (30) day period, for information regarding any Alterations that Tenant has then undertaken. Tenant shall respond in good faith with all information reasonably requested by Landlord within 5 days after receipt of Landlord's written request.

(d) Any and all Alterations shall be conducted and completed in a commercially reasonable time period (subject to the terms of Article XVII), in a good and workmanlike manner, and in compliance with all applicable laws, municipal ordinances, building codes and permits, and requirements of all governmental authorities having jurisdiction over the Demised Property, and of the local Board of Fire Underwriters, if any; and, upon completion of any and all Alterations, Tenant shall obtain and deliver to Landlord a copy of the amended certificate of occupancy for the Demised Property, if required under applicable law or by governmental authority. To the extent reasonably practicable, any and all Alterations shall be made and conducted so as not to disrupt Tenant's business.

(e) The cost of any and all Alterations shall be promptly paid by Tenant so that the Demised Property at all times shall be free of any and all liens for labor and/or materials supplied for any Alterations subject to the next succeeding sentence. In the event any such lien shall be filed, Tenant shall, within ten (10) days after receipt of notice of such lien, deliver written notice to Landlord thereof, and Tenant shall, within thirty (30) days after receipt of notice of such lien, discharge the same by bond, title indemnity or payment of the amount due the lien claimant. However, Tenant may in good faith contest such lien provided that within such thirty (30) day period Tenant provides Landlord with a surety bond, title indemnity or other form of security reasonably acceptable to Landlord, protecting against said lien. Tenant shall provide Landlord promptly with evidence satisfactory to Landlord that all contractors, subcontractors or materialmen have been paid in full with respect to such Alterations and that their lien rights have been waived or released. In the event Tenant fails to either discharge such lien or protect against such lien in accordance with the foregoing, then Landlord shall have the option (but not the obligation) to pay such lien or post a bond to protect against such lien and pass through such costs to Tenant as Additional Rent.

## ARTICLE VII

### REPAIRS AND MAINTENANCE

Except as otherwise provided in this Article, Tenant, at its sole cost and expense, shall maintain the Demised Property and each part thereof, structural and non-structural, in good order and condition, ordinary wear and tear and damage by casualty and condemnation excepted (such obligations shall include, without limitation, the obligation to maintain all areas outside of the Building (including all sidewalks, driveways, landscaping, trash enclosures, and trash compacting and loading areas on the Demised Property), in a neat and clean condition, and ensuring that debris from the operation of the restaurant on the Demised Property are cleaned on a regular basis) and, subject to the terms and conditions of Article VI, shall make any necessary Repairs thereto, interior and exterior, whether extraordinary, foreseen or unforeseen but subject to the casualty and condemnation provisions of this Lease. Tenant and Landlord shall each pay one-half of the cost and expense of any Repairs reasonably requested by Landlord which are performed during the last year of the Lease Term. When used in this Article VII, the term "Repairs" shall include all such replacements, renewals, alterations, additions and betterments necessary for Tenant to properly maintain the Demised Property in good order and condition and in compliance with all applicable laws. The adequacy of any and all Repairs to the Demised Property required or conducted pursuant to this Article VII shall be measured by and meet, at a minimum, all of the following standards: (1) at least equal in quality of material and workmanship to the condition of the Demised Property prior to the need for such Repairs; (2) avoidance of any and all structural damage or injury to the Building or persons therein; (3) any and all maintenance, service, operation and repair standards and requirements promulgated by Tenant for its (or its subsidiaries' or affiliates') restaurants; and (4) any and all repairs, replacements or upgrades necessary to ensure compliance with the rules and regulations of all governmental agencies having jurisdiction over the relevant Demised Property, including all Environmental Laws (as defined below) and shall conform to the requirements of any covenants, conditions, restrictions or other permitted encumbrances which are of record. Landlord shall have no duty whatsoever to maintain, replace, upgrade, or repair any portion of the Demised Property, and Tenant hereby expressly waives the right to make repairs at the expense of Landlord, which right may be provided for in any law now or hereinafter in effect. If Tenant fails or neglects to commence and diligently proceed with all necessary Repairs (for the purposes hereof, application by Tenant for a building permit (if necessary under applicable law to commence the applicable Repair) shall be deemed to constitute the commencement of a Repair under this Article) within thirty (30) days after receipt of written notice of the need therefor describing the applicable Repair or other obligation (a "Repair Notice") (except in emergency situations involving risk of further damage to the Demised Properties or injury to persons, in which case no such grace period shall be applicable and Tenant shall be obligated to expeditiously commence all necessary Repairs and diligently proceed to complete same), then Landlord or its agents may enter the Demised Property for the purpose of making such Repairs (with Landlord making commercially reasonable efforts not to unreasonably interfere with Tenant's business operations). All commercially reasonable out of pocket costs and expenses in relation to Repairs incurred as a consequence of such Landlord's action shall be paid by Tenant



to Landlord within thirty (30) days after Landlord delivers to Tenant copies of invoices for such Repairs. These invoices shall be prima facie evidence of the payment of the charges to be paid by Tenant.

## ARTICLE VIII

### COMPLIANCE WITH LAW

Tenant shall, throughout the Lease Term, at its sole cost and expense, comply with all laws and regulations of federal, state, municipal and local governments, departments, commissions and boards pursuant to law, or directives or orders issued pursuant thereto, including without limitation all Environmental Laws and the Americans With Disabilities Act, with respect to, regarding, or pertaining to the Demised Property, in each case whether now existing or hereafter enacted.

## ARTICLE IX

### QUIET ENJOYMENT SUBJECT TO DILIGENCE MATTERS

From and after the Commencement Date until the expiration or termination of the Lease Term, and provided no Event of Default has occurred and is continuing, Tenant shall have quiet enjoyment of the Demised Property, subject however, to all Diligence Matters, which shall have priority over the interest of Tenant in this Lease and its leasehold interest in the Demised Property.

## ARTICLE X

### DISCLAIMER AND INDEMNITY

**Section 10.01** As used in this Lease, (x) “Landlord Parties” means, collectively, Landlord, Landlord’s Affiliates, Landlord’s Lenders and any Fee Mortgagee; (y) “Landlord’s Affiliates” means Landlord’s members, partners, officers, directors, shareholders, employees, or any person or entity that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with Landlord (for purposes of this definition, the term “control,” “controlled by” or “under common control with” means the power, direct or indirect, to direct or cause the direction of the management and policies of Landlord, whether through the ownership of voting stock, by contract, as trustee or executor, or otherwise); and (z) “Landlord’s Lenders” means any persons or entities providing financing or refinancing to Landlord which is secured by a mortgage against the Demised Property or any secured mezzanine lender in the capital structure of any direct or indirect owner in Landlord. To the extent not prohibited by law, none of the Landlord Parties shall be liable, under any circumstances, for any loss, injury, death or damage to person or property (including but not limited to the business or any loss of income or profit therefrom) of Tenant, Tenant’s members, officers, directors, shareholders, agents, employees, contractors, customers, invitees, or any other person in or about the Demised Property, whether the same are caused by (a) fire, explosion,

falling plaster, steam, dampness, electricity, gas, water, rain; or (b) breakage, leakage or other defects of sprinklers, wires, appliances, plumbing fixtures, water or gas pipes, roof, air conditioning, lighting fixtures, street improvements, or subsurface improvements; or (c) theft, acts of God, acts of the public enemy, riot, strike, insurrection, civil unrest, war, court order, requisition or order of governmental body or authority; or (d) any act or omission of any other occupant of the Demised Property; or (e) operations in construction of any private, public or quasi-public work; or (f) any other cause, including damage or injury which arises from the condition of the Demised Property, from occupants of adjacent property, from the public, or from any other sources or places, and regardless of whether the cause of such damage or injury or the means of repairing the same are inaccessible to Tenant, or which may arise through repair, alteration or maintenance of any part of the Demised Property or failure to make any such repair, from any condition or defect in, on or about the Demised Property including any “Environmental Conditions” (as defined in Article XXXVII) or the presence of any mold or any “Hazardous Materials” (as defined in Article XXXVII) (other than known environmental problems specifically identified in the environmental site reports described on Schedule 2 (the “Environmental Reports”)), or from any other condition or cause whatsoever; provided, however, that the foregoing release set forth in this Section 10.01 shall not be applicable to any claim against a Landlord Party to the extent, and only to the extent, that such claim is attributable to the gross negligence or willful misconduct of such Landlord Party, as determined by a final nonappealable judgment (or by a judgment which such Landlord Party elects not to appeal) by a court of competent jurisdiction.

**Section 10.02** In addition to any and all other obligations of Tenant under this Lease (including without limitation under any indemnity or similar provision set forth herein), to the extent permitted by law, Tenant hereby fully and forever releases, discharges, acquits, indemnifies, protects, and agrees to defend (with counsel selected by Tenant and approved by Landlord (or Landlord’s Lenders), such approval not to be unreasonably withheld, delayed or conditioned) and hold all Landlord Parties wholly free and harmless of, from and against any and all losses, claims, demands, actions, causes of action, settlements, obligations, duties, indebtedness, debts, controversies, remedies, choses in action, liabilities, costs, penalties, fines, damages, injury, judgments, forfeiture, or expenses (including without limitation reasonable attorneys’, consultant, testing and investigation and expert fees and court costs), whether known or unknown, whether liquidated or unliquidated: (a) arising out of or in any way related to or resulting directly or indirectly from: (i) the use, occupancy or activities of Tenant, its subtenants, agents, employees, contractors or invitees in or about the Demised Property; (ii) any failure on the part of Tenant to comply with any applicable law, code or regulation, including without limitation all Environmental Laws; (iii) any Default or Event of Default under this Lease or any breach or default by Tenant under any other Transaction Document (as defined below) (including without limitation as a result of any termination by Landlord, following an Event of Default, of any sublease, license, concession, or other consensual arrangement for possession entered into by Tenant and affecting the Demised Property pursuant to Section 16.07); (iv) any other loss, injury or damage described in Section 10.01 above; (v) in connection with mold at the Demised Property (other than known mold problems specifically identified in the Environmental Reports); (vi) work or labor performed, materials or supplies furnished to or at the request of

Tenant or in connection with obligations incurred by or performance of any work done for the account of Tenant in, on or about the Demised Property; (vii) any failure by Tenant to comply with any of the terms and conditions of the Prime Lease, including, without limitation, any costs and expenses incurred by any of the Landlord Parties to cure any such failure; and (b) whether heretofore now existing or hereafter arising out of or in any way related to or resulting directly or indirectly from the presence or “Release” (as defined in Article XXXVII) at, on, under, to or from the Demised Property of Hazardous Materials (other than known environmental problems specifically identified in the Environmental Reports). All of the personal or any other property of Tenant kept or stored at, on or about the Demised Property shall be kept or stored at the sole risk of Tenant. Without limiting the foregoing, Tenant shall pay on demand all fees and costs of Landlord (including, without limitation, attorneys’ fees and costs) in connection with any enforcement by Landlord of the terms of this Lease and any amendment to this Lease requested by Tenant. Notwithstanding the foregoing, the indemnity set forth in this Section 10.02 shall not be applicable to any claim against any Landlord Party to the extent, and only to the extent, such claim is attributable to the gross negligence or willful misconduct of such Landlord Party, as determined by a final nonappealable judgment (or by a judgment which such Landlord Party elects not to appeal) by a court of competent jurisdiction. As used herein, “Transactional Documents” means, collectively, this Lease and the Guaranty, and any other agreements entered into by and between Landlord and Tenant regarding the foregoing or the Demised Property.

**Section 10.03** Landlord and Tenant each (a) represent to the other party that such representing party has dealt with no broker or brokers in connection with the negotiation, execution and delivery of this Lease and (b) agrees to indemnify, defend, protect (with counsel selected by the other party) and holds such other party wholly free and harmless of, from and against any and all claims or demands for any and all brokerage commissions and/or finder’s fees due or alleged to be due as a result of any agreement or purported agreement made by such indemnifying party.

**Section 10.04** The provisions of this Article X shall survive the expiration or sooner termination of this Lease. Tenant hereby waives the provisions of any applicable laws restricting the release of claims, or extent of release of claims, which Tenant does not know or suspect to exist at the time of release, which, if known, would have materially affected Tenant’s decision to agree to this release. In this regard, Tenant hereby agrees, represents, and warrants to Landlord that Tenant realizes and acknowledges that factual matters now unknown to Tenant may hereafter give rise to causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which are presently unknown, unanticipated and unsuspected, and Tenant further agrees, represents and warrants that the release provided hereunder has been negotiated and agreed upon in light of that realization and that Tenant nevertheless hereby intends to release, discharge and acquit the parties set forth herein above from any such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which are in any manner set forth in or related to this Lease, the Demised Property and all dealings in connection therewith.

## ARTICLE XI

### INSURANCE

#### **Section 11.01** INTENTIONALLY DELETED.

**Section 11.02** As of the Commencement Date and throughout the Lease Term, Tenant shall maintain, with financially sound and reputable insurers (as further described in Section 11.03), public liability and other types of insurance with respect to its business and each Real Property (including the Building now existing or hereafter erected thereon) against all losses, hazards, casualties, liabilities and contingencies as customarily carried or maintained by persons of established reputation engaged in similar businesses. Without limitation of the foregoing, Tenant shall maintain or cause to be maintained policies of insurance with respect to the Real Property in the following amounts and covering the following risks:

(a) Commercial property coverage for one hundred percent (100%) insurable guaranteed 100% replacement value with no co-insurance penalty (A) “Special Form Causes of Loss” coverage (as such term is used in the insurance industry), at least as broad as ISO Special Form Causes of Loss, CP1030, including coverage for glass breakage, vandalism and malicious mischief, with any deductible (other than related to the property insurance requirement pursuant to Sections 11.02(d) and 11.02(f) below) in excess of One Hundred Thousand Dollars (US\$100,000) to be approved by Landlord and, (B) “Ordinance and Law Coverage” with limits of not less than the building value for Coverage A (loss to the undamaged portion of the Building), limits of not less than fifteen percent (15%) of the building value of the Building for Coverage B (Demolition Cost Coverage), and limits not less than fifteen percent (15%) of the value of the Building for Coverage C (Increased Cost of Construction Coverage).

(b) Commercial General Liability insurance including Product Liability and Liquor Liability (if alcohol is served) covering the Demised Property at least as broad as the most commonly available ISO Commercial General Liability policy form CG0001 (occurrence basis) covering bodily injury, property damage and personal and advertising injury, for the joint benefit of and insuring Tenant and Landlord as set forth below, with limits not less than One Million Dollars (US\$1,000,000) per occurrence, with a general aggregate of not less than One Million Dollars (US\$1,000,000), with any deductible or self-insured retention in excess of Five Hundred Thousand Dollars (US\$500,000) to be approved by Landlord, and a “following form” Umbrella Liability policy or Excess Liability policy to include Product Liability and Liquor Liability (if alcohol is served), in an amount such that the total coverage under both the aforesaid Commercial General Liability policy and the Umbrella Liability policy or Excess Liability policy is not less than Five Million Dollars (US\$5,000,000) per occurrence.

(c) Worker’s compensation insurance covering all persons employed by Tenant at the Demised Property in connection with any work done on or about the Demised Property for which claims for death or bodily injury could be asserted against Landlord, Tenant or the Demised Property.

(d) In the event the Demised Property is 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 the full replacement value of the Demised Property, with any deductible in excess of the greater of (i) Two Hundred Fifty Thousand Dollars (US\$250,000.00) or five percent (5%) of property value to be approved by Landlord.

(e) Insurance against loss or damage from explosion of any steam or pressure boilers or similar apparatus located in or about the Building with limits of not less than Ten Million Dollars (US\$10,000,000) for consequential damages, covering the Building and Fixtures (excluding footings and foundations and other parts of the Buildings which are not insurable), with any deductible in excess of One Hundred Thousand Dollars (US\$100,000) to be approved by Landlord.

(f) In the event the Demised Property is located in a major earthquake damage area and earthquake insurance is available, Tenant shall maintain throughout the Term applicable to the Demised Property earthquake insurance for the full replacement value of the Demised Property, with any deductible in excess of the greater of (i) Two Hundred Fifty Thousand Dollars (US\$250,000) or (ii) five percent (5%) of property value to be approved by Landlord.

(g) Such additional and/or other insurance with respect to the Building located on the Demised Property and in such amounts as at the time is customarily carried by prudent owners or tenants with respect to improvements and equipment similar in character, location and use and occupancy to the Building located on the Demised Property.

(h) All insurance policies, endorsements and coverages required for the Demised Property under the terms of the Prime Lease.

**Section 11.03** Each carrier providing any insurance, or portion thereof, required by this Article shall have the legal right to conduct its business in the jurisdiction in which the applicable Real Property is located, and shall have a claims paying ability rating by S&P of not less than “A-” and an A.M. Best Company, Inc. rating of not less than A and financial size category of not less than X. Tenant shall cause all insurance that it is required to maintain hereunder to contain a mortgagee clause and loss payee clause in favor of Landlord’s Lender in accordance with this Section to be payable to Landlord’s Lender as a mortgagee and not as a co-insured, as its interest may appear.

**Section 11.04** All insurance policies required to be maintained by Tenant hereunder and renewals thereof (a) shall be in a form reasonably acceptable to Landlord, (b) shall provide for a term of not less than six months (except for any short term extensions granted by the relevant insurance carriers while Tenant and such insurance carriers work on a longer term policy renewal), (c) if the same are insurance policies covering any property (i) shall include a standard non-contributory mortgagee endorsement or its equivalent in favor of and in form acceptable to Landlord’s Lender, (ii) shall contain an agreed value clause updated periodically

and (iii) shall designate Landlord's Lender as "mortgagee and loss payee" as their interest may appear, and (d) shall provide that the policy of insurance shall not be terminated, cancelled, substantially modified or allowed to lapse on any renewal date without at least thirty (30) days' prior written notice to Landlord, Landlord's Lender and to any other party covered by any standard mortgage clause, loss-payee or additional insured endorsement. In addition, all property insurance policies (except for flood and earthquake limits) must either automatically reinstate after each loss or Tenant must otherwise provide for uninterrupted coverage. Furthermore, all property insurance policies shall reflect that Landlord and Landlord's Lender (the "Landlord Insured Parties") are loss payees to the extent that their respective interests appear. With respect to commercial general liability and umbrella policies, the Landlord Insured Parties shall be named as additional insureds with respect to the leased Demised Property. The Landlord Insured Parties shall be provided with evidence of property insurance coverage consistent with this Article XI utilizing an Accord form 27, 28 or equivalent, confirming the loss payee status of the Landlord Insured Parties. The form shall also reflect any business interruption coverage maintained voluntarily by Tenant. With respect to liability and umbrella insurance, the Landlord Insured Parties shall be provided with evidence of coverage utilizing an Accord form 25 or equivalent, reflecting that the Landlord Insured Parties are additional insureds with respect to the leased locations. This form shall also confirm the existence of workers compensation insurance including a waiver of subrogation against Landlord.

**Section 11.05** Any insurance provided for in this Article may be effected by a blanket policy or policies of insurance, or under so-called "all-risk" or "multi-peril" insurance policies, provided that the amount of the total insurance available with respect to the Demised Property shall provide coverage and indemnity at least equivalent to separate policies in the amounts herein required, and provided further that in other respects, any such policy or policies shall comply with the provisions of this Article. Any increased coverage provided by individual or blanket policies shall be satisfactory, provided the aggregate liability limits covering the Demised Property under such policies shall otherwise comply with the provisions of this Article.

**Section 11.06** Every property insurance policy carried by either party with respect to the Demised Property shall (if it can be so written) include provisions waiving the insurer's subrogation rights against the other party to the extent such rights can be waived by the insured prior to the occurrence of damage or loss. Subject to the above, each party hereby waives any rights of recovery against the other party for any property direct damage or associated consequential loss covered by said policies (or by policies required to be carried hereunder by such party) whether or not such damage or loss shall have been caused by any acts or omissions of the other party, but such waiver shall operate only to the extent such waiving party is so protected by such insurance coverage (or would have been protected by maintaining all policies required to be carried hereunder by such party).

**Section 11.07** All insurance policies required under this Article XI shall provide that the beneficial interest of Landlord in such policies shall be fully transferable. In the event Tenant fails to procure or maintain any policy of insurance required under Article XI, or if the insurance company or coverages provided fail to meet the requirements contained in this Article

XI, Landlord may, at its option, purchase such insurance and charge Tenant all costs and expenses incurred in procuring and maintaining such insurance.

## ARTICLE XII

### DAMAGE OR DESTRUCTION

**Section 12.01** If at any time during the Lease Term, the Demised Property or any part thereof shall be damaged or destroyed by fire or other casualty of any kind or nature, Tenant shall promptly apply for all necessary permits, and promptly after issuance of such permits and receipt of insurance proceeds, diligently proceed to repair, replace or rebuild the Demised Property as nearly as possible to its condition and character immediately prior to such damage with such variations and Alterations as may be permitted under (and subject to the provisions of) Article VI (the “Restoration Work”). Notwithstanding the foregoing, if Tenant has not exercised its renewal option, Tenant shall have no obligation to repair, replace or rebuild the Demised Property during the last two (2) years of the Lease Term, so long as (i) no Event of Default exists, including without limitation any Event of Default under the insurance provisions, (ii) Landlord shall have received any and all insurance proceeds relating to such casualty (other than insurance proceeds on account of Tenant’s trade fixtures, Restaurant Equipment or inventory) and (iii) Tenant shall have paid the deductible for the insurance policy covering such casualty. Tenant shall have the right to receive any and all insurance proceeds on account of Tenant’s trade fixtures, Restaurant Equipment or inventory.

**Section 12.02** All property and casualty insurance proceeds payable to Landlord or Tenant (except (i) insurance proceeds payable to Tenant on account of Tenant’s trade fixtures, Restaurant Equipment or inventory; and (ii) insurance proceeds payable from comprehensive general public liability insurance, or any other liability insurance) at any time as a result of casualty to the Demised Property shall be paid to Tenant if less than \$100,000 (which amount shall be adjusted annually in proportion to increases in the CPI), otherwise jointly to Landlord and Tenant for purposes of payment for the cost of the Restoration Work, except as may be otherwise expressly set forth herein. Landlord shall make such insurance proceeds available to Tenant based on a commercially reasonable draw schedule. Landlord and Tenant shall cooperate in order to obtain the largest possible insurance award lawfully obtainable and shall execute any and all consents and other instruments and take all other actions necessary or desirable in order to effectuate same and to cause such proceeds to be paid as hereinbefore provided. The proceeds of any such insurance in the case of loss shall, to the extent necessary, be used first for the Restoration Work with the balance, if any, payable to Landlord. If insurance proceeds as a result of a casualty to the Demised Property are insufficient to complete the Restoration Work necessary by reason of such casualty, then Tenant shall be responsible for the payment of such amounts necessary to complete such work.

**Section 12.03** This Lease shall not be affected in any manner by reason of the total or partial destruction to the Demised Property or any part thereof and Tenant, notwithstanding any law or statute, present or future, waives all rights to quit or surrender the Demised Property or any portion thereof because of the total or partial destruction of the Demised Property (prior to

the expiration of this Lease). Base Rent and Additional Rent required to be paid by Tenant hereunder shall not abate as a result of any casualty.

## ARTICLE XIII

### EMINENT DOMAIN

**Section 13.01** Landlord and Tenant hereby agree that in no event shall any taking of the Demised Property for any public or quasi-public use under any statute or by right of eminent domain, or by purchase in lieu thereof, in any way relieve Tenant of any obligations under this Lease (as to the Demised Property or otherwise) except as explicitly provided in this Article.

**Section 13.02** The parties hereto agree to cooperate in applying for and in prosecuting any claim for any taking regarding the Demised Property and further agree that the aggregate net award shall be distributed to Landlord for the condemned Demised Property. Tenant shall be entitled to claim and receive any award or payment from the condemning authority expressly granted for the taking of Tenant's trade fixtures, Restaurant Equipment or inventory, the interruption of its business and moving expenses, but only if such claim or award does not adversely affect or interfere with the prosecution of Landlord's claim for the taking or otherwise reduce the amount recoverable by Landlord for the taking.

**Section 13.03** In case of a taking of any portion of the Demised Property (except if this Lease is terminated pursuant to Section 13.04), Tenant at its own expense shall proceed with diligence (subject to reasonable time periods for purposes of adjustment of any award and unavoidable delays) to repair or reconstruct (or cause to be repaired and reconstructed) the affected Building to a complete architectural unit (all such repair, reconstruction and work being referred to in this Article as "Reconstruction Work"). Landlord shall make such condemnation award available to Tenant based on a commercially reasonable draw schedule for Reconstruction Work up to and not exceeding the net compensation amount realized by Landlord as a result of such taking (i.e., the gross amount of the compensation received by Landlord from the taking authority less all reasonable costs and expenses incurred by Landlord in pursuing, prosecuting, and/or recovering its claim to such award). All Reconstruction Work shall be performed in accordance with the standards and requirements for Alterations set forth in Article VI.

**Section 13.04** In case of a taking of any portion of the Demised Property, the Base Rent payable hereunder regarding the Demised Property shall be equitably reduced as of the Impact Date (as hereinafter defined) by a percentage equal to the percentage of the diminution in value of the Demised Property, as reasonably determined by Tenant and Landlord (however, Tenant shall not reduce the payment of Base Rent until such determination of the equitable reduction in Base Rent, or until determination by an arbitration as set forth below, and then Tenant shall be entitled to a credit for any excess payments of Base Rent made by Tenant). "Impact Date" shall mean the date on which Tenant is no longer legally permitted to use the portion of the Demised Property that was taken. In determining the equitable reduction in Base Rent, the parties shall utilize the fair market value of the Demised Property, as of the date of inception of this Lease, as determined by an MAI Appraiser mutually acceptable to the parties.



If the parties fail to agree on the reduction in Base Rent due to the applicable taking with respect to the Demised Property within fifteen (15) business days after the applicable taking, then either party, by written notice delivered to the other party (the date when such notice is delivered to the other party is referred to herein as the “Notice Date”), may cause the following procedure to be utilized in determining such reduction in Base Rent:

(1) Submission of Proposed Base Rent Reduction. Within fifteen (15) days after the Notice Date, each of Landlord and Tenant shall deliver to the other party its calculation of its proposed equitable reduction in the Base Rent as a result of the applicable taking (a “Base Rent Reduction”), which calculation shall include (a) the Base Rent properly allocated to the Demised Property prior to the taking, (b) the percentage diminution in value of the Demised Property as a result of the taking, and (c) the resulting reduction in Base Rent hereunder as a result of such taking.

(2) Appointment and Qualifications of Appraiser. Within thirty (30) days after the Notice Date, Landlord and Tenant shall each appoint one licensed real estate appraiser who has been active over the previous five-year (5-year) period in the appraisal of single tenant restaurants within the county in which the Demised Property is located (each such appraiser chosen pursuant to this subsection (2), an “Appraiser”). Each of Landlord and Tenant shall notify the other party, in writing, of its Appraiser (and the business address thereof) within two (2) business days after the appointment thereof (collectively, the “Appraiser Appointment Notices”). Each of Landlord and Tenant agree that any Appraiser may be (but is not required to be) an appraiser who assisted either party in determining such party’s calculation of the Base Rent Reduction pursuant to subsection (1), above.

(3) Appointment of Third Appraiser. If each party appoints an Appraiser and notifies the other party in accordance with subsection (2), above, then the two (2) Appraisers shall, within ten (10) business days after delivery of the later of the two Appraiser Appointment Notices, agree on and appoint a third Appraiser (whom shall be a licensed real estate appraiser with all other qualifications for the initial two Appraisers chosen by the parties as set forth in subsection (2), above) and provide prompt written notice to Landlord and Tenant of such third Appraiser and the business address thereof. If the two (2) Appraisers fail to agree on and appoint a third Appraiser within such ten (10) business day period, then either party may elect to have the third Appraiser selected by the AAA by delivering written notice thereof to the other party. In such event, the electing party shall petition the AAA (with a copy to the other party) to so determine the third Appraiser and the parties shall cooperate reasonably

with each other and the AAA (including, without limitation, by responding promptly to any requests for information made by the AAA) in connection with such determination. The decision of the AAA shall be final and conclusive as to the identity of the third Appraiser.

(4) Appraisers' Decision. Within thirty (30) days after the appointment of the third Appraiser, each of the three (3) Appraisers shall decide whether the Base Rent Reduction as proposed by Landlord or Tenant pursuant to subsection (1), above, is closer to the actual Base Rent Reduction as determined by each such Appraiser. The decision of the majority of the three (3) Appraisers shall be binding on Landlord and Tenant (subject to subsection (5), below). The determination of each Appraiser shall be limited to the sole issue of, and each Appraiser shall have neither the right nor the power to determine any issue other than, whether the Base Rent Reduction as proposed by Landlord or Tenant pursuant to subsection (1), above, is closer to the actual Base Rent Reduction as determined by each such Appraiser.

(5) If Only One Appraiser Is Appointed. If either Landlord or Tenant fails to appoint an Appraiser within thirty (30) days after the Tenant Notice Date or fails to deliver an Appraiser Appointment Notice in accordance with subsection (2), above, and the other party does appoint an Appraiser within such thirty (30) day period and delivers an Appraiser Appointment Notice in accordance with subsection (2), above, then the Appraiser timely appointed by such other party shall reach a decision regarding whether the Base Rent Reduction as proposed by Landlord or Tenant pursuant to subsection (1), above, is closer to the actual Base Rent Reduction as determined by each such Appraiser, and notify Landlord and Tenant of that decision within thirty (30) days after such Appraiser's appointment. In such event, such Appraiser's decision shall be binding on Landlord and Tenant.

(6) Cost of Arbitration. If the Appraisers (or Appraiser, pursuant to subsection (5), above) determine that Tenant's proposed Base Rent Reduction is closer to the actual Base Rent Reduction, then Landlord shall be deemed the "Losing Party" and Tenant shall be deemed the "Prevailing Party." If the Appraisers (or Appraiser, pursuant to subsection (5), above) determine that Landlord's proposed Base Rent Reduction is closer to the actual Base Rent Reduction, then Tenant shall be deemed the "Losing Party" and Landlord shall be deemed the "Prevailing Party." Each party shall initially pay the fees and expenses of its legal counsel, appointed appraiser, appraisals, one-half of the fees of the third appraiser, and one-half the fees of the AAA (if applicable), provided, however, that the Losing Party shall be obligated to reimburse the Prevailing Party for

all costs of the arbitration paid by the Prevailing Party promptly upon the completion of the arbitration procedure set forth in this Section (including fees and expenses of the Prevailing Party's legal counsel, appointed appraiser, appraisals, and its one-half share of the fees of the third appraiser, and the AAA (if applicable)).

In the event of a total taking of the Demised Property, (i) this Lease shall terminate, (ii) Tenant's obligations hereunder shall terminate from and after the Total Taking Date (as hereinafter defined) and (iii) Landlord shall be entitled to the entire condemnation award for such total taking of the Demised Property. In the event of the taking of more than twenty-five (25%) percent of the square footage of the restaurant building located on the Demised Property, Tenant shall have the right to terminate this Lease by written notice given to Landlord no later than the Total Taking Date, and if such termination right is timely exercised, Tenant's obligations hereunder shall terminate from and after the Total Taking Date and Landlord shall be entitled to the entire condemnation award for such taking of the Demised Property. "Total Taking Date" shall mean the date of the actual transfer of title of the Demised Property from Landlord to the applicable condemning authority.

Notwithstanding the foregoing, in connection with any condemnation award received by Landlord in an amount less than US\$100,000 (which amount shall be adjusted annually in proportion to increases in the CPI), Landlord, in its sole discretion, shall either reduce the Base Rent as of the Impact Date (a) in accordance with the foregoing appraisal process or (b) by an amount equal to the product of (1) the actual condemnation award received by Landlord multiplied by (2) 0.667 percent (0.667%).

**Section 13.05** Any compensation for a temporary taking shall be payable to Tenant without participation by Landlord, except to the proportionate extent such temporary taking extends beyond the end of the Lease Term, and there shall be no abatement of Rent as a result of any temporary taking affecting the Demised Property.

## ARTICLE XIV

### PERFORMANCE OF OBLIGATIONS

#### **Section 14.01** Performance of Obligations.

(a) Landlord hereby represents, warrants and covenants to Tenant that Landlord has the right and lawful authority to enter into this Lease and perform Landlord's obligations hereunder.

(b) Tenant hereby represents, warrants and covenants to Landlord that Tenant has the right and lawful authority to enter into this Lease and perform Tenant's obligations hereunder.

#### **Section 14.02** Intentionally Deleted

**Section 14.03 Books and Records.** Tenant shall keep accurate books and records of account of the Demised Property. Tenant shall provide, or cause to be provided, to Landlord, in addition to any other financial statements required under this Lease, the following financial statements and information, all of which must be prepared in a form reasonably acceptable to Landlord:

(i) promptly and in any event within sixty (60) days after the end of each Fiscal Quarter, (x) quarterly statements of EBITDA in respect of the Demised Property for each Fiscal Month in such Fiscal Quarter and year-to-date, to be certified by an officer of Tenant, and (y) total sales figures in respect of the Demised Property for each Fiscal Month in such Fiscal Quarter and year-to-date; and

(ii) promptly and in any event within one hundred and twenty (120) days after the end of each Fiscal Year, an annual statement of financial position of Tenant, including a balance sheet and statement of profits and losses and, to the extent one is prepared, a statement of cash flows, such annual statements of financial position to be certified by an officer of Tenant to fairly represent the financial condition of Tenant as of the date thereof. To the extent such financial statements are audited, Tenant shall provide Landlord with a final copy of that audit within thirty (30) days of completion. Notwithstanding the foregoing, as long as Tenant is a wholly-owned direct or indirect subsidiary of Buffets, LLC, Tenant shall be permitted to satisfy its obligations under this clause (ii) by providing (or causing Buffets, LLC to provide) the financial statements described herein of Buffets, LLC and its subsidiaries on a consolidated basis, rather than of Tenant; and

(iii) in the event that Tenant defaults in making any payment required under this Lease when due and such default is not cured within thirty (30) days, within sixty (60) days of Landlord's request, a quarterly statement of financial position of Tenant, including a balance sheet and statement of profits and losses and a statement of cash flows, for the most recent Fiscal Quarter for which such quarterly statements were prepared by Tenant, such quarterly statements to be certified by an officer of Tenant to fairly represent the financial condition of Tenant as of the date thereof. Notwithstanding the foregoing, as long as Tenant is a wholly-owned direct or indirect subsidiary of Buffets, LLC, Tenant shall be permitted to satisfy its obligations under this clause (iii) by providing (or causing Buffets, LLC to provide) the financial statements described herein of Buffets, LLC and its subsidiaries on a consolidated basis, rather than of Tenant.

“Fiscal Year” shall mean a fiscal year from approximately July to June (subject to change by Tenant); “Fiscal Quarter” shall mean approximately July through September, approximately October through December, approximately January through March, and approximately April through June (subject to change by Tenant). The last day of each Fiscal Year is the Wednesday closest to June 30<sup>th</sup> (subject to change by Tenant); and “Fiscal Month” shall mean either (A) a calendar month or (B) a reporting period equal to 1/13 of a year, whichever shall then be used by Tenant in maintaining its books and records.

Tenant acknowledges that Landlord must comply with certain financial audit requirements and Landlord will suffer damages from Tenant's failure to deliver any of the financial information required in Subsections 14.03(i) and (ii) (the "Key Financial Statements") as and when due. If Tenant fails to deliver any Key Financial Statements as and when due, and such failure is not cured within ten (10) days after written notice from Landlord, subject to Force Majeure, Tenant shall pay Landlord a fee equal to US\$500 for each day that Tenant has failed to deliver any such Key Financial Statements (the "Financial Statements Default Fee"). The Financial Statements Default Fee is in addition to, and not in lieu of, any other remedy of Landlord under this Lease regarding Tenant's failure to deliver the Key Financial Statements. Tenant's payment of the Financial Statements Default Fee does not cure any Default or Event of Default caused by the failure to deliver any Key Financial Statement in a timely manner.

## ARTICLE XV

### INTENTIONALLY DELETED

## ARTICLE XVI

### DEFAULT

**Section 16.01** Events Of Default. The occurrence of any of the following shall constitute an event of default under this Lease ("Event of Default") on the part of Tenant:

(a) Nonpayment of Base Rent. Failure to pay any installment of Base Rent hereunder when due, and the continuance of such nonpayment for five (5) days after Tenant's receipt of written notice and demand from Landlord.

(b) Nonpayment of Additional Rent. Failure to pay any amount of Additional Rent on or before the date when due and such failure continuing for seven (7) business days following delivery to Tenant by Landlord of written notice specifying such failure.

(c) Insolvency. If at any time during the Lease Term, (i) proceedings in bankruptcy shall be instituted (voluntarily or involuntarily) by or against Tenant or Buffets, LLC, a Minnesota limited liability company, formerly known as Buffets, Inc. ("Guarantor") that result in the filing of a voluntary petition or the entry of an order for relief, or (ii) Tenant or Guarantor shall file, or any creditor or other person shall file against Tenant or Guarantor, any petition in bankruptcy (i.e., seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief) under the Bankruptcy Code of the United States of America (or under any other present or future federal or state statute, law or regulation of similar intent or application), and such filing is not vacated or withdrawn within sixty (60) days thereafter, or (iii) a trustee or receiver shall be appointed to take possession of the Demised Property, or of all or substantially all of the business or assets of Tenant or Guarantor, and such appointment is not vacated or withdrawn and possession restored to Tenant within sixty (60) days thereafter, or (iv) a general assignment or arrangement is made by Tenant or Guarantor for

the benefit of creditors, or (v) any sheriff, marshal, constable or other duly-constituted public official takes possession of the Demised Property, or of all or substantially all of the business or assets of Tenant or Guarantor by authority of any attachment, execution, or other judicial seizure proceedings, and if such attachment or other seizure remains undismissed or undischarged for a period of sixty (60) days after the levy thereof, or (vi) Tenant or Guarantor shall admit in writing Tenant's or Guarantor's inability to pay its debts as they become due; or (vii) Tenant or Guarantor files an answer admitting or failing timely to contest a material allegation of a petition filed against Tenant or Guarantor, respectively, in any such proceeding; or (viii) within ninety (90) days after the commencement of any proceeding against Tenant or Guarantor seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such proceeding shall not have been dismissed. In the event that under applicable law the trustee in bankruptcy or Tenant has the right to affirm this Lease and continue to perform the obligations of Tenant hereunder, such trustee or Tenant shall, within such time period as may be permitted by the bankruptcy court having jurisdiction, cure all defaults of Tenant hereunder outstanding as of the date of the affirmance of this Lease and provide to Landlord such adequate assurances as may be necessary to ensure Landlord of the continued performance of Tenant's obligations under this Lease.

(d) Misrepresentation. The discovery by Landlord that any representation, warranty or financial statement given to Landlord by Tenant or Guarantor, or any affiliate of Tenant or Guarantor, was intentionally materially false or misleading when given, including without limitation as set forth in any Transaction Document.

(e) Insurance; Patriot Act. Any breach by Tenant under Article XI or Article XLII, provided however, any breach by Tenant under Article XI shall not constitute an Event of Default so long as Tenant cures any such breach within ten (10) days after receipt of written notice of such breach from Landlord (provided further however, that any lapse of any of the insurance policies required under Article XI shall constitute an automatic Event of Default without any notice or cure right).

(f) Delivery of Documents. The failure by Tenant to deliver any of the documents required pursuant to Section 26.01, 28.01 or 38.01 within the time periods required pursuant to such sections (except if the delay is caused by the good faith negotiation between Tenant and Landlord or its Lender with respect to the form and substance of such documents).

(g) Financial Information; Insurance. Tenant fails in any of its obligations set forth in Section 14.03, such failure continuing for a period of ten (10) days after written notice of such failure is delivered by Landlord to Tenant; or any claim of lien is recorded against the Demised Property and such claim of lien continues for thirty (30) days without discharge (by bonding or other means available pursuant to applicable law), satisfaction or provision for payment being made by or on behalf of Tenant.

(h) Cross Default With Guaranty. There is any default by Guarantor, after any applicable notice or cure periods, under the Guaranty.

(i) Intentionally Omitted.

(j) Other Obligations. The failure by Tenant to timely perform any obligation, agreement or covenant under this Lease, other than those matters specified in Sections 16.01(a)-(i) above, and such failure continuing for a period of thirty (30) days after written notice of such failure is delivered to Tenant, or such longer period, up to but not exceeding an additional ninety (90) days, as is reasonably necessary to remedy such default provided, however, that if Tenant has continuously and diligently pursued a remedy at all times during such thirty (30) day period and additional ninety (90) day period, and notwithstanding such efforts by Tenant the applicable Default has not been cured, and if Tenant prior to the expiration of such additional ninety (90) day period delivers to Landlord cash or other collateral, or agrees to other undertakings, in each case reasonably acceptable to Landlord that, in Landlord's commercially reasonable judgment, fully mitigate any loss that Landlord has suffered, or is reasonably likely to suffer, as a result of such Default, then such Default shall be deemed cured by Tenant for all purposes hereunder; provided, however, that if at any time thereafter Landlord determines in its commercially reasonable discretion that additional cash, collateral or other undertakings by Tenant are required in order to fully mitigate any loss that Landlord has suffered, or is reasonably likely to suffer, as a result of such Default, then Tenant shall deliver such cash or collateral to Landlord, or agree to such other undertakings, within thirty (30) days after Landlord's written request therefor (and any failure to do so shall constitute an immediate Event of Default hereunder), and Landlord and Tenant agree that Landlord's actions in accordance with this subsection 16.01(j) shall satisfy any obligation of Landlord pursuant to applicable law to mitigate its damages following any Default.

As used in this Lease, "Default" means any breach or default under this Lease, whether or not the same is an Event of Default, and also any breach or default under this Lease, that after notice or lapse of time or both, would constitute an Event of Default if that breach or default were not cured within any applicable grace or cure period.

**Section 16.02** Remedies Upon Event of Default. If an Event of Default by Tenant occurs and during the continuance thereof, in addition to any other remedies available to Landlord at law or in equity or elsewhere hereunder, Landlord shall have the following remedies:

(a) Termination. Landlord shall have the right, with or without notice or demand, immediately upon expiration of any applicable grace period specified herein, to terminate this Lease (or Tenant's possession to the Demised Property), and at any time thereafter recover possession of all or any portion of the Demised Property or any part thereof and expel and remove therefrom Tenant and any other person occupying the same by any lawful means, and repossess and enjoy all or any portion of the Demised Property without prejudice to any of the remedies that Landlord may have under this Lease. If Landlord elects to terminate this Lease (or to terminate Tenant's right of possession), Landlord shall also have the right to reenter the Demised Property and take possession of and remove all personal property of Tenant, if any, in the Demised Property. In connection with any such repossession Tenant (and any affiliate of Tenant holding a liquor license, if any, with respect to the Demised Property) shall cooperate reasonably with Landlord and any applicable government agency in transferring

its liquor license to Landlord, or in assisting Landlord in obtaining a liquor license, all at no cost or expense to Tenant. If Landlord elects to terminate this Lease and/or Tenant's right to possession, or if Tenant's right to possession is otherwise terminated by operation of law, Landlord may recover as damages from Tenant the following: (i) all Rent then due under this Lease through the date of termination; (ii) the Rent due for the remainder of the Lease Term in excess of the fair market rental value of the Demised Property for the remainder of the Lease Term, including without limitation any and all Additional Rent (each discounted by the discount rate of the Federal Reserve Bank of San Francisco plus one percent (1%)); (iii) the cost of reletting the Demised Property, including without limitation the anticipated period of vacancy until such Demised Property can be re-let at its fair market rental values; and (iv) any other costs and expenses that Landlord may reasonably incur in connection with the Event of Default. Efforts by Landlord to mitigate the damaged caused by the Event of Default (or Tenant's Default under this Lease) shall not waive Landlord's right to recover damages under the foregoing provisions.

(b) Continuation after Event of Default. If Landlord does not elect to terminate this Lease, then this Lease shall continue in effect, and Landlord may enforce all of its rights and remedies under this Lease, including, without limitation, the right to recover Rent as it becomes due, and Landlord, without terminating this Lease, may exercise all of the rights and remedies of a landlord under law, subject to Article XXXII hereof. Landlord shall not be deemed to have terminated this Lease except by an express statement in writing. Acts of maintenance or preservation, efforts to relet the Demised Property, or the appointment of a receiver upon application of Landlord to protect Landlord's interest under this Lease shall not constitute an election to terminate Tenant's right to possession unless such election is expressly stated in writing by Landlord. Notwithstanding any such reletting without such termination, Landlord may at any time thereafter elect to terminate Tenant's right to possession and this Lease. If Landlord elects to relet the Demised Property for the account of Tenant, the rent received by Landlord from such reletting shall be applied as follows: first, to the payment of any and all costs of such reletting (including, without limitation, reasonable attorneys' fees, brokers' fees, alterations and repairs to the Demised Property, and tenant improvement costs); second, to the payment of any and all indebtedness other than Rent due hereunder from Tenant to Landlord; third, to the payment of any and all Rent due and unpaid hereunder; and the balance, if any, shall be held by Landlord and applied in payment of future Rent as it becomes due. If the rent received from the reletting is less than the sum of the costs of reletting, other indebtedness due by Tenant, and the Rent due by Tenant, then Tenant shall pay the deficiency to Landlord promptly upon demand by Landlord. Such deficiency shall be calculated and paid monthly.

(c) State-Specific Remedy. Landlord may pursue any other remedy now or hereafter available to Landlord under the laws and judicial decisions of the state in which the Demised Property is located in addition to and not as an alternative remedy to those provided hereunder.



**Section 16.03** Indemnification. Nothing in this Article shall be deemed to affect Tenant's obligation to indemnify, defend, protect and hold harmless Landlord and the other Landlord Parties under this Lease (including, without limitation, under Article X and Article XXXVII), and such obligation shall survive the termination or expiration of this Lease.

**Section 16.04** Waiver of Notice/Performance by Landlord. Notwithstanding any provision herein, (a) if Tenant is required to comply with any governmental requirement, Tenant shall not be entitled to notice of default from Landlord and right to cure beyond the period within which such compliance may be required by applicable law or government agency or (b) if in Landlord's reasonable determination the continuance of any default by Tenant for the full period of notice provided for herein will constitute a threat of injury or harm to persons or property, Landlord may, with or without notice, elect to perform those acts with respect to which Tenant is in default for the account and at the expense of Tenant. If by reason of such governmental requirement or default by Tenant, Landlord is compelled or elects to pay any sum of money, (including without limitation reasonable attorneys' fees, consultant fees, testing and investigation fees, expert fees and court costs), such sums so paid by Landlord shall be due to Landlord from Tenant within thirty (30) days after written demand therefor from Landlord, in addition to any other amounts to be paid by Tenant under this Lease.

**Section 16.05** Late Fee. In addition to any interest charged to Tenant under Section 16.06, if any payment of Base Rent or Additional Rent is not received by Landlord from Tenant within five (5) days after such payment is due to Landlord hereunder, such payment shall be deemed delinquent and cause Tenant to incur a late fee of seven percent (7%) on each such delinquent payment (the "Late Fee"), due and payable immediately with the delinquent Base Rent or delinquent Additional Rent, as the case may be.

**Section 16.06** Interest. Tenant hereby acknowledges that late payment by Tenant of Base Rent, Additional Rent and/or any other sums due by Tenant hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges and late charges which may be imposed on Landlord by the terms of any mortgage or trust deed covering the Demised Property. Accordingly, in addition to any Late Fee due from Tenant hereunder, any sum due by Tenant under this Lease which is not paid when due shall bear interest at the lesser of ten percent (10%) per annum of such sums or the maximum rate allowed under applicable law, from the date such sum becomes due and payable by Tenant hereunder until paid, unless otherwise expressly provided in this Lease.

**Section 16.07** Tenant's Subleases. If Landlord elects to terminate this Lease on account of any Event of Default, then Landlord may: (i) terminate any sublease and any license, concession, or other consensual arrangement for possession entered into by Tenant and affecting the Demised Property which is not the subject of a nondisturbance agreement executed by Landlord; or (ii) choose to succeed to Tenant's interest in such arrangement. Absent a nondisturbance agreement between Landlord and such subtenant, no payment by a subtenant with respect to a sublease shall entitle such subtenant to possession of the Demised Property after termination of this Lease and Landlord's election to terminate the sublease by the subtenant. If

Landlord elects to succeed to Tenant's interest in such arrangement, then Tenant shall, as of the date of notice given by Landlord to Tenant of such election, have no further right to, or interest in, any rent or other consideration receivable under that arrangement.

**Section 16.08 Other Effects of Events of Default.**

(a) Upon the occurrence of an Event of Default, Landlord shall have all rights and remedies hereunder and under applicable law immediately. Except only as may be required by statute which cannot be waived lawfully, Landlord shall have no obligation to give any notice after an Event of Default as a condition to Landlord's pursuit of any right or remedy.

(b) This Section is in all respects subject to any applicable statute that provides rights in favor of Tenant that are contrary to this Section. Notwithstanding anything else herein (but subject to any such applicable statute), Landlord shall have no obligation to accept the attempted or purported cure of, or to waive, any Event of Default, regardless of tender of delinquent payments or other performance by Tenant, or any other event or condition whatsoever; and Tenant shall not have any right to cure any Event of Default, and no right to cure shall be implied.

(c) Without limiting the foregoing, after the occurrence of any Event of Default (irrespective of whether or not the same consists of an ongoing condition, a one-time occurrence, or otherwise), the same shall be deemed to continue at all times thereafter; provided, however, that such Event of Default shall cease to continue only if Landlord shall accept performance of the defaulted obligation or shall execute and deliver a written agreement in which Landlord expressly states that such Event of Default has ceased to continue. Landlord shall not be obligated under any circumstances whatsoever to accept such performance or execute and deliver any such writing.

(d) Without limitation, this Section shall govern in any case where reference is made in this Lease to (i) any "cure" (whether by use of such word or otherwise) of any Event of Default, (ii) "during an Event of Default" or "the continuance of an Event of Default" (in each case, whether by use of such words or otherwise), or (iii) any condition or event which continues beyond the time when the same becomes an Event of Default.

**Section 16.09 Acceptance of Rent Without Waiving Rights.** No payment by Tenant shall be deemed to be other than on account of the earliest sum due from Tenant hereunder, nor shall any endorsement or statement by Tenant on any check or any letter accompanying such payment be deemed an accord and satisfaction of any amount in dispute between Tenant and Landlord or otherwise. Landlord may accept any and all of Tenant's payments without waiving any right or remedy under this Lease, including but not limited to the right to commence and pursue an action to enforce rights and remedies under a previously served notice of default, without giving Tenant any further notice or demand.

**Section 16.10 Waiver by Tenant.** Tenant hereby waives all claims for damages that may be caused by Landlord's lawful reentering and taking possession of the Demised Property in

accordance with the provisions of this Lease or removing and storing the property of Tenant as herein provided.

**Section 16.11 Remedies Cumulative.** All rights, privileges, elections, and remedies of Landlord and Tenant are cumulative and not alternative with all other rights and remedies hereunder, at law or in equity to the fullest extent permitted by law. The exercise of one or more rights or remedies by Landlord or Tenant shall not impair Landlord's or Tenant's rights to exercise any other right or remedy to the fullest extent permitted by law.

**Section 16.12 Survival.** The remedies available to Landlord pursuant to this Article shall survive expiration or termination of this Lease.

## **ARTICLE XVII**

### **UNAVOIDABLE DELAYS, FORCE MAJEURE**

If either party shall be prevented or delayed from punctually performing any obligation or satisfying any condition under this Lease by any condition beyond the control of such party, exclusive of financial inability of a party (including without limitation any of the following if beyond the control of (and not caused by) such party ("Force Majeure"): strike, lockout, labor dispute, civil unrest, inability to obtain labor, materials or reasonable substitutes thereof, acts of God, present or future governmental restrictions, regulations or control, insurrection, and sabotage), then the time to perform such obligation or satisfy such condition shall be extended by the delay caused by such event, but only for a reasonable period of time not to exceed, in any event, three hundred sixty-five (365) days (the "Force Majeure Deadline"). The provisions of this Article shall in no event operate to delay the Commencement Date or to excuse Tenant from the payment of all Rent as and when due under this Lease.

## **ARTICLE XVIII**

### **NO WAIVER**

The failure of Landlord or Tenant to insist upon strict performance of any of the terms and conditions hereof shall not be deemed a waiver of any rights or remedies that party or any other such party may have, and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions.

## **ARTICLE XIX**

### **NOTICES**

Whenever it is provided herein that notice, demand, request or other communication shall or may be given to either of the parties by the other, it shall be in writing and, any law or statute to the contrary notwithstanding, shall not be effective for any purpose unless same shall be given or served as follows:

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Store #\_\_ (City, State)

LAND AND BUILDING LEASE  
(Individual Lease Form)

(a) If given or served by Landlord, (1) by hand delivery to Tenant, (2) by mailing same to Tenant by registered or certified mail, postage prepaid, return receipt requested, or (3) by delivery by overnight courier such as Federal Express, all delivered and addressed to Tenant at the following address:

120 Chula Vista  
Hollywood Park, TX 78232  
Attention: Real Estate Department  
Telephone: (210) 403-3725

with a copy to:

120 Chula Vista  
Hollywood Park, TX 78232  
Attention: President  
Telephone: (210) 403-3725

(b) If given or served by Tenant, (1) by hand delivery to Landlord, (2) by mailing same to Landlord by U.S. registered or certified mail, postage prepaid, return receipt requested, or (3) by delivery by overnight courier such as Federal Express, all delivered and addressed to Landlord at the following address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

with a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

(c) All notices, demands, requests or other communications hereunder shall be deemed to have been given or served: (1) if hand delivered, on the date received (or the date delivery is refused) by the recipient party; (2) if delivered by registered or certified mail, three (3) days after the date of posting as marked on the U.S. postage receipt; and (3) if by Federal

Express or similar overnight courier service, on the date of receipt (or the date delivery is refused) by the recipient party.

(d) Either Landlord or Tenant may from time to time change its address for receiving notices under this Lease by providing written notice to the other party in accordance with this Article XIX.

## **ARTICLE XX**

### **ACCESS**

Landlord and its designees shall have the right upon not less than forty-eight hours' prior written notice to Tenant (except in the event of an emergency, where no prior notice shall be required) to enter upon the Demised Property at reasonable hours to inspect the Demised Property or, during the period commencing one year prior to the end of the Lease Term, for the purpose of exhibiting same to prospective tenants and posting "for lease" or similar signage at the Demised Property, in Landlord's discretion. Any such entry and/or inspection by Landlord shall not unreasonably interfere with Tenant's ability to conduct its business operations at the Demised Property. Tenant may provide an escort for Landlord during any such entry and/or inspection, but Landlord's right to such entry and/or inspection shall not be subject to the availability or presence of any such escort provided by Tenant. Landlord agrees to reasonably cooperate with any escort provided by Tenant during any inspection of the Demised Property.

## **ARTICLE XXI**

### **SIGNS**

No sign shall be installed on the Demised Property until all governmental approvals and permits required therefor are first obtained and all fees pertaining thereto have been paid by Tenant. Except as set forth in the preceding sentence, Tenant may, at Tenant's sole cost and expense, install or erect signs of any height or dimensions and bearing such inscription as Tenant shall reasonably determine. Tenant may at all times remove such signage, subject to the requirements of this Lease. Upon the termination of this Lease following an Event of Default or upon a rejection of this Lease in any bankruptcy, Landlord shall have the right, at its sole option, to retain and use the signage structures (e.g. base, pole) in the future operation of the Demised Property without payment of any compensation to Tenant.

## **ARTICLE XXII**

### **IMPROVEMENTS AND FIXTURES**

**Section 22.01** Any and all portions of the Building, all other improvements on the Real Property at the Commencement Date and all Building Equipment on the Demised Property at the Commencement Date shall be the property of Landlord (excluding the trade fixtures and the Restaurant Equipment). In the event that Tenant installs or erects fixtures or improvements to

the Demised Property after the Commencement Date (excluding the trade fixtures and Restaurant Equipment), such fixtures or improvements shall at the expiration or earlier termination of this Lease, become the property of Landlord and remain upon and be surrendered with the Demised Property. Notwithstanding the foregoing provisions, Tenant shall be liable for all property taxes, assessments, and similar charges assessed against or allocable to any fixtures or equipment at the Demised Property (irrespective of whether such items are Building Equipment owned by Landlord or Restaurant Equipment or other personal property of Tenant) and which are attributable to any period of time during the Lease Term.

**Section 22.02** During the Lease Term, Tenant shall be entitled to use the Building Equipment in Tenant's operations at the Demised Property. Except as otherwise provided in Section 22.04, Tenant shall keep the Building Equipment in good working order and repair, ordinary wear and tear excepted, shall not remove the Building Equipment from the Demised Property and shall not permit any lien or other encumbrance to attach to Building Equipment except any such liens that are being contested by Tenant in good faith by appropriate proceedings and that have been bonded over by Tenant to the commercially reasonable satisfaction of Landlord or for which Tenant provides alternative security to the commercially reasonable satisfaction of Landlord. Tenant shall keep (or cause to be kept) the Building Equipment insured and shall be responsible for any casualty or other loss to Building Equipment or occasioned by Building Equipment. Tenant may, from time to time, retire or replace Building Equipment with new or comparable items of equipment purchased by Tenant, in which event such replaced equipment shall constitute Building Equipment. All Building Equipment shall be the property of Landlord, and Tenant shall execute such instruments and documents as Landlord may reasonably require to evidence such ownership by Landlord.

### **Section 22.03**

(a) Without limiting Landlord's rights or Tenant's obligations in subsection (b), Tenant shall deliver to Landlord within thirty (30) days following Tenant's receipt of Landlord's written request (i) to the extent in Tenant's possession and/or control, a complete listing of all Restaurant Equipment, which may be in electronic format, to the extent not previously delivered to Landlord, and (ii) any fixed asset report relating to the Restaurant Equipment in Tenant's possession and/or control, to the extent not previously delivered to Landlord; provided that Landlord shall have the right to deliver such request not more than one time in any 12 month period during the Lease Term and provided that Tenant's delivery of such information in (i) and (ii) shall be without any representation or warranty as to such information's accuracy or completeness.

(b) At any time during the occurrence of any Event of Default, and during the occurrence of any Default caused by the failure of Tenant to pay any amount as and when due from Tenant under this Lease, and within ninety (90) days before the expiration of the Lease Term, Tenant shall deliver to Landlord immediately following Tenant's receipt of Landlord's written request (i) to the extent in Tenant's possession and/or control, a complete listing of all Restaurant Equipment, which may be in electronic format, to the extent not previously delivered to Landlord, and (ii) any fixed asset report relating to the Restaurant Equipment in Tenant's

possession and/or control, to the extent not previously delivered to Landlord; provided that Tenant's delivery of such information in (i) and (ii) shall be without any representation or warranty as to such information's accuracy or completeness.

(c) Without limiting Article XX, at any time during the Lease Term, upon not less than forty-eight hours' prior written notice to Tenant, Landlord may enter upon the Demised Property at reasonable hours to inspect and inventory the Restaurant Equipment provided that (i) such inspection and inventory shall not unreasonably interfere with Tenant's ability to conduct its business operations at the Demised Property, (ii) Landlord shall have the right to such inspection and inventory not more than one time in any 12 month period during the Lease Term, (iii) at Tenant's option, such inspection and inventory shall not be conducted during normal business hours and Tenant may provide an escort for Landlord during any such inspection and inventory (provided further that Landlord's right to such inspection and inventory shall not be subject to the availability or presence of any such escort), and (iv) Landlord shall promptly pay the costs of any damage caused by Landlord and/or its agents to any Restaurant Equipment in connection with such inspection and inventory.

(d) Without limiting Article XX, at any time during the occurrence of any Event of Default or any Default in connection with any payment due and payable by Tenant under this Lease and within ninety (90) days before the expiration of the Lease Term, Landlord may enter (without any notice) upon the Demised Property to inspect and inventory the Restaurant Equipment; provided that (i) such inspection and inventory shall not unreasonably interfere with Tenant's ability to conduct its business operations at the Demised Property, (ii) at Tenant's option, such inspection and inventory shall not be conducted during normal business hours and Tenant may provide an escort for Landlord during any such inspection and inventory (provided further that Landlord's right to such inspection and inventory shall not be subject to the availability or presence of any such escort), and (iii) Landlord shall promptly pay the costs of any damage caused by Landlord and/or its agents to any Restaurant Equipment in connection with such inspection and inventory.

(e) Tenant shall not commit waste with respect to the Restaurant Equipment located in the Demised Property and shall not remove the Restaurant Equipment from the Demised Property (except to the extent it is replaced by equipment of equal or greater quality and utility). Tenant shall keep the Restaurant Equipment insured and shall be responsible for any casualty or other loss to Restaurant Equipment or occasioned by Restaurant Equipment. Tenant may, from time to time, retire or replace Restaurant Equipment with new items of equipment purchased by Tenant, in which event such replaced equipment shall constitute Restaurant Equipment.

(f) Landlord shall execute and deliver a lien waiver agreement in form and substance commercially reasonably satisfactory to Landlord to any lender of the Restaurant Equipment.

Any Restaurant Equipment remaining on the Demised Property after ten (10) days after the expiration or earlier termination of the Lease Term shall be deemed abandoned and shall become the property of Landlord without payment therefor.

### **ARTICLE XXIII**

#### **END OF TERM**

Upon the expiration or earlier termination of the Lease Term, Tenant shall peaceably and quietly quit and surrender the Demised Property, and all Alterations which are then part of the Demised Property, broom clean and in good order and condition, ordinary wear and tear excepted and except as provided in Articles XII and XIII. Tenant shall prior to the end of the Lease Term transfer to Landlord all plans, drawings, other Alteration Information, and technical descriptions of the Demised Property (if available), and shall assign to Landlord all assignable permits, licenses, authorizations and warranties necessary for the operation of the Demised Property (in each case to the extent not previously transferred or assigned to Landlord). Upon the expiration or earlier termination of this Lease Tenant shall have the obligation to remove all Restaurant Equipment, except that Tenant may elect to abandon any trade fixtures or equipment which is attached or connected to the Demised Property. Any such items or other items of Restaurant Equipment or personal property which are not removed upon the expiration or earlier termination of this Lease shall be deemed abandoned and may be removed, disposed of or used by Landlord without payment of any compensation to Tenant. Upon the expiration or earlier termination of the Lease Term, Tenant shall remit to Landlord a pro-rated amount of Real Estate Taxes and other recurring expenses required to be paid under the Prime Lease for the period through the expiration or earlier termination of the Lease Term (less any amounts that have previously been escrowed with the Prime Landlord for such purposes and period). This Article XXIII shall survive the expiration or termination of this Lease.

### **ARTICLE XXIV**

#### **HOLDING OVER**

If Tenant holds over in possession after the expiration of the Lease Term, then such holding over shall not be deemed to extend the Lease Term or renew this Lease, but rather the tenancy thereafter shall continue as a tenancy at sufferance pursuant to the terms and conditions herein contained, at One Hundred Fifty percent (150%) of the Base Rent otherwise then applicable (in addition to all Additional Rent); and Tenant shall be responsible for the consequences of any unauthorized holdover and shall indemnify, defend, protect (with counsel selected by Landlord) and hold Landlord Parties wholly free and harmless of, from and against any and all damages, losses, costs, expenses and claims arising therefrom, including reasonable attorneys fees and costs. This Article shall survive expiration or termination of this Lease.



## ARTICLE XXV

### TENANT ASSIGNMENT AND SUBLETTING

#### Section 25.01

(a) Except as otherwise explicitly provided in this Article, neither Tenant, nor Tenant's successors or assigns, shall assign in whole or in part, by operation of law or otherwise, this Lease, or sublet the Demised Property, in whole or in part, or permit the Demised Property or any portion of it to be used or occupied by others, or enter into a management contract or other arrangement whereby the Demised Property shall be managed or operated by anyone other than the owner of the Tenant's leasehold estate, without the prior written consent of Landlord in each instance, such consent not to be unreasonably withheld or conditioned so long as Landlord has received all information reasonably requested. Notwithstanding the foregoing, Tenant may assign or transfer this Lease in its entirety or sublease all or a portion of the Demised Property, with prior written notice to Landlord, but without Landlord's prior written consent, if such assignment, transfer or sublease is to a Tenant Affiliate (as defined below), in which case neither the Tenant nor the Guarantor shall be released of its obligations under this Lease, provided, however, no consent shall be required only so long as such Tenant Affiliate which holds such interest in this Lease shall remain a Tenant Affiliate. In the event such Tenant Affiliate which holds such interest in this Lease ceases to be a Tenant Affiliate during the Lease Term, then such cessation shall be an automatic Event of Default, subject to the terms of this Lease. "Tenant Affiliate" shall mean any person or entity that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with Tenant (for purposes of this section, the term "control," "controlled by" or "under common control with" means the power, direct or indirect, to direct or cause the direction of the management and policies of Tenant, whether through the ownership of voting stock, by contract, as trustee or executor, or otherwise). Any disposition of an ownership interest in Tenant, either directly or indirectly, in such a manner that the ultimate beneficial owners of Tenant, through one or more tiers of ownership, transfer "control" of Tenant, shall be deemed to be an assignment of this Lease. Notwithstanding the foregoing, the following may be made with prior written notice to Landlord, but without Landlord's prior written consent: (i) the sale or transfer of all or any portion of the equity ownership interests of Guarantor (or its parent) or all or substantially all of Guarantor's (or its parents') assets, provided that all of Tenant's obligations hereunder and Guarantor's obligations under the Guaranty shall be expressly assumed by the entity acquiring all or substantially all of the assets of Guarantor, (ii) an initial public offering ("IPO") of stock in Guarantor, Buffets Holdings, Inc. and/or any subsidiary of either of them and (iii) the transfer of shares of stock in any entity after its IPO. Provided Tenant remains liable for all its obligations under this Lease and there shall not exist any Event of Default or event that, with the passage of time or the giving of notice or both, could become an Event of Default, Landlord shall not unreasonably withhold consent to: (X) an assignment of this Lease for the purposes permitted herein to an individual, partnership or corporation if (i) such individual, partnership or corporation (together with any affiliates that will agree to guaranty the Tenant's obligations and liabilities under this Lease

pursuant to a guaranty substantially in the form of Exhibit F hereto) has, in the reasonable opinion of Landlord at least five (5) years' experience in managing and operating restaurants, as well as a record of timely payment of obligations and compliance with applicable laws; (ii) such individual, partnership or corporation (together with any affiliates that will agree to guaranty the Tenant's obligations and liabilities under this Lease pursuant to a guaranty substantially in the form of Exhibit F hereto) is commercially and financially sound; and (iii) the restaurant use meets the standards and criteria set forth in Article IV; or (Y) a sublease of the Demised Property in its entirety to retailer or restaurant operator if (i) the proposed sublease will not take effect until after the expiration of the Original Lease Term, (ii) the proposed subtenant will not engage in any use prohibited by Section 4.01 hereof and would not be anticipated to receive in excess of seventy-five (75%) percent of its revenues from the Demised Property from the sale of alcoholic beverages, (iii) the proposed subtenant has a record of timely payment of obligations and compliance with applicable laws, and is commercially and financially sound, (iv) neither the proposed subtenant nor any of its officers, directors, and direct or indirect owners regardless of the number of tiers of ownership is a Person (as hereinafter defined) (1) whose property or interest in property is blocked or subject to blocking pursuant to Section 1 of Executive Order 13224 of September 23, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)), (2) who engages in any dealings or transactions prohibited by Section 2 of such executive order, or is otherwise associated with any such person in any manner violative of Section 2, or (3) on the list of Specially Designated Nationals and Blocked Persons or subject to the limitations or prohibitions under any other U.S. Department of Treasury's Office of Foreign Assets Control regulation or executive order, (v) the proposed subtenant and each of its officers, directors, and direct or indirect owners regardless of the number of tiers of ownership, is in compliance with (1) the Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, and (2) the Uniting And Strengthening America By Providing Appropriate Tools Required To Intercept And Obstruct Terrorism (USA Patriot Act of 2001), (vi) to the extent the base rent payable under such sublease exceeds the amount of base rent payable under the Prime Lease, Tenant shall be obligated to (1) remit such excess first to the Prime Landlord to the extent required under the Prime Lease, and then remit 50% of any remaining excess to Landlord as additional Rent, or (2) if the Prime Lease does not require that such excess be remitted to the Prime Landlord, remit 50% of such excess to Landlord as additional Rent, and (vii) the proposed subtenant has delivered to Landlord and any Landlord's Lender, upon request, a subordination, non-disturbance and attornment agreement in form and substance reasonably acceptable to Landlord and any Landlord's Lender (to which Tenant shall not be required to be a party to the extent such agreement is also executed by Landlord's Lender (provided, however, that Tenant may be required to execute a separate instrument evidencing its consent to and agreement with the provisions of such agreement)). Notwithstanding the foregoing, (x) after any such assignment or sublease, Tenant shall remain liable for all its obligations under this Lease, Guarantor shall remain liable under the Guaranty, and Tenant shall execute and deliver to Landlord a guaranty in form and substance reasonably acceptable to both Landlord and Tenant (which shall contain surety and guarantor waivers similar to those contained in the Guaranty),

whereby Tenant explicitly guarantees all of the assignee's or subtenant's obligations under this Lease, and (y) Landlord may condition its consent to any sublease regarding the Demised Premises upon the sublease containing the following provisions, in form and substance acceptable to Landlord and Landlord's Lender (collectively, the "Subordination and Attornment Provisions"): (i) that the sublease is subordinate in all respects to this Lease; (ii) that in the event of the cancellation or termination of this Lease for any reason whatsoever or of the surrender of this Lease by operation of law prior to the expiration date of the sublease, subtenant shall make full and complete attornment to Landlord under either the terms of this Lease or the terms of the sublease, in Landlord's sole and absolute discretion, for the balance of the term of the sublease; (iii) that subtenant waives the provisions of any law then or thereafter in effect which may give subtenant any right of election to terminate the sublease or to surrender possession of the Demised Property in the event any proceeding is brought by Landlord to terminate this Lease; and (iv) that all of the foregoing provisions in (i) through (iv) are for the benefit of both Tenant and Landlord and Landlord is a third party beneficiary thereof. Notwithstanding the foregoing, Landlord and Tenant agree that upon the request of any subtenant, Landlord or Landlord's Lender, Landlord, Tenant and such subtenant will execute and deliver to each other a separate subordination, attornment and nondisturbance agreement regarding the sublease, in form and substance reasonably acceptable to all parties thereto.

(b) Tenant shall submit current financial statements of any proposed assignee or sublessee together with Tenant's request for Landlord's approval of any proposed assignment or sublease which requires Landlord's approval hereunder.

(c) Notwithstanding anything to the contrary contained herein, no assignment or transfer of this Lease by Tenant and no sublease of the Demised Property shall be permitted hereunder if such assignment, transfer or sublease is not permitted by the Prime Lease or if the consent of the Prime Landlord to such assignment, transfer or sublease is required and such consent has not been obtained.

(d) If this Lease is assigned or transferred, or if all or any part of the Demised Property is sublet or occupied by any party other than Tenant, Landlord may collect rent from the assignee, transferee, subtenant or occupant, and apply the net amount collected to the Rent reserved in this Lease, but no such assignment, subletting, occupancy or collection shall be deemed a waiver of any covenant or condition of this Lease, or the acceptance of the assignee, transferee, subtenant or occupant as tenant, or a release of Tenant from the performance or further performance by Tenant of its obligations under this Lease. Without limiting the generality of the foregoing, Tenant expressly acknowledges and agrees that in the event of any assignment of this Lease, Tenant shall remain jointly and severally liable with the assignee for all of the obligations under this Lease, and in all other cases of any transfer of Tenant's interest under this Lease, Tenant shall remain primarily liable for such obligations. Subject to the foregoing, the consent by Landlord to an assignment, transfer, management contract or subletting shall not in any way be construed to relieve Tenant from obtaining the express written consent of Landlord in each instance to any subsequent similar action that Tenant may intend to take.

**Section 25.02** Upon any sublease or assignment permitted as provided in this Article XXV, Tenant shall deliver to Landlord copies of such sublease agreement or assignment in form and substance reasonably satisfactory to Landlord (including, without limitation, assumption language reasonably satisfactory to Landlord in any assignment agreement) promptly after the execution thereof by Tenant. An assignment made with Landlord's consent or as otherwise permitted hereunder shall not be effective until Tenant delivers to Landlord an executed counterpart of such assignment containing an agreement, in recordable form, executed by the assignor and the proposed assignee, in which the assignee assumes the performance of the obligations of the assignor under this Lease throughout the Lease Term. In no event shall Tenant be entitled to amend, extend or otherwise modify any sublease without the prior written consent of Landlord, which Landlord may withhold in its commercially reasonable discretion.

**Section 25.03** This Lease shall be binding upon, enforceable by, and inure to the benefit of the parties hereto and their respective heirs, successors, representatives and assigns.

## ARTICLE XXVI

### FINANCINGS

**Section 26.01** Except as provided herein, without the necessity of any additional document being executed by Tenant for the purpose of effecting a subordination, this Lease and any and all subleases and similar arrangements shall be subject and subordinate to all ground leases and the lien of all mortgages and deeds of trust which now or hereafter affect Landlord's interest in the Demised Property, and all amendments thereto, all without the necessity of Tenant's (or any subtenant's) executing further instruments to effect subordination. In the event that any mortgage or deed of trust is foreclosed or a deed in lieu of foreclosure is made for any reason, Tenant shall, notwithstanding any subordination, attorn to and become the Tenant of the successor in interest to Landlord at the option of and on terms acceptable to such successor in interest. So long as no Event of Default exists under this Lease, Tenant's possession of the Demised Property shall not be disturbed as a result of such foreclosure or deed in lieu of foreclosure. Notwithstanding the foregoing, as of the Commencement Date (or if no mortgages, deeds of trust or other security instruments encumber Landlord's interest in the Demised Property as of the Commencement Date, then at such time as any such instrument does encumber the Demised Property after the Commencement Date), Landlord, Landlord's Lender, and Tenant shall execute and deliver to each other a subordination, non-disturbance and attornment agreement in the form attached hereto as Exhibit G (an "SNDA"). The interest in the Demised Property of any such future ground lessee or lienholder shall have priority over the interest of Tenant in this Lease and in the Demised Property, subject to Landlord, Landlord's Lender and Tenant entering into a subordination, non-disturbance and attornment agreement reasonably required by Landlord or Landlord's Lender. Tenant shall execute and deliver to Landlord and Landlord's Lender, and Tenant shall cause any subtenant to execute and deliver to Landlord and Landlord's Lender, in each case within fifteen (15) days after Landlord's written request therefor, an SNDA or other subordination, nondisturbance and attornment agreement reasonably required by Landlord or Landlord's Lender. If Tenant fails to deliver such SNDA within such 15

day period, then Landlord shall deliver a subsequent written request of such SNDA (the “SNDA Second Request”) and Tenant shall be required to deliver such SNDA within five (5) days after the SNDA Second Request.

**Section 26.02** Subject to the terms of this Article, Landlord agrees that Tenant shall have the right to encumber or hypothecate Tenant’s interest in the leasehold estate created by this Lease. As used in this Article, “Leasehold Mortgage” shall mean any leasehold deed of trust, mortgage, assignment of leases and rents, assignment, security agreement, or other security document securing the applicable financing from Tenant’s lender or Tenant Affiliates’ lender (collectively, “Tenant’s Lender”). Landlord shall not be obligated to subordinate any or all of Landlord’s right, title or interest in and to the Demised Property and this Lease to the lien of any Leasehold Mortgage. A Leasehold Mortgage shall encumber only Tenant’s leasehold interest in the Demised Property, and shall not encumber Landlord’s right, title or interest in the Demised Property. Landlord shall have no liability whatsoever for the payment of any obligation secured by any Leasehold Mortgage or any other provisions of such note or the Leasehold Mortgage or related obligations. Should there be any conflict between the provisions of this Lease and of any Leasehold Mortgage, the provisions of this Lease shall control. No Leasehold Mortgage will be for a term longer than the Original Lease Term or as the Original Lease Term may be extended in accordance with the terms of this Lease. Either prior to or concurrently with the recordation of the Leasehold Mortgage, Tenant shall cause a fully conformed copy thereof and of the financing agreement secured thereby to be delivered to Landlord and Fee Mortgagee, together with a written notice containing the name and post office address of Tenant’s Lender. Without limiting anything contained in this Section, within fifteen (15) days after written request from Tenant, Landlord shall deliver an estoppel certificate in favor of Tenant’s Lender regarding this Lease, in form and substance reasonably acceptable to Landlord and Tenant’s Lender. Tenant agrees that a condition precedent to its granting a Leasehold Mortgage to any Tenant’s Lender shall be the execution and delivery by such Tenant’s Lender to Landlord and Landlord’s Lender of a subordination, non-disturbance and attornment agreement, in form and substance reasonably acceptable to Landlord and Fee Mortgagee, which shall provide, without limitation, that upon a default under the Leasehold Mortgages, Tenant’s Lender may foreclose only on this Lease as an entirety, applicable to all, but not less than all (even if otherwise possible under applicable law) of the Demised Property. If Landlord obtains financing secured by mortgages, deeds of trust or other security instruments encumbering Landlord’s interest in the Demised Property (the “Fee Mortgages”) as of the Commencement Date, then Tenant shall not record a Leasehold Mortgage until after the recordation of the Fee Mortgages. However, if Landlord does not obtain financing secured by Fee Mortgages as of the Commencement Date, Tenant shall be permitted to record the Leasehold Mortgages prior to the Fee Mortgages so long as Tenant has otherwise satisfied the requirements under this Section. A Leasehold Mortgage shall be, and hereafter shall continue at all times to be, subject to each and all of the covenants, conditions and restrictions set forth in this Lease, and junior, subject and subordinate, in each and every respect, to all rights and interests of any Fee Mortgagee (as defined below) now or hereafter affecting the Demised Property. If Landlord delivers to Tenant a Default notice under this Lease, Landlord shall notify any Tenant’s Lender (without any liability for failure to provide such notification) who has given Landlord a prior written request for such notice of such Default by sending a copy of the Default

notice to Tenant's Lender, and Landlord shall recognize and accept the performance of any obligation of Tenant hereunder by Tenant's Lender (provided said performance occurs within the same cure periods as provided to Tenant under this Lease); provided, however that nothing contained herein shall obligate Tenant's Lender to take any such actions. As used herein, "Fee Mortgagee" means any mortgagee or Landlord's Lender (and its successors and assigns) under any Fee Mortgage.

Any act by Tenant or Tenant's Lender in violation of this Section 26.02 shall be null and void and of no force or effect. This Section shall survive termination of this Lease.

## ARTICLE XXVII

### INTENTIONALLY DELETED

## ARTICLE XXVIII

### CERTIFICATES

#### Section 28.01

(a) Tenant or Landlord, as applicable (the "Certifying Party") shall, without charge, at any time and from time to time, within fifteen (15) days after requested in writing by the other party (the "Requesting Party"), deliver a written instrument (the "Estoppel Certificate") to the Requesting Party or any other person, firm or corporation specified by the Requesting Party, duly executed and acknowledged, certifying such information as is reasonably requested by the Requesting Party, which may include confirmation that:

(i) This Lease is unmodified and in full force and effect, or if there has been any modification, that this Lease is in full force and effect as modified and stating any such modification;

(ii) Whether or not there are then existing, to the actual knowledge of the executing officer, any defenses against the enforcement of any of the agreements, terms, covenants or conditions of this Lease upon the part of the Certifying Party to be performed or complied with, and, if so, specifying same (including, without limitation, whether the Certifying Party knows or does not know of any default by the Requesting Party in the Requesting Party's performance of all agreements, terms, covenants and conditions to be performed by the Requesting Party, and if such default does exist, specifying same);

(iii) The amounts and dates to which the Base Rent and Additional Rent and any and all other charges due by Tenant hereunder have been paid, the amounts of any and all outstanding balances of such items, if any, known to the Certifying Party; and

(iv) such other accurate statements as may be reasonably requested by the Requesting Party.

If the Certifying Party fails to deliver such Estoppel Certificate within such fifteen (15) day period, then the Requesting Party shall deliver a subsequent written request of such Estoppel Certificate (the "Estoppel Certificate Second Request") and the Certifying Party shall be required to deliver such Estoppel Certificate within five (5) days after the Estoppel Certificate Second Request.

(b) Delivery of a completed Estoppel Certificate in substantially the form as set forth on Exhibit B attached hereto ("Estoppel Certificate") shall satisfy the requirements of this Section.

## **ARTICLE XXIX**

### **RELATIONSHIP OF PARTIES**

Nothing contained in this Lease shall be construed to create the relationship of principal and agent, partnership, joint venture or any other relationship between the parties hereto other than the relationship of Landlord and Tenant.

## **ARTICLE XXX**

### **RECORDING**

Neither Landlord nor Tenant shall record this Lease; however, upon the request of either party hereto, the other party shall join in the execution and recordation of a memorandum of lease (or other document that serves the same purpose) in a form substantially similar to the form attached hereto as Exhibit C or a substantially equivalent form complying with state-specific recording requirements (collectively, the "Memoranda" and each individually a "Memorandum"). Each Memorandum shall describe the parties, the relevant Demised Property, the term of this Lease, any special provisions other than those pertaining to Rent and shall incorporate this Lease by reference. Tenant shall pay all costs charged or collected by the county recorders and other appropriate government offices to record the Memoranda.

## **ARTICLE XXXI**

### **CAPTIONS AND SECTION NUMBERS**

The captions, section numbers, and index appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such sections or articles nor in any way affect this Lease.

## ARTICLE XXXII

### APPLICABLE LAW; WAIVER OF JURY TRIAL

This Lease shall be governed by, and construed in accordance with the laws of the State of New York without regard to conflicts of law principles; provided, however, that any forcible entry and detainer action or similar proceeding shall be governed by the laws of the state in which the Real Property is located. If any provision of this Lease or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease shall not be affected thereby, and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by the law.

LANDLORD AND TENANT HEREBY CONSENT TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED WITHIN THE COUNTY OF NEW YORK, STATE OF NEW YORK OR WITHIN THE COUNTY AND STATE IN WHICH THE DEMISED PROPERTY IS LOCATED AND EACH IRREVOCABLY AGREES THAT (EXCEPT FOR FORCIBLE ENTRY AND DETAINER ACTIONS OR SIMILAR ACTIONS) ALL ACTIONS OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS LEASE SHALL BE LITIGATED IN SUCH COURTS. TENANT ACCEPTS FOR ITSELF AND IN CONNECTION WITH THE DEMISED PROPERTY, GENERALLY AND UNCONDITIONALLY, THE NONEXCLUSIVE JURISDICTION OF THE AFORESAID COURTS AND WAIVES ANY DEFENSE OF FORUM NON CONVENIENS, AND IRREVOCABLY AGREES TO BE BOUND BY ANY JUDGMENT RENDERED THEREBY IN CONNECTION WITH THIS LEASE.

EACH OF LANDLORD AND TENANT, TO THE FULL EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, WAIVES, RELINQUISHES AND FOREVER FORGOES THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING (WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE) BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO THIS LEASE. TENANT ACKNOWLEDGES THAT THE PROVISIONS OF THIS ARTICLE ARE A MATERIAL INDUCEMENT TO LANDLORD'S ENTERING INTO THE LEASE.

## ARTICLE XXXIII

### ENTIRE AGREEMENT

This Lease and the Exhibits attached hereto, all of which form a part hereof, set forth all the covenants, promises, agreements, conditions and understandings between Landlord and Tenant concerning the Demised Property, and there are no covenants, promises, agreements, conditions or understandings heretofore made, either oral or written, between them other than as herein set forth. No modification, amendment, change or addition to this Lease shall be binding upon Landlord or Tenant unless reduced to writing and signed by each party.

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Store # \_\_\_ (City, State)

LAND AND BUILDING LEASE  
(Individual Lease Form)



**ARTICLE XXXIV**

**LIABILITY OF PARTIES**

**Section 34.01** The obligations of Landlord under this Lease are not personal obligations of the individual members, partners, directors, officers, shareholders, agents or employees of Landlord. Tenant shall look solely to the Demised Property and the proceeds therefrom for satisfaction of any liability of Landlord and shall not look to other assets of Landlord nor seek recourse against the assets of the individual members, partners, directors, officers, shareholders, agents or employees of Landlord. Whenever Landlord transfers its interest, Landlord shall be automatically released from future performance subsequently arising under this Lease and from all liabilities and expenses hereunder.

**Section 34.02** The obligations of Tenant under this Lease are not personal obligations of the individual members, partners, directors, officers, shareholders, agents or employees of Tenant. Landlord shall not seek recourse against the assets of the individual members, partners, directors, officers, shareholders, agents or employees of Tenant, except pursuant to the Guaranty. If more than one person or entity is named as Tenant hereunder, the obligations under this Lease of all such persons and entities as Tenant shall be joint and several.

**ARTICLE XXXV**

**ATTORNEYS' FEES**

If any legal action should be commenced in any court regarding any dispute arising between the parties hereto, or their successors and assigns, concerning any provision of this Lease or the rights and duties of any person in relation thereto, then the prevailing party therein shall be entitled to collect its reasonable expenses, attorneys' fees and court costs, including the same on appeal. As used herein, the term "prevailing party" means the party who, in light of the claims, causes of action, and defenses asserted, is afforded greater relief.

**ARTICLE XXXVI**

**TIME OF THE ESSENCE; SURVIVAL**

Time is of the essence of every provision of this Lease. Any provision of this Lease explicitly providing for the performance by Tenant of obligations upon or after the expiration or termination of this Lease shall survive any such expiration or termination.

**ARTICLE XXXVII**

**ENVIRONMENTAL**

**Section 37.01**

(a) For the purpose of this Lease, the following definitions pertaining to environmental matters shall apply:

“De Minimis Amounts” means, with respect to any given level of Hazardous Materials, that level or quantity of Hazardous Materials in any form or combination of forms, the use, storage or release of which does not constitute a violation of, or require regulation or remediation under, any Environmental Laws and is customarily employed in the ordinary course of, or associated with, similar business located in the states in which the relevant Demised Property is located.

“Environmental Conditions” means the conditions of “Environmental Media” (as defined below), and the conditions of any part of the Demised Property, including but not limited to building materials, which affect or may affect Environmental Media.

“Environmental Laws” shall mean any federal, state or local law, statute, ordinance, permit condition or regulation pertaining to occupational health and safety, natural resources or environmental protection, including, without limitation: (1) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 *et seq.* as amended (“CERCLA”), the Solid Waste Disposal Act, 42 U.S.C. § 6901 *et seq.* as amended (“RCRA”), the Federal Water Pollution Control Act of 1972, as amended by the Clean Water Act of 1977, as amended, 33 U.S.C. 1251 *et seq.*; the Toxic Substances Control Act of 1976, as amended, 15 U.S.C. 2601 *et seq.*; the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11001 *et seq.*; the Clean Air Act of 1966, as amended by the Clean Air Act Amendments of 1990, 42 USC 7401 *et seq.*; the National Environmental Policy Act of 1970, as amended, 42 USC 4321 *et seq.*; the Rivers and Harbors Act of 1899, as amended, 33 USC 401 *et seq.*; the Mine Safety and Health Act of 1977, as amended, 30 U.S.C. Section 801 *et seq.* the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531, *et seq.*; the Occupational Safety and Health Act of 1970, as amended 29 U.S.C. 651, *et seq.*; the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. 300(f) *et seq.*; the Hazardous Materials Transportation Act, 49 U.S.C. Sections 1801 *et seq.* as amended, and all regulations, published governmental policies, and administrative or judicial orders promulgated under or implementing or enforcing said laws; (2) all state or local laws which implement the foregoing federal laws or which pertain to occupational health and safety, natural resources or environmental protection: all as amended from time to time, and all regulations, published governmental policies, and administrative or judicial orders promulgated under the foregoing laws that are legally binding and; (3) all federal and state common law, including but not limited to the common law of public or private nuisance, trespass, negligence or strict liability, where such common law pertains to occupational health and safety, natural resources, or environmental protection and all legally binding judicial orders promulgated under said laws.

“Environmental Media” means soil, fill material, or other geologic materials at all depths, groundwater at all depths, surface water including storm water and sewerage, indoor and outdoor air, and all living organisms, including without limitation all animals and plants, whether such Environmental Media are located on or off the Demised Property.

“Hazardous Materials” means any ignitable, reactive, explosive, corrosive, carcinogenic, mutagenic, toxic or radioactive material, whether virgin material, secondary material, by-product, waste or recycled material, defined, regulated or designated as a contaminant, pollutant, hazardous or toxic substance, material, waste, contaminant or pollutant under any Environmental Laws presently in effect or as amended or promulgated in the future, and shall specifically include, without limitation: (a) those materials included within the definitions of “hazardous substances,” “extremely hazardous substances,” “hazardous materials,” “toxic substances” “toxic pollutants,” “hazardous air pollutants” “toxic air contaminants,” “solid waste,” “hazardous waste,” “pollutants,” contaminants” or similar categories under any Environmental Laws; and (b) specifically including, without limitation, any material, waste or substance which contains: (i) petroleum or petroleum derivatives byproducts, including crude oil and any fraction thereof and waste oil; (ii) asbestos; (iii) polychlorinated biphenyls; (iv) formaldehyde; and/or (v) radon.

“Release” means any active or passive spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into any Environmental Media. For the purposes of this Lease, “Release” also includes any threatened Release.

“Remedial Activities” means any investigation, work plan preparation removal, repair, cleanup, abatement, remediation, monitored natural attenuation, natural resource damage assessment and restoration, closure, post-closure, detoxification or remedial activity of any kind whatsoever necessary to address Environmental Conditions.

“Unreimbursed Costs” means any fees or other costs which are not reimbursed or subject to reimbursement pursuant to applicable law or regulations, insurance, contractual indemnities or any other means.

“Use” means the receipt, handling, generation, storage, treatment, recycling, disposal, transfer, transportation, introduction, or incorporation into, on, about, under or from the Demised Property.

(b) Tenant acknowledges that Landlord makes no warranties or representations of any kind, or in any manner or in any form whatsoever, as to the status of Environmental Conditions or Hazardous Materials at the Demised Property. Tenant will conduct at its own expense any investigations regarding Environmental Conditions of the Demised Property in order to satisfy itself as to the absence or existence of Hazardous Materials contamination of the Demised Property.

**Section 37.02** From and after the Commencement Date, Tenant shall not be entitled to the Use of any Hazardous Materials at the Demised Property other than De Minimis Amounts,

unless performed in compliance in all material respects with all Environmental Laws and any other applicable local, state and federal statutes, orders, ordinances, rules and regulations. Tenant shall be prohibited from conducting or allowing the Release of Hazardous Materials onto, on, about, under or from the Demised Property, the exception being sewer or other permitted discharges or Releases or other De Minimis Amounts, in compliance in all material respects with all Environmental Laws. From and after the date of this Lease, Tenant covenants to, and shall, undertake all Remedial Activities required by Environmental Laws or otherwise necessary or appropriate to preserve the value of the Demised Property or to protect the public health to address any Use or Release of Hazardous Materials after the date of this Lease, caused by Tenant or its agents, employees, representatives, invitees, licensees, subtenants, customers or contractors (“Other Parties”), or otherwise adversely affecting the Demised Property at Tenant’s sole cost and expense, and shall give prompt written notice of same to Landlord. If any Remedial Activities are required by Environmental Laws to be performed at any location other than the Demised Property, Tenant shall use its best efforts to obtain any required access agreements from third parties.

**Section 37.03** In addition to any other obligation herein, Tenant shall defend, indemnify and hold Landlord Parties free and harmless from any and all claims, losses, liabilities and other obligations of any kind whatsoever that may be made against or incurred by Landlord Parties in connection with (i) the violation of any Environmental Law by Tenant (other than known environmental problems specifically identified in the Environmental Reports), or (ii) Hazardous Materials or Environmental Conditions at, on, under, about or from the Demised Property during the Lease Term (and in the event of any holding over by Tenant, during any period which Tenant occupies the Demised Property), including without limitation any and all costs and fees of attorneys or experts incurred by Landlord in defending against same except to the extent that such Release is attributable to the gross negligence or willful misconduct of such Landlord Party, as determined by a final nonappealable judgment (or by a judgment which such Landlord Party elects not to appeal) by a court of competent jurisdiction. This and any other right of Landlord under this Lease shall inure to the benefit of Landlord’s successors and assigns, as well as Landlord’s Lenders and/or Fee Mortgagees and their respective successors and assigns as third party beneficiaries.

**Section 37.04** Tenant shall promptly inform Landlord in writing of (i) any and all material enforcement actions or initiation of Remedial Activities (where no Remedial Activities are currently being conducted) or other governmental or regulatory enforcement or remedial actions (excluding routine actions such as permit renewals) instituted, completed or threatened pursuant to any Environmental Laws affecting the Demised Property; (ii) all claims made or threatened by any third person against Tenant or the Demised Property relating in any way whatsoever to Hazardous Materials or Environmental Conditions (the matters set forth in clauses (i) and (ii) are hereinafter referred to as “Environmental Claims”); (iii) Tenant’s knowledge of any material Release of Hazardous Materials at, on, in, under to or from the Demised Property or on, in or under any adjoining property. Tenant shall also supply to Landlord promptly after Tenant first receives or sends the same, copies of all claims, reports, complaints, notices,

warnings, asserted violations or other communications relating in any way to the matters described in this Section.

**Section 37.05** In addition to any other obligations herein, Tenant shall be solely responsible for and shall indemnify and hold harmless all Landlord Parties from and against any and all private or governmental claims, lawsuits, administrative proceedings, judgments, penalties, fines, proceedings, loss, damage, cost, expense or liability arising out of or associated with Tenant's Use or the presence of Hazardous Materials or Release of Hazardous Materials at, on, under, about or from the Demised Property during the Lease Term (and in the event of any holding over by Tenant, during any period which Tenant occupies the Demised Property) except to the extent that such Release is attributable to the gross negligence or willful misconduct of such Landlord Party, as determined by a final nonappealable judgment (or by a judgment which such Landlord Party elects not to appeal) by a court of competent jurisdiction. Tenant's indemnity and release includes, without limitation: (i) such costs associated with Remedial Activities, including all necessary plans and reports, incurred by the U.S. Environmental Protection Agency, or any other federal, state or local governmental agency or entity or by any other person, incurred pursuant to the CERCLA, RCRA, or any other applicable Environmental Laws; (ii) any such oversight charges, fines, damages or penalties arising from the presence or Release of Hazardous Materials, and any related Remedial Activities, incurred pursuant to the provisions of CERCLA, RCRA, or any other applicable Environmental Laws; (iii) any such liability to third parties arising out of the presence or Release of Hazardous Materials for personal injury, bodily injury, or property damage arising under any statutory or common law theory, including damages assessed for the maintenance of a public or private nuisance, the costs of Remedial Activities, or for the carrying on of an abnormally dangerous activity; (iv) all such direct or indirect compensatory, consequential, or punitive damages arising out of any claim based on the presence or such Release of Hazardous Materials or damage or threatened damage to Environmental Conditions; (v) any and all reasonable costs, fees and expenses of attorneys, consultants and experts incurred or sustained in making any investigation on account of any claim, in prosecuting or defending any action brought in connection therewith, in obtaining or seeking to obtain a release therefrom, or in enforcing any of the agreements herein contained; (vi) Rent during any period of Remedial Activities equal to the Base Rent then in effect, or if this Lease has terminated, the Base Rent that was in effect on the Termination Date; and (vii) any action or omission or use of the Demised Property by any subtenant. The foregoing indemnity shall apply to Tenant's Use of Hazardous Materials irrespective of whether any of Tenant's activities were or will be undertaken in accordance with Environmental Laws or other applicable laws, regulations, codes and ordinances. This indemnity is intended to be operable under 42 U.S.C. 9607(e)(1). Tenant specifically agrees that it shall not sue or seek contribution from the Landlord Parties or any successors or assigns thereof for any matter for which Tenant is obligated to provide indemnification under this Section. All reasonable costs and expenses incurred by Landlord for which Tenant is obligated to indemnify Landlord under this Section shall be repaid promptly by Tenant to Landlord. This Section shall survive termination of this Lease.

**ARTICLE XXXVIII**

**LANDLORD ASSIGNMENT**

**Section 38.01** This Lease shall be fully assignable by the Landlord or its successors and/or assigns, in whole or in part, subject to the terms of Article XXXIV and this Article. In addition, Tenant agrees to cooperate reasonably with Landlord in connection with any such sale or assignment (including, without limitation, agreeing to change the method of payment of Rent if required by Landlord's assignee).

**Section 38.02** Landlord and Tenant agree that this Lease constitutes a true lease and not a financing or other form of transaction. In furtherance of the foregoing, Landlord and Tenant each waives any claim or defense based upon the characterization of this Lease as anything other than a true lease and irrevocably waive any claim or defense which asserts that this Lease is anything other than a true lease. Landlord and Tenant covenant and agree that they will not assert that this Lease is anything but a true lease. Landlord and Tenant each stipulate and agree not to challenge the validity, enforceability or characterization of this Lease of the Demised Properties as a true lease and further stipulate and agree that nothing contained in this Lease creates or is intended to create a joint venture, partnership (either de jure or de facto), equitable mortgage, trust, financing device or arrangement, security interest or the like. Landlord and Tenant each shall support the intent of the parties that the lease of the Demised Properties pursuant to this Lease is a true lease and does not create a joint venture, partnership (either de jure or de facto), equitable mortgage, trust, financing device or arrangement, security interest or the like, if, and to the extent that, any challenge occurs.

**ARTICLE XXXIX**

**INTENTIONALLY DELETED**

**ARTICLE XL**

**GUARANTY**

Guarantor shall guaranty Tenant's obligations under this Lease pursuant to the Guaranty Agreement substantially in the form of Exhibit F, executed and delivered to Landlord as of the Commencement Date (the "Guaranty").

**ARTICLE XLI**

**LANDLORD'S RIGHTS UNDER LEASE**

Any and all rights of Landlord under this Lease shall inure to the benefit of Landlord's successors and assigns, as well as Landlord's Lenders and/or any Fee Mortgagees and their respective successors and assigns as third party beneficiaries.

**ARTICLE XLII**

**PATRIOT ACT**

**Section 42.01** Tenant represents and warrants that none of Tenant, or Guarantor, their respective officers and directors, and their respective direct or indirect owners regardless of the number of tiers of ownership (each such owner, a “Beneficial Owner”) (a) is a Person (as defined below) whose property or interest in property is blocked or subject to blocking pursuant to Section 1 of Executive Order 13224 of September 23, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)), (b) engages in any dealings or transactions prohibited by Section 2 of such executive order, or is otherwise associated with any such person in any manner violative of Section 2, or (c) is a Person on the list of Specially Designated Nationals and Blocked Persons or subject to the limitations or prohibitions under any other U.S. Department of Treasury’s Office of Foreign Assets Control regulation or executive order. If Tenant shall at any time determine that an officer, director or Beneficial Owner of Tenant is or has become subject to Executive Order 13224 or is a Person listed on the list referenced in foregoing clause (c) or subject to the limitations or prohibitions referenced in such clause, Tenant will take such steps as a result of such determination as may be required by applicable law. As used in this Article, “Person” means any individual, corporation, limited liability company, partnership, joint venture, estate, trust, unincorporated association, or any other entity, any government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

**Section 42.02** Tenant represents and warrants that each of Tenant and Guarantor is in compliance with (a) the Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, and (b) the Uniting And Strengthening America By Providing Appropriate Tools Required To Intercept And Obstruct Terrorism (USA Patriot Act of 2001), and each of the officers, directors and Beneficial Owners of Tenant and Guarantor is in compliance with such statutes, enabling legislation or executive orders to the extent applicable to such Persons.

**ARTICLE XLIII**

**LIQUOR PROVISIONS**

Landlord may require Tenant to obtain Commercial General Liability insurance regarding liquor liability (in amounts and otherwise consistent with the requirements set forth in Article XI) for any sites that serve liquor or other alcoholic beverages, and in connection with any repossession of the Demised Property pursuant to Article XVI, Tenant (on behalf of itself and any affiliate of Tenant holding a liquor license with respect to the Demised Property) shall, at no cost and expense to Tenant, provide reasonable cooperation in transferring any liquor license to Landlord, or in assisting Landlord in obtaining a liquor license where necessary or advisable.

**ARTICLE XLIV**

**ADDENDA**

The following exhibits and schedule have been agreed to by the parties and attached hereto or initialed by the parties prior to the execution hereof, it being the intention of the parties that they shall become a binding part of this Lease as if fully set forth herein.

- Exhibit A      Location/Address/Legal Descriptions of Real Property
- Exhibit B      Form of Tenant’s Estoppel Certificate
- Exhibit C      Form of Memorandum of Lease
- Exhibit D      Intentionally Deleted
- Exhibit E      Intentionally Deleted
- Exhibit F      Form of Guaranty
- Exhibit G      Form of SNDA
- Schedule 1     Restaurant Equipment
- Schedule 2     Environmental Reports

**ARTICLE XLV**

**COUNTERPARTS**

This Lease may be executed in counterparts and shall be binding on all the parties hereto as if one document had been signed. The delivery of an executed copy of this Lease by facsimile transmission shall have the same force and effect as the delivery of the original, signed copy of this Lease.

**ARTICLE XLVI**

**STATE SPECIFIC PROVISIONS**

**Section 46.01** California. Without limiting the choice of law provision set forth in Article XXXII, the following provisions shall apply to the extent that the laws of the State of California govern the interpretation or enforcement of this Lease with respect to any Demised Properties located in the State of California:

- (a) Effect of Waivers. The provisions of Article V are intended to release Landlord from and against any liability arising from the condition of the Demised



Properties. In furtherance thereof, Tenant hereby waives the benefits of California Civil Code Section 1542, which provides as follows: “A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

(b) Eminent Domain. The provisions of this Lease, including those in Article XIII, constitute an express agreement between Landlord and Tenant that applies in the event there is any taking of any part of the Demised Property for any public or quasi-public use under any statute or by right of eminent domain or by purchase in lieu thereof (collectively, “Condemnation”). Tenant hereby waives all rights it may have under California Code of Civil Procedure Section 1265.130, or otherwise, to terminate this Lease based on a total or partial Condemnation.

(c) Damage and Destruction. The provisions of this Lease, including those in Article XII, constitute an express agreement between Landlord and Tenant that applies in the event that any Demised Property or any part thereof shall be damaged or destroyed by fire or other casualty of any kind or nature (“Casualty”). Tenant, therefore, fully waives the provisions of any statute or regulation, including California Civil Code Sections 1932(2) and 1933(4), relating to any rights or obligations concerning a Casualty.

(d) Notices. When this Lease requires service of a notice, that notice shall replace rather than supplement any equivalent or similar statutory notice, including any notices required by California Code of Civil Procedure Section 1161 or any similar or successor statute. When a statute requires service of a notice in a particular manner, service of that notice (or a similar notice required by this Lease) in the manner required by Article XIX shall replace and satisfy the statutory service-of-notice procedures, including those required by California Code of Civil Procedure Section 1162 or any similar or successor statute.

(e) Remedies. It is intended that Landlord shall have the remedy described in California Civil Code Section 1951.4, which provides that, when a tenant has the right to sublet or assign, the landlord may continue the lease in effect after the tenant’s breach and abandonment and recover rent as it becomes due. Accordingly, if Landlord does not elect to terminate this Lease on account of any default by Tenant, Landlord may enforce all of Landlord’s rights and remedies under this Lease, including the right to recover all rent as it becomes due.

**Section 46.02** Washington. Without limiting the choice of law provisions set forth in Article XXXII, the following provisions shall apply to the extent that the laws of the State of Washington govern the interpretation or enforcement of this Lease with respect to any Demised Premises located in the State of Washington:

(a) Any and all transfers of or applications for liquor licenses provided for under this Lease shall be made pursuant to the provisions of The Washington State

Liquor Control Act, codified at RCW Title 66 et seq. and the rules and regulations promulgated by the Washington State Liquor Control Board.

[SIGNATURES FOLLOW ON NEXT PAGE]

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

THIS CONTRACT CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES.

LANDLORD:

\_\_\_\_\_,  
a \_\_\_\_\_

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

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

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

Signature Page

Store #\_\_\_ (City, State)

LAND AND BUILDING LEASE  
(Individual Lease Form)

THIS CONTRACT CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES.

TENANT:

[\_\_\_\_\_] ,  
[\_\_\_\_\_]

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

Signature Page

Store #\_\_\_ (City, State)  
LAND AND BUILDING LEASE  
(Individual Lease Form)

**ACKNOWLEDGMENTS**

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person, acted, executed the instrument.

(NOTARIAL SEAL)

\_\_\_\_\_  
Notary Public

My commission expires:  
\_\_\_\_\_

[ACKNOWLEDGMENTS CONTINUE ON NEXT PAGE]

**ACKNOWLEDGMENTS**

STATE OF MINNESOTA        )  
  ) ss.  
COUNTY OF DAKOTA        )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned, personally appeared [\_\_\_\_\_] , personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person, acted, executed the instrument.

(NOTARIAL SEAL)

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_

Acknowledgements

Store #\_\_ (City, State)

LAND AND BUILDING LEASE  
(Individual Lease Form)

**EXHIBIT A**

**LOCATION/ADDRESS/LEGAL DESCRIPTION OF REAL PROPERTY**

---

EXHIBIT A

Store #\_\_\_ (City, State)  
LAND AND BUILDING LEASE  
(Individual Lease Form)

**EXHIBIT B**

**FORM OF TENANT’S ESTOPPEL CERTIFICATE**

**TENANT’S ESTOPPEL CERTIFICATE**

The undersigned, \_\_\_\_\_, whose address is 120 Chula Vista, Hollywood Park, TX 78232 represents and certifies as follows:

1. The undersigned is the tenant (“Tenant”) under that certain Land and Building Lease dated \_\_\_\_\_ with \_\_\_\_\_ as Landlord ( the “Lease”), covering the properties described therein (collectively the “Demised Properties”).

2. The Lease constitutes the only agreement (either written or oral) the undersigned has with respect to the Demised Properties and any right of occupancy or use thereof.

3. The Lease is in full force and effect and has not been assigned, subleased, supplemented, modified or amended except as follows:

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

4. The undersigned presently occupies the Demised Properties and is paying rent on a current basis. No rent has been paid by Tenant in advance except for the monthly rental that became due on \_\_\_\_\_.

5. The monthly rental is the sum of \_\_\_\_\_ Dollars (US\$\_\_\_\_\_).

6. The present Lease term expires on \_\_\_\_\_ and there are no options to renew except: \_\_\_\_\_.

7. To the undersigned’s actual knowledge, there are no defaults under the Lease by Landlord or any events which with the passage of time or giving of notice or both will result in any such default. The undersigned does not presently have (nor with the passage of time or giving of notice or both will have) any offset, charge, lien, claim, termination right or defense under the Lease; provided, however, although Tenant is currently making no claim or exercising any defense or offset against the enforcement of the Lease by Landlord, it does not waive its right to do so.

8. The undersigned occupies and has accepted possession of all of the Demised Properties covered by the Lease. All obligations of Landlord under the Lease required

EXHIBIT B

Store #\_\_ (City, State)

LAND AND BUILDING LEASE  
(Individual Lease Form)



to be performed to date, including any improvements to be constructed by Landlord (or its predecessors or successors) or the granting of any free rent, rent credit, offset, deductions, building allowance or rent reduction have been completed to the satisfaction of the undersigned.

9. Landlord has no personal liability under the Lease (recourse against Landlord being limited to Landlord's interest in the Demised Properties).

10. The undersigned is aware that third parties intend to rely upon this Certificate and the statements set forth herein and that the statements and facts set forth above shall be binding on the undersigned

11. The undersigned and the persons executing this Certificate on behalf of the undersigned have the power and authority to execute and deliver this Certificate.

12. Tenant has no right of first refusal, or option to purchase, with respect to all or any portion of any Demised Properties; and

13. No deposits or prepayments of rent have been made in connection with the Lease, except as follows: \_\_\_\_\_.

14. Pursuant to the Lease, Tenant will not subject and subordinate its rights and interests under the Lease to the lien of any mortgage, unless the mortgagee enters into an SNDA (as defined in the Lease) with Tenant.

15. This Certificate is given for estoppel purposes. All certifications herein made are to the best of Tenant's knowledge and belief as of the date of execution as set forth herein. To the extent there is any inconsistency between this Certificate and the Lease, the terms of the Lease shall control. Tenant does not waive any right for claim not yet known to Tenant.

“TENANT”

\_\_\_\_\_

a \_\_\_\_\_

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

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

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

EXHIBIT B

Store #\_\_ (City, State)

LAND AND BUILDING LEASE  
(Individual Lease Form)

**EXHIBIT C**

**FORM OF MEMORANDUM OF LEASE**

---

(Above space reserved for recorder and recording information)

This instrument prepared by and  
after recording return to:

|

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**MEMORANDUM OF LEASE**

This Memorandum of Lease is made and entered into as of \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ by and between \_\_\_\_\_, a \_\_\_\_\_ (“Landlord”), and \_\_\_\_\_, a \_\_\_\_\_, whose address is 120 Chula Vista, Hollywood Park, TX 78232 (“Tenant”), who agree as follows:

1. Terms and Premises. Pursuant to a certain Land and Building Lease (the “Lease”) dated on or about the date hereof entered into between Landlord and Tenant, Landlord has leased to Tenant and Tenant has leased from Landlord that certain real property, together with all the improvements thereon and appurtenances thereunto belonging (the “Premises”), more particularly described on Exhibit “A” which is attached hereto and incorporated herein, from \_\_\_\_\_, \_\_\_\_\_, expiring on \_\_\_\_\_, \_\_\_\_\_. Tenant has options to extend the term of the Lease, all as more particularly set forth in the Lease.

2. Purpose of Memorandum of Lease. This Memorandum of Lease is executed and recorded to give public notice of the Lease between the parties and all terms and conditions of the Lease are incorporated by reference into this Memorandum and this Memorandum of Lease does not modify the provisions of the Lease. If there are any conflicts between the Lease and this Memorandum of Lease, the provisions of the Lease shall prevail. The rights and obligations set forth herein shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Any initial capitalized term not defined herein shall have the meaning as set forth in the Lease.

EXHIBIT C

Store # \_\_\_ (City, State)

LAND AND BUILDING LEASE  
(Individual Lease Form)

[SIGNATURES AND ACKNOWLEDGMENTS ON NEXT PAGE]

EXHIBIT C

Store #\_\_\_ (City, State)  
LAND AND BUILDING LEASE  
(Individual Lease Form)

LANDLORD:

TENANT:

\_\_\_\_\_,  
a \_\_\_\_\_

\_\_\_\_\_,  
a \_\_\_\_\_

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Signed, sealed, and delivered this \_\_\_\_  
day of \_\_\_\_, \_\_\_\_ in the presence of:

Signed, sealed, and delivered this \_\_\_\_  
day of \_\_\_\_, \_\_\_\_ in the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Notary Public, County of \_\_\_\_\_,  
State of \_\_\_\_\_

\_\_\_\_\_  
Notary Public, County of \_\_\_\_\_,  
State of \_\_\_\_\_

My commission expires: \_\_\_\_\_

My commission expires: \_\_\_\_\_

(Notary Seal)

(Notary Seal)

EXHIBIT C

Store #\_\_ (City, State)  
LAND AND BUILDING LEASE  
(Individual Lease Form)

**EXHIBIT "A"**

[INSERT LEGAL DESCRIPTION OF PROPERTY HERE]

EXHIBIT C

Store #\_\_\_ (City, State)  
LAND AND BUILDING LEASE  
(Individual Lease Form)

**EXHIBIT D**  
**INTENTIONALLY DELETED**

EXHIBIT D

Store #\_\_\_ (City, State)  
LAND AND BUILDING LEASE  
(Individual Lease Form)

**EXHIBIT E**  
**INTENTIONALLY DELETED**

EXHIBIT E

Store #\_\_\_ (City, State)  
LAND AND BUILDING LEASE  
(Individual Lease Form)

**EXHIBIT F**

**GUARANTY OF LEASE**

This GUARANTY OF LEASE (“Guaranty”) is made as of \_\_\_\_\_, 20\_\_\_\_, by BUFFETS, LLC, a Minnesota limited liability company, formerly known as Buffets, Inc. (“Guarantor”), to [\_\_\_\_\_], a [\_\_\_\_\_] (“Landlord”), with reference to the following facts:

A. Landlord and [\_\_\_\_\_], a [\_\_\_\_\_] (“Tenant”) have entered into that certain land and building lease (as the same may be amended from time to time pursuant to the terms thereof, the “lease”) regarding certain “demised premises” as defined in the lease. Capitalized terms not otherwise defined herein shall have the meaning set forth in the lease.

B. Tenant is an indirect/direct 100% owned subsidiary of Guarantor.

C. Landlord would not enter into the lease but for the execution and delivery of this guaranty by guarantor. Guarantor is willing to execute this guaranty for the express and intended purposes of inducing landlord enter into the lease.

D. Guarantor will benefit from the execution of the lease. Guarantor is executing this guaranty in consideration of that anticipated benefit.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and agreed, Guarantor hereby agrees as follows:

1. Guaranty. Guarantor hereby absolutely and unconditionally guarantees to Landlord the full, prompt and faithful performance by Tenant of all Tenant’s Obligations (as defined below). As used herein, “Tenant’s Obligations” means all covenants, terms, and conditions of the Lease, and any extensions, modifications or renewals thereof, to be hereafter performed and kept by Tenant, including without limitation the prompt payment of all amounts that Tenant may at any time owe under the Lease, and any extensions, renewals or modifications thereof.

2. Independent Obligations. Guarantor’s obligations hereunder are independent of the obligations of Tenant, and a separate action or actions may be brought and prosecuted against Guarantor whether or not any action or actions are brought against Tenant and whether or not Tenant shall be joined in any such action or actions.

3. Rights of Landlord. Guarantor authorizes Landlord, without notice or demand and without affecting its liability hereunder, from time to time to (a) extend, accelerate, or otherwise change the time for any payment provided for in the Lease, or any covenant, term or condition of the Lease, delay enforcing Landlord’s remedies or rights against Tenant in

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connection with the Lease, and consent to any assignment, subletting or reassignment of the Lease, (b) take and hold security for any payment provided for in the Lease or for the performance of any covenant, term or condition of the Lease, or exchange, waive or release any such security; and (c) apply such security and direct the order or manner of sale thereof as Landlord in its sole discretion may determine. Landlord may without notice assign this Guaranty, the Lease, or the rents and other sums payable thereunder. Notwithstanding any termination, renewal, extension, or holding over of the Lease, or any assignment of the Lease by Landlord or Tenant, this Guaranty shall continue until all of Tenant's Obligations have been fully and completely performed by Tenant.

Guarantor shall not be released by any act or event which might, but for this provision of this Guaranty, be deemed a legal or equitable discharge of a surety, or by reason of any waiver, extension, modification, forbearance or delay or other act or omission of the Landlord or its failure to proceed promptly or otherwise as against Tenant or Guarantor, or by reason or any action taken or omitted or circumstance which may or might vary the risk or affect the rights or remedies of Guarantor as against Tenant, or by reason of any further dealings between Tenant and Landlord, whether relating to the Lease or otherwise, and Guarantor hereby expressly waives and surrenders any defense to its liability hereunder based upon any of the foregoing acts, omissions, things, or agreements. It is the purpose and intent of this Guaranty that the obligations of Guarantor hereunder are absolute and unconditional under any and all circumstances. Notwithstanding any provision hereof to the contrary, Guarantor shall be released and discharged of its obligations hereunder if and to the same extent as Tenant is released or discharged of its obligations under the Lease with the consent of Landlord or in accordance with the terms of the Lease. The foregoing sentence shall in no way affect any waivers or any bankruptcy provisions set forth herein.

Guarantor further agrees that to the extent Tenant or Guarantor makes any payment to Landlord in connection with Tenant's Obligations and all or any part of such payment is subsequent invalidated, declared to be fraudulent or preferential, set aside or required to be repaid by Landlord or paid over to a trustee, receiver or any other entity, whether under any bankruptcy act or otherwise (any such payment is hereinafter referred to as a "Preferential Payment"), then this Guaranty shall continue to be effective or shall be reinstated, as the case may be, and, to the extent of such payment or repayment by Landlord, Tenant's Obligations or part thereof intended to be satisfied by such Preferential Payment shall be revived and continued in full force and effect as if such Preferential Payment had not been made.

#### 4. Guarantor's Representations and Warranties.

(a) Qualification and Authority. Guarantor is a company duly organized, validly existing and in good standing under the laws of Minnesota. Guarantor has the right, power, and authority to execute, deliver, and perform this Guaranty. This Guaranty, when executed and delivered by Guarantor, shall constitute the valid and binding agreement of Guarantor, and shall be enforceable against Guarantor in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable

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principles. All requisite authorizations, consents, resolutions and actions on the part of Guarantor have been or will prior to the date hereof be obtained, adopted or taken, as applicable, by Guarantor in connection with making and entering into this Guaranty. Neither this Guaranty nor the consummation of any of the transactions contemplated hereby violates or shall violate any provision of any agreement or document to which Guarantor is a party or to which Guarantor is bound.

(b) Bankruptcy. Neither Guarantor nor any entity or person in Control of, having Control over, or under common Control with Guarantor, regardless of the number of tiers of ownership, is bankrupt under the Federal Bankruptcy Code, or has filed for protection or relief under any applicable bankruptcy or creditor protection statute or has been threatened by creditors with an involuntary application of any applicable bankruptcy or creditor protection statute. Guarantor is not entering into the transactions described in this Agreement with an intent to defraud any creditor or to prefer the rights of one creditor over any other. As used in this Agreement, “Control” means ownership of voting securities sufficient to elect a majority of the board of directors of a corporation, or analogous ownership interests of non-corporate entities.

(c) Contractual Obligations. Guarantor is not in default in the performance, observance or fulfillment of any of the material obligations, covenants or conditions contained in any contractual obligation of Guarantor beyond any applicable notice and cure period, and to Guarantor’s knowledge, no condition exists that, with the giving of notice or the lapse of time or both, would constitute such a default.

(d) Disclosure. No financial statements or any other document, certificate or written statement furnished to Landlord by Guarantor and, to the knowledge of Guarantor, no document or statement furnished by any third party on behalf of Guarantor, for use in connection with this Guaranty or the transactions contemplated herein, when taken as a whole, contains any untrue representation, warranty or statement of a material fact, and none omits or will omit to state a material fact necessary in order to make the statements contained herein or therein not misleading. There is no material fact known to Guarantor that has had or will have a Material Adverse Effect (as defined below) and that has not been disclosed in writing to Landlord by Guarantor or by any third party on behalf of Guarantor. As used herein, “Material Adverse Effect” means (A) a material adverse effect upon the business, operations, properties, assets or condition (financial or otherwise) of Guarantor or Tenant, with respect to such party, when taken as a whole, or (B) the material impairment of the ability of Guarantor to perform its obligations under this Guaranty, or (C) the material impairment of Landlord’s rights or remedies under the Guaranty. In determining whether any individual event would result in a Material Adverse Effect, notwithstanding that such event does not of itself have such effect, a Material Adverse Effect shall be deemed to have occurred if the cumulative effect of such event and all other then occurring events and existing conditions would result in a Material Adverse Effect.

(e) Suits, Judgments and Liens. There is no action, suit or legal, administrative or other proceeding pending or, to Guarantor’s knowledge, threatened which questions the legality or propriety of the transactions contemplated by the Guaranty.

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5. Guarantor's Financial Covenants. Guarantor shall provide, or cause to be provided, to Landlord the following financial statements and information, all of which must be in a form reasonably acceptable to Landlord:

(i) promptly and in any event within sixty (60) days after the end of each Fiscal Quarter, (x) quarterly statements of EBITDA for each Fiscal Month in such Fiscal Quarter and year-to-date, to be certified by an officer of Guarantor, and (y) total sales figures for each Fiscal Month in such Fiscal Quarter and year-to-date; and

(ii) promptly and in any event within one hundred and twenty (120) days after the end of each Fiscal Year, an annual statement of financial position of Guarantor, including a balance sheet and statement of profits and losses and, to the extent one is prepared, a statement of cash flows, such annual statements of financial position to be certified by an officer of Guarantor to fairly represent the financial condition of Guarantor as of the date thereof. To the extent such financial statements are audited, Guarantor shall provide Landlord with a final copy of that audit within thirty (30) days of completion within sixty (60) days of Landlord's request. Notwithstanding the foregoing, as long as Tenant is a wholly-owned direct or indirect subsidiary of Buffets, LLC, Guarantor shall be permitted to satisfy its obligations under this clause (ii) by providing (or causing Tenant to provide) the financial statements described herein of Buffets, LLC and its subsidiaries on a consolidated basis, rather than of Guarantor; and

(iii) in the event that Tenant defaults in making any payment required under the Lease when due and such default is not cured within thirty (30) days, within sixty (60) days of Landlord's request, a quarterly statement of financial position of Guarantor, including a balance sheet and statement of profits and losses and a statement of cash flows, for the most recent Fiscal Quarter for which such quarterly statements were prepared by Guarantor, such quarterly statements to be certified by an officer of Guarantor to fairly represent the financial condition of Guarantor as of the date thereof. Notwithstanding the foregoing, as long as Tenant is a wholly-owned direct or indirect subsidiary of Buffets, LLC, Guarantor shall be permitted to satisfy its obligations under this clause (iii) by providing (or causing Tenant to provide) the financial statements described herein of Buffets, LLC and its subsidiaries on a consolidated basis, rather than of Guarantor.

"Fiscal Year" shall mean a fiscal year from approximately July to June (subject to change by Guarantor) and "Fiscal Quarter" shall mean approximately July through September, approximately October through December, approximately January through March, and approximately April through June (subject to change by Guarantor). The last day of each Fiscal Year is the Wednesday closest to June 30<sup>th</sup> (subject to change by Guarantor).

Guarantor acknowledges that Landlord must comply with certain financial audit requirements and Landlord will suffer damages from Guarantor's failure to deliver any of the financial information required in Subsections 5(i) through (v) (the "Key Financial Statements") as and when due. If Guarantor fails to deliver any Key Financial Statements as and when due, and

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such failure is not cured within ten (10) days after written notice from Landlord, subject to Force Majeure, Guarantor shall pay Landlord a fee equal to US\$500 for each day that Guarantor has failed to deliver any such Key Financial Statements (the "Financial Statements Default Fee"). The Financial Statements Default Fee is in addition to, and not in lieu of, any other remedy of Landlord under this Guaranty regarding Guarantor's failure to deliver the Key Financial Statements. Guarantor's payment of the Financial Statements Default Fee does not cure any default caused by the failure to deliver any Key Financial Statement in a timely manner.

6. Waiver of Defenses. Guarantor waives (a) any right to require Landlord to (i) proceed against Tenant or any other person or entity; (ii) proceed against or exhaust any security held from Tenant or Guarantor; (iii) pursue any other remedy in Landlord's power against Tenant which Guarantor cannot itself pursue, and which would lighten its burden; (b) all statutes of limitation as a defense to any action brought against Guarantor by Landlord to the fullest extent permitted by law; (c) any defense based upon any legal disability of Tenant, or any discharge or limitation of the liability of Tenant to Landlord, whether consensual or arising by operation of law or any bankruptcy, reorganization, receivership, insolvency, or debtor-relief proceeding, or from any other similar cause; (d) presentment, demand, protest and notice of any kind; and (e) any defense based upon or arising out of any defense which Tenant may have to the payment or performance of any part of Tenant's Obligations, other than any defense arising under the express terms of the Lease. Guarantor waives all demand and notices, including demands for performance, notices of non-performance, notices of non-payment and notice of acceptance of this Guaranty.

7. Effect of Tenant's Bankruptcy. Without limiting anything contained in Section 4 of this Guaranty, the liability of Guarantor under this Guaranty shall in no way be affected by: (a) the release or discharge of Tenant in any creditor proceeding, receivership, bankruptcy or other proceeding; (b) the impairment, limitation, or modification of Tenant's liability or the estate, or of any remedy for the enforcement of Tenant's liability, which may result from the operation of any present or future provision of the Bankruptcy Code (Title 11 of the United States Code, as amended; 11 U.S.C. §§ 101-1330) or any bankruptcy, insolvency, debtor relief statute (state or federal), any other statute, or from the decision of any court; (c) the rejection or disaffirmance of the Lease, or any portion of the Lease, in any such proceeding; (d) the cessation, from any cause whatsoever, whether consensual or by operation of law, of Tenant's liability to Landlord resulting from any such proceeding; or (e) the modification or replacement of Tenant's Obligations in any such proceeding.

8. Waiver of Subrogation.

(a) Notwithstanding any other provision of this Guaranty to the contrary, until Tenant's Obligations are fully performed and paid, during the continuance of an Event of Default, Guarantor hereby waives any claims or other rights which Guarantor may now have or hereafter acquire against Tenant or any other guarantor of all or any of Tenant's Obligations, which claims or other rights arise from the existence or performance of Guarantor's obligations under this Guaranty (all such claims and rights are referred to as "Guarantor's Conditional Rights"), including, without limitation, any right of subrogation, reimbursement, exoneration,

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contribution, or indemnification, any right to participate in any claim or remedy of Landlord against Tenant or any collateral which Landlord now has or hereafter acquires, whether or not such claim, remedy or right arises in equity or under contract, statute or common law, by any payment made hereunder or otherwise, including without limitation, the right to take or receive from Tenant, directly or indirectly, in cash or other property or by setoff or in any other manner, payment or security on account of such claim or other rights. If, notwithstanding the foregoing provision, any amount shall be paid to Guarantor on account of any Guarantor's Conditional Rights and either (i) such amount is paid to Guarantor at any time when Tenant's Obligations shall not have been paid or performed in full during the continuance of an Event of Default, or (ii) regardless of when such amount is paid to Guarantor, any payment made by Tenant to Landlord is at any time determined to be a Preferential Payment, then such amount paid to Guarantor shall be held in trust for the benefit of Landlord and shall forthwith be paid to Landlord to be credited and applied upon Tenant's Obligations, whether matured or unmatured, in such order as Landlord, in its sole and absolute discretion, shall determine.

(b) During the continuance of an Event of Default, to the extent that any of the provisions of subsection (a) of this Section 8 shall not be enforceable, Guarantor agrees that until such time as Tenant's Obligations have been paid and performed in full and the period of time has expired during which any payment made by Tenant or Guarantor to Landlord may be determined to be a Preferential Payment, Guarantor's Conditional Rights to the extent not validly waived shall be subordinate to Landlord's right to full payment and performance of Tenant's Obligations, and Guarantor shall not enforce Guarantor's Conditional Rights during such period.

9. Costs and Expenses. If Guarantor fails to perform any of its obligations under this Guaranty or if any dispute arises between the parties hereto concerning the meaning or interpretation of any provision of this Guaranty, then the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party on account of such default and/or in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees and disbursements. Any such attorneys' fees and other expenses incurred by either party in enforcing a judgement in its favor under this Guaranty shall be recoverable separately from and in addition to any other amount included in such judgement, and such attorney's fees' obligation is intended to be severable from the other provisions of this Guaranty and to survive and not be merged into any such judgement.

10 Notices.

(a) Any notice, demand or request by Landlord to Guarantor shall be in writing and shall be deemed to have been duly given or made if given or served by Landlord, (i) by hand delivery to Guarantor, or (ii) by delivery to Guarantor via overnight courier such as Federal Express, or (iii) by delivery to Guarantor via certified or registered mail addressed to Guarantor at the following address:

Buffets, LLC  
120 Chula Vista

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Hollywood Park, TX 78232  
Attention: Real Estate Department  
Telephone: (210) 403-3725

with a copy to:

Buffets, LLC  
120 Chula Vista  
Hollywood Park, TX 78232  
Attention: President  
Telephone: (210) 403-3725

(b) If given or served by Guarantor, (1) by hand delivery to Landlord, (2) by mailing same to Landlord by U.S. registered or certified mail, postage prepaid, return receipt requested, or (3) by delivery by overnight courier such as Federal Express, all delivered and addressed to Landlord at the following address:

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

with a copy to:

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

with a copy to:

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

(c) All notices, demands, requests or other communications hereunder shall be deemed to have been given or served: (1) if hand delivered, on the date received (or the date delivery is refused) by the recipient party; (2) if delivered by registered or certified mail, three (3) days after the date of posting as marked on the U.S. postage receipt; and (3) if by Federal Express or similar overnight courier service, on the date of receipt (or the date delivery is refused) by the recipient party.

(d) Either Landlord or Guarantor may from time to time change its address for receiving notices under this Guaranty by providing written notice to the other party in accordance with this Section 10.

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11. Delay; Cumulative Remedies. No delay or failure by Landlord to exercise any right or remedy against Tenant or Guarantor will be construed as a waiver of that right or remedy. All remedies of Landlord against Tenant and Guarantor are cumulative.

12. Jurisdiction; Waiver Of Jury Trial.

GUARANTOR HEREBY CONSENTS TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED WITHIN THE COUNTY OF NEW YORK, STATE OF NEW YORK AND IRREVOCABLY AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS GUARANTY SHALL BE LITIGATED IN SUCH COURTS. GUARANTOR ACCEPTS, GENERALLY AND UNCONDITIONALLY, THE NONEXCLUSIVE JURISDICTION OF THE AFORESAID COURTS AND WAIVES ANY DEFENSE OF FORUM NON CONVENIENS, AND IRREVOCABLY AGREES TO BE BOUND BY ANY JUDGMENT RENDERED THEREBY IN CONNECTION WITH THIS GUARANTY.

GUARANTOR AND, BY ITS ACCEPTANCE HEREOF, LANDLORD EACH HEREBY WAIVE, TO THE EXTENT PERMITTED BY APPLICABLE LAW, TRIAL BY JURY IN ANY LITIGATION OR PROCEEDING WITH RESPECT TO, IN CONNECTION WITH, OR ARISING FROM THIS GUARANTY, OR THE GUARANTY'S VALIDITY, PROTECTION, INTERPRETATION, COLLECTION OR ENFORCEMENT, OR ANY OTHER CLAIM OR DISPUTE HOWSOEVER ARISING (INCLUDING TORT AND CLAIMS FOR BREACH OF DUTY) BETWEEN GUARANTOR AND LANDLORD.

13. Miscellaneous.

(a) This Guaranty shall bind Guarantor, its successors and assigns, and shall inure to the benefit of Landlord and its successors and assigns.

(b) The invalidity or unenforceability of any one or more provisions of this Guaranty will not affect any other provision.

(c) This Guaranty and each and every term and provision thereof shall be construed in accordance with the laws of the State of New York without regard to conflict of law principles.

(d) Guarantor expressly declares that it knows and understands the contents of this Guaranty and has had an opportunity to consult with legal counsel as to its form and content.

(e) Neither this Guaranty nor any of its provisions may be waived, modified, amended, discharged, or terminated except as set forth in writing signed by the party against which the enforcement of the waiver, modification, amendment, discharge, or termination is sought, and then only to the extent set forth in that writing.

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LA1 2037116

4815-1665-5921.7



IN WITNESS WHEREOF, Guarantor has executed this instrument on the day and year first above written.

“GUARANTOR”

BUFFETS, LLC, a Minnesota limited liability company, formerly known as Buffets, Inc.

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

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**EXHIBIT G**  
**FORM OF SNDA**

**RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:**

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

Loan No. \_\_\_\_\_

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**SUBORDINATION AGREEMENT; ACKNOWLEDGMENT OF LEASE ASSIGNMENT,  
ATTORNMENT AND NON-DISTURBANCE AGREEMENT**

**NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR SECURITY  
INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF  
LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER  
SECURITY INSTRUMENT.**

THIS SUBORDINATION AGREEMENT; ACKNOWLEDGMENT OF LEASE ASSIGNMENT,  
ATTORNMENT AND NON-DISTURBANCE AGREEMENT ("Agreement") is made this \_\_ day  
of \_\_\_\_\_, 20\_\_ by and between \_\_\_\_\_, a  
\_\_\_\_\_ ("Owner", or "Lessor"), \_\_\_\_\_, a  
\_\_\_\_\_ ("Lessee") and \_\_\_\_\_  
 ("Lender").

**RECITALS**

- A. Pursuant to the terms and provisions of that certain Land and Building Lease dated \_\_\_\_\_  
\_\_, 20\_\_ ("Lease") Owner, as "Lessor", granted to Lessee a leasehold estate in and to that  
certain property described on Exhibit A attached hereto and incorporated herein by this  
reference (which property, together with all improvements now or hereafter located on such  
property, is defined collectively herein as the "Property").
- B. Owner has executed, or proposes to execute, certain deeds of trust, deeds to secure debt, or  
mortgagees and related absolute assignments of leases and rents (collectively, "Deed of  
Trust") securing, among other things, a promissory note ("Note") in the principal sum of

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\_\_\_\_\_ AND \_\_\_/100  
DOLLARS (\$ \_\_\_\_\_), dated the date hereof, in favor of Lender, which Note is payable with interest and upon the terms and conditions described therein ("Loan"). The Deed of Trust is to be recorded concurrently herewith.

- C. As a condition to making the Loan secured by the Deed of Trust, Lender requires that the Deed of Trust be unconditionally and at all times remain a lien on the Property, prior and superior to all the rights of Lessee under the Lease and that the Lessee specifically and unconditionally subordinate the Lease to the lien of the Deed of Trust, in each case, in accordance with the terms and provisions of this Agreement.
- D. Owner and Lessee have agreed to the subordination, attornment and other agreements herein in favor of Lender.

NOW THEREFORE, for valuable consideration and to induce Lender to make the Loan, Owner and Lessee hereby agree for the benefit of Lender as follows:

1. **SUBORDINATION.** Owner and Lessee hereby agree that:
  - 1.1 **Prior Lien.** The Deed of Trust securing the Note in favor of Lender, and any modifications, renewals or extensions thereof, shall unconditionally be and at all times remain a lien on the Property prior and superior to the Lease;
  - 1.2 **Subordination.** Lender would not make the Loan without this agreement to subordinate; and
  - 1.3 **Whole Agreement.** This Agreement shall be the whole agreement and only agreement with regard to the subordination of the Lease to the lien of the Deed of Trust and shall supersede and cancel, but only insofar as would affect the priority between the Deed of Trust and the Lease, any prior agreements as to such subordination, including, without limitation, those provisions, if any, contained in the Lease which provide for the subordination of the Lease to a deed or deeds of trust or to a mortgage or mortgages.

AND FURTHER, Lessee individually declares, agrees and acknowledges for the benefit of Lender, that:

- 1.4 **Use of Proceeds.** Lender, in making disbursements pursuant to the Note, the Deed of Trust or any loan documents with respect to the Property, is under no obligation or duty to, nor has Lender represented that it will, see to the application of such proceeds by the person or persons to whom Lender disburses such proceeds, and any application or use of such proceeds for purposes other than those provided for in such agreement or

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agreements shall not defeat this agreement to subordinate in whole or in part;

- 1.5 **Subordination**. Lessee intentionally and unconditionally subordinates all of Lessee's right, title and interest in and to the Property to the lien of the Deed of Trust, in accordance with the terms and provisions of this Agreement, and understands that in reliance upon, and in consideration of, this waiver, relinquishment and subordination, specific loans and advances are being and will be made by Lender and, as part and parcel thereof, specific monetary and other obligations are being and will be entered into which would not be made or entered into but for said reliance upon this waiver, relinquishment and subordination.
2. **ASSIGNMENT**. Lessee acknowledges and consents to the assignment of the Lease by Lessor in favor of Lender.
3. **ESTOPPEL**. Lessee acknowledges and represents that:
  - 3.1 **Lease Effective**. The Lease has been duly executed and delivered by Lessee and, subject to the terms and conditions thereof, the Lease is in full force and effect, the obligations of Lessee thereunder are valid and binding and there have been no modifications or additions to the Lease, written or oral;
  - 3.2 **No Default**. To the best of Lessee's knowledge, as of the date hereof: (i) there exists no breach, default, or event or condition which, with the giving of notice or the passage of time or both, would constitute a breach or default under the Lease; and (ii) there are no existing claims, defenses or offsets against rental due or to become due under the Lease;
  - 3.3 **Entire Agreement**. The Lease constitutes the entire agreement between Lessor and Lessee with respect to the Property, and Lessee claims no rights with respect to the Property other than as set forth in the Lease;
  - 3.4 **No Right of First Refusal or Option to Purchase**. The Lease does not grant to Lessee any right of first refusal, or option to purchase, with respect to all or any portion of the Property; and
  - 3.5 **No Prepaid Rent**. No deposits or prepayments of rent have been made in connection with the Lease, except as follows: None.
4. **ADDITIONAL AGREEMENTS**. Lessee covenants and agrees that, during all such times as Lender is the Beneficiary under the Deed of Trust:

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- 4.1 **Notice of Default.** Lessee will notify Lender in writing concurrently with any notice given to Lessor of any default by Lessor under the Lease, and Lessee agrees that Lender has the right (but not the obligation) to cure any breach or default specified in such notice within the time periods set forth below and Lessee will not declare a default of the Lease, as to Lender, if Lender cures such default within fifteen (15) days from and after the expiration of the time period provided in the Lease for the cure thereof by Lessor; provided, however, that if such default cannot with diligence be cured by Lender with-in such fifteen (15) day period, the commencement of action by Lender within such fifteen (15) day period to remedy the same shall be deemed sufficient so long as Lender pursues such cure with diligence;
- 4.2 **Assignment of Rents.** Upon receipt by Lessee of written notice from Lender that Lender has elected to terminate the license granted to Lessor to collect rents, as provided in the Deed of Trust, and directing the payment of rents by Lessee to Lender, Lessee shall comply with such direction to pay and shall not be required to determine whether Lessor is in default under the Loan and/or the Deed of Trust.
- 4.3 **Certain Actions Not Binding on Lender**. Lender shall not be bound by any modification, amendment, termination or cancellation of the Lease (in whole or in part) that was effected without Lender's prior written consent.
5. **ATTORNTMENT.** In the event of a foreclosure under the Deed of Trust, Lessee agrees for the benefit of Lender (including for this purpose any transferee of Lender or any transferee of Lessor's title in and to the Property by Lender's exercise of the remedy of sale by foreclosure under the Deed of Trust), upon the receipt by Lessee of written notice of such foreclosure, as follows:
- 5.1 **Payment of Rent.** Lessee shall pay to Lender all rental payments required to be made by Lessee pursuant to the terms of the Lease for the duration of the term of the Lease;
- 5.2 **Continuation of Performance.** Lessee shall be bound to Lender in accordance with all of the provisions of the Lease for the balance of the term thereof; provided that the Lease shall be deemed not to include any modification, amendment, termination or cancellation of the Lease (in whole or in part) that was effected without Lender's prior written consent; and Lessee hereby attorns to Lender as its landlord, and Lender hereby accepts such attornment, such attornment to be effective and self-operative without the execution of any further instrument immediately upon Lender succeeding to Lessor's interest in the Lease and giving written notice thereof to Lessee;

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(Individual Lease Form)

- 5.3 **No Offset.** Lender shall not be liable for, nor subject to, any offsets or defenses which Lessee may have by reason of any act or omission of Lessor under the Lease with respect to the period preceding the effectiveness of the attornment provided for herein, nor for the return of any sums which Lessee may have paid to Lessor under the Lease (a) as and for security deposits, rentals paid more than one (1) month before the time when they became due under the lease, or otherwise, except to the extent that such sums are actually delivered by Lessor to Lender and applied to amounts due in respect of the Loan (or held by Lender as collateral therefor); and, for purposes of determining the rentals due under the Lease, any amount paid in respect of rentals paid more than one (1) month before the time such amount became due under the Lease and not delivered by Lessor to Lender and applied to amounts due in respect of the Loan (or held by Lender as collateral therefor) shall be treated as if they had not been paid; or (b) any payment made by Lessee to Lessor in consideration of any modification, termination or cancellation of the Lease (in whole or in part) without Lender's prior written consent.
- 5.4 **Subsequent Transfer.** If Lender, by succeeding to the interest of Lessor under the Lease, should become obligated to perform the covenants of Lessor thereunder, then, upon any further transfer of Lessor's interest by Lender, all of such obligations shall terminate as to Lender.
6. **NON-DISTURBANCE.** In the event of a foreclosure under the Deed of Trust, so long as there shall then exist no "Event of Default" on the part of Lessee under (and as defined in) the Lease, Lender agrees for itself and its successors and assigns that the leasehold interest of Lessee under the Lease shall not be extinguished or terminated by reason of such foreclosure, but rather the Lease shall continue in full force and effect in accordance with the terms thereof except as modified or limited by this Agreement (including, without limitation, the provisions of Sections 4.3 and 5.2 hereof), and Lender shall recognize and accept Lessee as tenant under the Lease subject to the terms and provisions of the Lease except as modified or limited by this Agreement.
7. **MISCELLANEOUS.**
- 7.1 **Heirs, Successors, Assigns and Transferees.** The covenants herein shall be binding upon, and inure to the benefit of, the heirs, successors and assigns of the parties hereto; and
- 7.2 **Notices.** All notices or other communications required or permitted to be given pursuant to the provisions hereof shall be deemed served upon delivery or, if mailed, upon the first to occur of receipt or the expiration of three (3) days after deposit in United States Postal Service, certified mail,

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postage prepaid and addressed to the address of Lessee or Lender appearing below:

**“Owner”:**

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

**“Lessee”:**

[ \_\_\_\_\_ ]  
120 Chula Vista  
Hollywood Park, TX 78232  
Attention: Real Estate Department  
Telephone: (210) 403-3725

with a copy to:

[ \_\_\_\_\_ ]  
120 Chula Vista  
Hollywood Park, TX 78232  
Attention: President  
Telephone: (210) 403-3725

**“Lender”:**

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

Loan No.: \_\_\_\_\_

provided, however, any party shall have the right to change its address for notice hereunder by the giving of written notice thereof to the other party in the manner set forth in this Agreement; and

7.3 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute and be construed as one and the same instrument; and

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- 7.4 **Remedies Cumulative.** All rights of Lender herein to collect rents on behalf of Lessor under the Lease are cumulative and shall be in addition to any and all other rights and remedies provided by law and by other agreements between Lender and Lessor or others; and
- 7.5 **Paragraph Headings.** Paragraph headings in this Agreement are for convenience only and are not to be construed as part of this Agreement or in any way limiting or applying the provisions hereof.
- 7.6 **Lender's Consent.** If the Lease is being entered into by Owner after the making of the Loan, Lender hereby consents to Owner's entry into the Lease.
- 7.7 **Owner's Consent.** By its execution and delivery of this Agreement, Owner consents to, and authorizes Lessee to comply with, each of the provisions hereof.

**INCORPORATION.** Exhibit A and Lease Guarantor's Consent are attached hereto and incorporated herein by this reference.

[NO FURTHER TEXT ON THIS PAGE]

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

**NOTICE: THIS SUBORDINATION AGREEMENT CONTAINS A PROVISION WHICH ALLOWS THE PERSON OBLIGATED ON YOUR REAL PROPERTY SECURITY TO OBTAIN A LOAN A PORTION OF WHICH MAY BE EXPENDED FOR OTHER PURPOSES THAN IMPROVEMENT OF THE LAND.**

**IT IS RECOMMENDED THAT, PRIOR TO THE EXECUTION OF THIS AGREEMENT, THE PARTIES CONSULT WITH THEIR ATTORNEYS WITH RESPECT HERETO.**

**“OWNER”**

[ \_\_\_\_\_ ],  
a [ \_\_\_\_\_ ]

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

**“LENDER”**

[ \_\_\_\_\_ ]

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

**“LESSEE”**

[ \_\_\_\_\_ ],  
a [ \_\_\_\_\_ ]

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

**(ALL SIGNATURES MUST BE ACKNOWLEDGED)**

EXHIBIT G

Store # \_\_\_ (City, State)

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LA1 2037116  
4815-1665-5921.7



**LEASE GUARANTOR'S CONSENT**

The undersigned ("Lease Guarantor") consents to the foregoing Subordination Agreement; Acknowledgment of Lease Assignment, Attornment and Non-Disturbance Agreement and the transactions contemplated thereby and reaffirms its obligations under the lease guaranty ("Lease Guaranty") dated \_\_\_\_\_, 20\_\_\_. Lease Guarantor further reaffirms that its obligations under the Lease Guaranty are separate and distinct from Lessee's obligations.

AGREED AS OF THE FIRST DATE WRITTEN ABOVE:

**"LEASE GUARANTOR"**

Buffets, LLC, a Minnesota limited liability company, formerly known as Buffets, Inc.

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

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(Individual Lease Form)

**EXHIBIT A**

**DESCRIPTION OF PROPERTY**

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**EXHIBIT "A"**

[INSERT LEGAL DESCRIPTION OF PROPERTY HERE]

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## SCHEDULE 1

### RESTAURANT EQUIPMENT

The term "Restaurant Equipment" shall include without limitation, with respect to each Demised Property, all of the following, whether now or hereafter owned or acquired by, or in which Tenant has any interest (whether unattached or attached by bolts and screws and/or by utility connections): décor items, office equipment, computer, POS machines, tables, chairs, seating stations, bus stations, beverage stations, grill areas, host stations, serving stations and equipment, steam tables, warming tables, stoves, ovens, fryers, ranges, grills, dishwashing equipment, non-built in shelving and racking, decorative light fixtures, stereo equipment, furniture, trade fixtures (including, but not limited to, window grills and countertops) containing protected intellectual property owned by or licensed to Tenant, remote or movable refrigeration and freezer systems, signage panels, building lettering, fixtures (including, but not limited to, window grills and countertops) containing protected intellectual property owned by or licensed to Tenant, neon signage, food and customer service equipment, removable equipment, any and all inventory existing within or upon any Demised Property (including, without limitation, supplies, foods and beverages), and other similar type items of personal property now owned, acquired, held or used by Tenant in its restaurant operations, and all additions to, substitutions for and replacements of the foregoing.

SCHEDULE 1

Store # \_\_\_ (City, State)

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(Individual Lease Form)



**SCHEDULE 2**  
**ENVIRONMENTAL REPORTS**

SCHEDULE 1

Store # \_\_\_ (City, State)  
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(Individual Lease Form)

**EXHIBIT E**  
**INTENTIONALLY DELETED**

EXHIBIT E  
AMENDED AND RESTATED MASTER LAND AND BUILDING LEASE

## EXHIBIT F

### GUARANTY OF AMENDED AND RESTATED MASTER LAND AND BUILDING LEASE

This GUARANTY OF AMENDED AND RESTATED MASTER LAND AND BUILDING LEASE ("Guaranty") is made as of \_\_\_\_\_, 2016, by BUFFETS, LLC, a Minnesota limited liability company, formerly known as Buffets, Inc. ("Guarantor"), to ARC DBPPROP001, LLC, a Delaware limited liability company ("Landlord"), with reference to the following facts:

A. Landlord and Fire Mountain Restaurants, LLC, an Ohio limited liability company, HomeTown Buffet, Inc., a Minnesota corporation, and OCB Restaurant Company, LLC, a Minnesota limited liability company (collectively, "Tenant") have entered into that certain Amended and Restated Master Land and Building Lease (as the same may be amended from time to time pursuant to the terms thereof, the "Lease") regarding certain "Demised Properties" as defined in the Lease. Capitalized terms not otherwise defined herein shall have the meaning set forth in the Lease.

B. Tenant is an indirect/direct 100% owned subsidiary of Guarantor.

C. Landlord would not enter into the Lease but for the execution and delivery of this guaranty by guarantor. Guarantor is willing to execute this guaranty for the express and intended purposes of inducing landlord enter into the Lease.

D. Guarantor will benefit from the execution of the Lease. Guarantor is executing this guaranty in consideration of that anticipated benefit.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and agreed, Guarantor hereby agrees as follows:

1. Guaranty. Guarantor hereby absolutely and unconditionally guarantees to Landlord the full, prompt and faithful performance by Tenant of all Tenant's Obligations (as defined below). As used herein, "Tenant's Obligations" means all covenants, terms, and conditions of the Lease, and any extensions, modifications or renewals thereof, to be hereafter performed and kept by Tenant, including without limitation the prompt payment of all amounts that Tenant may at any time owe under the Lease, and any extensions, renewals or modifications thereof.

2. Independent Obligations. Guarantor's obligations hereunder are independent of the obligations of Tenant, and a separate action or actions may be brought and prosecuted against Guarantor whether or not any action or actions are brought against Tenant and whether or not Tenant shall be joined in any such action or actions.

## EXHIBIT F

### AMENDED AND RESTATED MASTER LAND AND BUILDING LEASE

3. Rights of Landlord. Guarantor authorizes Landlord, without notice or demand and without affecting its liability hereunder, from time to time to (a) extend, accelerate, or otherwise change the time for any payment provided for in the Lease, or any covenant, term or condition of the Lease, delay enforcing Landlord's remedies or rights against Tenant in connection with the Lease, and consent to any assignment, subletting or reassignment of the Lease, (b) take and hold security for any payment provided for in the Lease or for the performance of any covenant, term or condition of the Lease, or exchange, waive or release any such security; and (c) apply such security and direct the order or manner of sale thereof as Landlord in its sole discretion may determine. Landlord may without notice assign this Guaranty, the Lease, or the rents and other sums payable thereunder. Notwithstanding any termination, renewal, extension, or holding over of the Lease, or any assignment of the Lease by Landlord or Tenant, this Guaranty shall continue until all of Tenant's Obligations have been fully and completely performed by Tenant.

Guarantor shall not be released by any act or event which might, but for this provision of this Guaranty, be deemed a legal or equitable discharge of a surety, or by reason of any waiver, extension, modification, forbearance or delay or other act or omission of the Landlord or its failure to proceed promptly or otherwise as against Tenant or Guarantor, or by reason or any action taken or omitted or circumstance which may or might vary the risk or affect the rights or remedies of Guarantor as against Tenant, or by reason of any further dealings between Tenant and Landlord, whether relating to the Lease or otherwise, and Guarantor hereby expressly waives and surrenders any defense to its liability hereunder based upon any of the foregoing acts, omissions, things, or agreements. It is the purpose and intent of this Guaranty that the obligations of Guarantor hereunder are absolute and unconditional under any and all circumstances. Notwithstanding any provision hereof to the contrary, Guarantor shall be released and discharged of its obligations hereunder if and to the same extent as Tenant is released or discharged of its obligations under the Lease with the consent of Landlord or in accordance with the terms of the Lease. The foregoing sentence shall in no way affect any waivers or any bankruptcy provisions set forth herein.

Guarantor further agrees that to the extent Tenant or Guarantor makes any payment to Landlord in connection with Tenant's Obligations and all or any part of such payment is subsequent invalidated, declared to be fraudulent or preferential, set aside or required to be repaid by Landlord or paid over to a trustee, receiver or any other entity, whether under any bankruptcy act or otherwise (any such payment is hereinafter referred to as a "Preferential Payment"), then this Guaranty shall continue to be effective or shall be reinstated, as the case may be, and, to the extent of such payment or repayment by Landlord, Tenant's Obligations or part thereof intended to be satisfied by such Preferential Payment shall be revived and continued in full force and effect as if such Preferential Payment had not been made.

4. Guarantor's Representations and Warranties.

(a) Qualification and Authority. Guarantor is a company duly organized, validly existing and in good standing under the laws of Minnesota. Guarantor has the right, power, and authority to execute, deliver, and perform this Guaranty. This Guaranty, when executed and delivered by Guarantor, shall constitute the valid and binding agreement of

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AMENDED AND RESTATED MASTER LAND AND BUILDING LEASE

Guarantor, and shall be enforceable against Guarantor in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles. All requisite authorizations, consents, resolutions and actions on the part of Guarantor have been or will prior to the date hereof be obtained, adopted or taken, as applicable, by Guarantor in connection with making and entering into this Guaranty. Neither this Guaranty nor the consummation of any of the transactions contemplated hereby violates or shall violate any provision of any agreement or document to which Guarantor is a party or to which Guarantor is bound.

(b) Operations. Guarantor is an operating entity with active business operations and owns assets other than its equity interests in the Tenant. Guarantor is not a conduit, pass-through or holding company. Further, neither Buffets Holdings, LLC ("Holdings") nor Buffets Restaurant Holdings, Inc. ("BR Holdings") are creditors of Tenant or Guarantor nor do Holdings or BR Holdings assert any lien on any assets of Tenant or Guarantor.

(c) Contractual Obligations. Guarantor is not in default in the performance, observance or fulfillment of any of the material obligations, covenants or conditions contained in any contractual obligation of Guarantor beyond any applicable notice and cure period, and to Guarantor's knowledge, no condition exists that, with the giving of notice or the lapse of time or both, would constitute such a default.

(d) Disclosure. No financial statements or any other document, certificate or written statement furnished to Landlord by Guarantor and, to the knowledge of Guarantor, no document or statement furnished by any third party on behalf of Guarantor, for use in connection with this Guaranty or the transactions contemplated herein, when taken as a whole, contains any untrue representation, warranty or statement of a material fact, and none omits or will omit to state a material fact necessary in order to make the statements contained herein or therein not misleading. There is no material fact known to Guarantor that has had or will have a Material Adverse effect (as defined below) and that has not been disclosed in writing to Landlord by Guarantor or by any third party on behalf of Guarantor. As used herein, "Material Adverse Effect" means (A) a material adverse effect upon the business, operations, properties, assets or condition (financial or otherwise) of Guarantor or Tenant, with respect to such party, when taken as a whole, or (B) the material impairment of the ability of Guarantor to perform its obligations under this Guaranty, or (C) the material impairment of Landlord's rights or remedies under the Guaranty. In determining whether any individual event would result in a Material Adverse Effect, notwithstanding that such event does not of itself have such effect, a Material Adverse Effect shall be deemed to have occurred if the cumulative effect of such event and all other then occurring events and existing conditions would result in a Material Adverse Effect.

(e) Suits, Judgments and Liens. There is no action, suit or legal, administrative or other proceeding pending or, to Guarantor's knowledge, threatened which questions the legality or propriety of the transactions contemplated by the Guaranty.

#### EXHIBIT F

#### AMENDED AND RESTATED MASTER LAND AND BUILDING LEASE

5. Guarantor's Financial Covenants. Guarantor shall provide, or cause to be provided, to Landlord the following financial statements and information, all of which must be in a form reasonably acceptable to Landlord:

(i) promptly and in any event within sixty (60) days after the end of each Fiscal Quarter, (x) quarterly statements of EBITDA for each Fiscal Month in such Fiscal Quarter and year-to-date, to be certified by an officer of Guarantor, and (y) total sales figures for each Fiscal Month in such Fiscal Quarter and year-to-date; and

(ii) promptly and in any event within one hundred and twenty (120) days after the end of each Fiscal Year, an annual statement of financial position of Guarantor, including a balance sheet and statement of profits and losses and, to the extent one is prepared, a statement of cash flows, such annual statements of financial position to be certified by an officer of Guarantor to fairly represent the financial condition of Guarantor as of the date thereof. To the extent such financial statements are audited, Guarantor shall provide Landlord with a final copy of that audit within thirty (30) days of completion within sixty (60) days of Landlord's request. Notwithstanding the foregoing, as long as Tenant is a wholly-owned direct or indirect subsidiary of Buffets, LLC, Guarantor shall be permitted to satisfy its obligations under this clause (ii) by providing (or causing Tenant to provide) the financial statements described herein of Buffets, LLC and its subsidiaries on a consolidated basis, rather than of Guarantor; and

(iii) in the event that Tenant defaults in making any payment required under the Lease when due and such default is not cured within thirty (30) days, within sixty (60) days of Landlord's request, a quarterly statement of financial position of Guarantor, including a balance sheet and statement of profits and losses and a statement of cash flows, for the most recent Fiscal Quarter for which such quarterly statements were prepared by Guarantor, such quarterly statements to be certified by an officer of Guarantor to fairly represent the financial condition of Guarantor as of the date thereof. Notwithstanding the foregoing, as long as Tenant is a wholly-owned direct or indirect subsidiary of Buffets, LLC, Guarantor shall be permitted to satisfy its obligations under this clause (iii) by providing (or causing Tenant to provide) the financial statements described herein of Buffets, LLC and its subsidiaries on a consolidated basis, rather than of Guarantor.

"Fiscal Year" shall mean a fiscal year from approximately July to June (subject to change by Guarantor) and "Fiscal Quarter" shall mean approximately July through September, approximately October through December, approximately January through March, and approximately April through June (subject to change by Guarantor). The last day of each Fiscal Year is the Wednesday closest to June 30<sup>th</sup> (subject to change by Guarantor).

Guarantor acknowledges that Landlord must comply with certain financial audit requirements and Landlord will suffer damages from Guarantor's failure to deliver any of the financial information required in Subsections 5(i) through (v) (the "Key Financial Statements") as and when due. If Guarantor fails to deliver any Key Financial Statements as and when due, and such failure is not cured within ten (10) days after written notice from Landlord, subject to Force

EXHIBIT F

AMENDED AND RESTATED MASTER LAND AND BUILDING LEASE

Majeure, Guarantor shall pay Landlord a fee equal to US\$500 for each day that Guarantor has failed to deliver any such Key Financial Statements (the “Financial Statements Default Fee”). The Financial Statements Default Fee is in addition to, and not in lieu of, any other remedy of Landlord under this Guaranty regarding Guarantor’s failure to deliver the Key Financial Statements. Guarantor’s payment of the Financial Statements Default Fee does not cure any default caused by the failure to deliver any Key Financial Statement in a timely manner.

6. Waiver of Defenses. Guarantor waives (a) any right to require Landlord to (i) proceed against Tenant or any other person or entity; (ii) proceed against or exhaust any security held from Tenant or Guarantor; (iii) pursue any other remedy in Landlord’s power against Tenant which Guarantor cannot itself pursue, and which would lighten its burden; (b) all statutes of limitation as a defense to any action brought against Guarantor by Landlord to the fullest extent permitted by law; (c) any defense based upon any legal disability of Tenant, or any discharge or limitation of the liability of Tenant to Landlord, whether consensual or arising by operation of law or any bankruptcy, reorganization, receivership, insolvency, or debtor-relief proceeding, or from any other similar cause; (d) presentment, demand, protest and notice of any kind; and (e) any defense based upon or arising out of any defense which Tenant may have to the payment or performance of any part of Tenant’s Obligations, other than any defense arising under the express terms of the Lease. Guarantor waives all demand and notices, including demands for performance, notices of non-performance, notices of non-payment and notice of acceptance of this Guaranty.

7. Effect of Tenant's Bankruptcy. Without limiting anything contained in Section 4 of this Guaranty, the liability of Guarantor under this Guaranty shall in no way be affected by: (a) the release or discharge of Tenant in any creditor proceeding, receivership, bankruptcy or other proceeding; (b) the impairment, limitation, or modification of Tenant's liability or the estate, or of any remedy for the enforcement of Tenant's liability, which may result from the operation of any present or future provision of the Bankruptcy Code (Title 11 of the United States Code, as amended; 11 U.S.C. §§ 101-1330) or any bankruptcy, insolvency, debtor relief statute (state or federal), any other statute, or from the decision of any court; (c) the rejection or disaffirmance of the Lease, or any portion of the Lease, in any such proceeding; (d) the cessation, from any cause whatsoever, whether consensual or by operation of law, of Tenant's liability to Landlord resulting from any such proceeding; or (e) the modification or replacement of Tenant's Obligations in any such proceeding.

8. Waiver of Subrogation.

(a) Notwithstanding any other provision of this Guaranty to the contrary, until Tenant’s Obligations are fully performed and paid, during the continuance of an Event of Default, Guarantor hereby waives any claims or other rights which Guarantor may now have or hereafter acquire against Tenant or any other guarantor of all or any of Tenant’s Obligations, which claims or other rights arise from the existence or performance of Guarantor’s obligations under this Guaranty (all such claims and rights are referred to as “Guarantor’s Conditional Rights”), including, without limitation, any right of subrogation, reimbursement, exoneration, contribution, or indemnification, any right to participate in any claim or remedy of Landlord against Tenant or any collateral which Landlord now has or hereafter acquires, whether or not

EXHIBIT F

AMENDED AND RESTATED MASTER LAND AND BUILDING LEASE

such claim, remedy or right arises in equity or under contract, statute or common law, by any payment made hereunder or otherwise, including without limitation, the right to take or receive from Tenant, directly or indirectly, in cash or other property or by setoff or in any other manner, payment or security on account of such claim or other rights. If, notwithstanding the foregoing provision, any amount shall be paid to Guarantor on account of any Guarantor's Conditional Rights and either (i) such amount is paid to Guarantor at any time when Tenant's Obligations shall not have been paid or performed in full during the continuance of an Event of Default, or (ii) regardless of when such amount is paid to Guarantor, any payment made by Tenant to Landlord is at any time determined to be a Preferential Payment, then such amount paid to Guarantor shall be held in trust for the benefit of Landlord and shall forthwith be paid to Landlord to be credited and applied upon Tenant's Obligations, whether matured or unmatured, in such order as Landlord, in its sole and absolute discretion, shall determine.

(b) During the continuance of an Event of Default, to the extent that any of the provisions of subsection (a) of this Section 8 shall not be enforceable, Guarantor agrees that until such time as Tenant's Obligations have been paid and performed in full and the period of time has expired during which any payment made by Tenant or Guarantor to Landlord may be determined to be a Preferential Payment, Guarantor's Conditional Rights to the extent not validly waived shall be subordinate to Landlord's right to full payment and performance of Tenant's Obligations, and Guarantor shall not enforce Guarantor's Conditional Rights during such period.

9. Costs and Expenses. If Guarantor fails to perform any of its obligations under this Guaranty or if any dispute arises between the parties hereto concerning the meaning or interpretation of any provision of this Guaranty, then the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party on account of such default and/or in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees and disbursements. Any such attorneys' fees and other expenses incurred by either party in enforcing a judgement in its favor under this Guaranty shall be recoverable separately from and in addition to any other amount included in such judgement, and such attorney's fees' obligation is intended to be severable from the other provisions of this Guaranty and to survive and not be merged into any such judgement.

10 Notices.

(a) Any notice, demand or request by Landlord to Guarantor shall be in writing and shall be deemed to have been duly given or made if given or served by Landlord, (i) by hand delivery to Guarantor, or (ii) by delivery to Guarantor via overnight courier such as Federal Express, or (iii) by delivery to Guarantor via certified or registered mail addressed to Guarantor at the following address:

Buffets, LLC  
120 Chula Vista

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Hollywood Park, TX 78232  
Attention: Real Estate Department  
Telephone: (210) 403-3725

with a copy to:

Buffets, LLC  
120 Chula Vista  
Hollywood Park, TX 78232  
Attention: President  
Telephone: (210) 403-3725

(b) If given or served by Guarantor, (1) by hand delivery to Landlord, (2) by mailing same to Landlord by U.S. registered or certified mail, postage prepaid, return receipt requested, or (3) by delivery by overnight courier such as Federal Express, all delivered and addressed to Landlord at the following address:

c/o VEREIT, Inc.  
2325 East Camelback Road, Suite 1100  
Phoenix, AZ 85016  
Attention: General Counsel, Real Estate  
Telephone: (602) 778-8700  
Facsimile: (480) 449-7012

with a copy to:

Kutak Rock LLP  
8601 N. Scottsdale Road, Suite 300  
Scottsdale, AZ 85253-2742  
Attention: Mitchell Padover, Esq.  
Telephone: (480) 429-4848  
Facsimile: (480) 429-5001

(c) All notices, demands, requests or other communications hereunder shall be deemed to have been given or served: (1) if hand delivered, on the date received (or the date delivery is refused) by the recipient party; (2) if delivered by registered or certified mail, three (3) days after the date of posting as marked on the U.S. postage receipt; and (3) if by Federal Express or similar overnight courier service, on the date of receipt (or the date delivery is refused) by the recipient party.

(d) Either Landlord or Guarantor may from time to time change its address for receiving notices under this Guaranty by providing written notice to the other party in accordance with this Section 10.

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11. Delay; Cumulative Remedies. No delay or failure by Landlord to exercise any right or remedy against Tenant or Guarantor will be construed as a waiver of that right or remedy. All remedies of Landlord against Tenant and Guarantor are cumulative.

12. Jurisdiction; Waiver Of Jury Trial.

GUARANTOR HEREBY CONSENTS TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED WITHIN THE COUNTY OF NEW YORK, STATE OF NEW YORK AND IRREVOCABLY AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS GUARANTY SHALL BE LITIGATED IN SUCH COURTS. GUARANTOR ACCEPTS, GENERALLY AND UNCONDITIONALLY, THE NONEXCLUSIVE JURISDICTION OF THE AFORESAID COURTS AND WAIVES ANY DEFENSE OF FORUM NON CONVENIENS, AND IRREVOCABLY AGREES TO BE BOUND BY ANY JUDGMENT RENDERED THEREBY IN CONNECTION WITH THIS GUARANTY.

GUARANTOR AND, BY ITS ACCEPTANCE HEREOF, LANDLORD EACH HEREBY WAIVE, TO THE EXTENT PERMITTED BY APPLICABLE LAW, TRIAL BY JURY IN ANY LITIGATION OR PROCEEDING WITH RESPECT TO, IN CONNECTION WITH, OR ARISING FROM THIS GUARANTY, OR THE GUARANTY'S VALIDITY, PROTECTION, INTERPRETATION, COLLECTION OR ENFORCEMENT, OR ANY OTHER CLAIM OR DISPUTE HOWSOEVER ARISING (INCLUDING TORT AND CLAIMS FOR BREACH OF DUTY) BETWEEN GUARANTOR AND LANDLORD.

13. Miscellaneous.

(a) This Guaranty shall bind Guarantor, its successors and assigns, and shall inure to the benefit of Landlord and its successors and assigns.

(b) The invalidity or unenforceability of any one or more provisions of this Guaranty will not affect any other provision.

(c) This Guaranty and each and every term and provision thereof shall be construed in accordance with the laws of the State of New York without regard to conflict of law principles.

(d) Guarantor expressly declares that it knows and understands the contents of this Guaranty and has had an opportunity to consult with legal counsel as to its form and content.

(e) Neither this Guaranty nor any of its provisions may be waived, modified, amended, discharged, or terminated except as set forth in writing signed by the party against which the enforcement of the waiver, modification, amendment, discharge, or termination is sought, and then only to the extent set forth in that writing.

EXHIBIT F

AMENDED AND RESTATED MASTER LAND AND BUILDING LEASE

[NO FURTHER TEXT ON THIS PAGE]

EXHIBIT F

AMENDED AND RESTATED MASTER LAND AND BUILDING LEASE

LA1 2037116

4815-1665-5921.7

IN WITNESS WHEREOF, Guarantor has executed this instrument on the day and year first above written.

“GUARANTOR”

BUFFETS, LLC, a Minnesota limited liability company, formerly known as Buffets, Inc.

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

Name:

Title:

EXHIBIT F

AMENDED AND RESTATED MASTER LAND AND BUILDING LEASE

**EXHIBIT G**  
**FORM OF SNDA**

**RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:**

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

Loan No. \_\_\_\_\_

---

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**SUBORDINATION AGREEMENT; ACKNOWLEDGMENT OF LEASE ASSIGNMENT,  
ATTORNMENT AND NON-DISTURBANCE AGREEMENT**

**NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR SECURITY INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.**

THIS SUBORDINATION AGREEMENT; ACKNOWLEDGMENT OF LEASE ASSIGNMENT, ATTORNMENT AND NON-DISTURBANCE AGREEMENT ("Agreement") is made this \_\_ day of \_\_\_\_\_, 20\_\_ by and between \_\_\_\_\_, a \_\_\_\_\_ ("Owner", or "Lessor"), \_\_\_\_\_, a \_\_\_\_\_ ("Lessee") and \_\_\_\_\_ ("Lender").

**RECITALS**

- A. Pursuant to the terms and provisions of that certain Land and Building Lease dated \_\_\_\_\_, 20\_\_ ("Lease") Owner, as "Lessor", granted to Lessee a leasehold estate in and to that certain property described on Exhibit A attached hereto and incorporated herein by this reference (which property, together with all improvements now or hereafter located on such property, is defined collectively herein as the "Property").
- B. Owner has executed, or proposes to execute, certain deeds of trust, deeds to secure debt, or mortgages and related absolute assignments of leases and rents (collectively, "Deed of Trust") securing, among other things, a promissory note ("Note") in the principal sum of \_\_\_\_\_ AND \_\_\_/100

EXHIBIT G  
AMENDED AND RESTATED MASTER LAND AND BUILDING LEASE

DOLLARS (\$ \_\_\_\_\_), dated the date hereof, in favor of Lender, which Note is payable with interest and upon the terms and conditions described therein (“Loan”). The Deed of Trust is to be recorded concurrently herewith.

- C. As a condition to making the Loan secured by the Deed of Trust, Lender requires that the Deed of Trust be unconditionally and at all times remain a lien on the Property, prior and superior to all the rights of Lessee under the Lease and that the Lessee specifically and unconditionally subordinate the Lease to the lien of the Deed of Trust, in each case, in accordance with the terms and provisions of this Agreement.
- D. Owner and Lessee have agreed to the subordination, attornment and other agreements herein in favor of Lender.

NOW THEREFORE, for valuable consideration and to induce Lender to make the Loan, Owner and Lessee hereby agree for the benefit of Lender as follows:

- 1. **SUBORDINATION.** Owner and Lessee hereby agree that:
  - 1.1 **Prior Lien.** The Deed of Trust securing the Note in favor of Lender, and any modifications, renewals or extensions thereof, shall unconditionally be and at all times remain a lien on the Property prior and superior to the Lease;
  - 1.2 **Subordination.** Lender would not make the Loan without this agreement to subordinate; and
  - 1.3 **Whole Agreement.** This Agreement shall be the whole agreement and only agreement with regard to the subordination of the Lease to the lien of the Deed of Trust and shall supersede and cancel, but only insofar as would affect the priority between the Deed of Trust and the Lease, any prior agreements as to such subordination, including, without limitation, those provisions, if any, contained in the Lease which provide for the subordination of the Lease to a deed or deeds of trust or to a mortgage or mortgages.

AND FURTHER, Lessee individually declares, agrees and acknowledges for the benefit of Lender, that:

- 1.4 **Use of Proceeds.** Lender, in making disbursements pursuant to the Note, the Deed of Trust or any loan documents with respect to the Property, is under no obligation or duty to, nor has Lender represented that it will, see to the application of such proceeds by the person or persons to whom Lender disburses such proceeds, and any application or use of such proceeds for purposes other than those provided for in such agreement or

EXHIBIT G  
AMENDED AND RESTATED MASTER LAND AND BUILDING LEASE

agreements shall not defeat this agreement to subordinate in whole or in part;

- 1.5 **Subordination**. Lessee intentionally and unconditionally subordinates all of Lessee's right, title and interest in and to the Property to the lien of the Deed of Trust, in accordance with the terms and provisions of this Agreement, and understands that in reliance upon, and in consideration of, this waiver, relinquishment and subordination, specific loans and advances are being and will be made by Lender and, as part and parcel thereof, specific monetary and other obligations are being and will be entered into which would not be made or entered into but for said reliance upon this waiver, relinquishment and subordination.
2. **ASSIGNMENT**. Lessee acknowledges and consents to the assignment of the Lease by Lessor in favor of Lender.
3. **ESTOPPEL**. Lessee acknowledges and represents that:
  - 3.1 **Lease Effective**. The Lease has been duly executed and delivered by Lessee and, subject to the terms and conditions thereof, the Lease is in full force and effect, the obligations of Lessee thereunder are valid and binding and there have been no modifications or additions to the Lease, written or oral;
  - 3.2 **No Default**. To the best of Lessee's knowledge, as of the date hereof: (i) there exists no breach, default, or event or condition which, with the giving of notice or the passage of time or both, would constitute a breach or default under the Lease; and (ii) there are no existing claims, defenses or offsets against rental due or to become due under the Lease;
  - 3.3 **Entire Agreement**. The Lease constitutes the entire agreement between Lessor and Lessee with respect to the Property, and Lessee claims no rights with respect to the Property other than as set forth in the Lease;
  - 3.4 **No Right of First Refusal or Option to Purchase**. The Lease does not grant to Lessee any right of first refusal, or option to purchase, with respect to all or any portion of the Property; and
  - 3.5 **No Prepaid Rent**. No deposits or prepayments of rent have been made in connection with the Lease, except as follows: None.
4. **ADDITIONAL AGREEMENTS**. Lessee covenants and agrees that, during all such times as Lender is the Beneficiary under the Deed of Trust:

EXHIBIT G

AMENDED AND RESTATED MASTER LAND AND BUILDING LEASE

- 4.1 **Notice of Default.** Lessee will notify Lender in writing concurrently with any notice given to Lessor of any default by Lessor under the Lease, and Lessee agrees that Lender has the right (but not the obligation) to cure any breach or default specified in such notice within the time periods set forth below and Lessee will not declare a default of the Lease, as to Lender, if Lender cures such default within fifteen (15) days from and after the expiration of the time period provided in the Lease for the cure thereof by Lessor; provided, however, that if such default cannot with diligence be cured by Lender with-in such fifteen (15) day period, the commencement of action by Lender within such fifteen (15) day period to remedy the same shall be deemed sufficient so long as Lender pursues such cure with diligence;
- 4.2 **Assignment of Rents.** Upon receipt by Lessee of written notice from Lender that Lender has elected to terminate the license granted to Lessor to collect rents, as provided in the Deed of Trust, and directing the payment of rents by Lessee to Lender, Lessee shall comply with such direction to pay and shall not be required to determine whether Lessor is in default under the Loan and/or the Deed of Trust.
- 4.3 **Certain Actions Not Binding on Lender**. Lender shall not be bound by any modification, amendment, termination or cancellation of the Lease (in whole or in part) that was effected without Lender's prior written consent.
5. **ATTORNTMENT.** In the event of a foreclosure under the Deed of Trust, Lessee agrees for the benefit of Lender (including for this purpose any transferee of Lender or any transferee of Lessor's title in and to the Property by Lender's exercise of the remedy of sale by foreclosure under the Deed of Trust), upon the receipt by Lessee of written notice of such foreclosure, as follows:
- 5.1 **Payment of Rent.** Lessee shall pay to Lender all rental payments required to be made by Lessee pursuant to the terms of the Lease for the duration of the term of the Lease;
- 5.2 **Continuation of Performance.** Lessee shall be bound to Lender in accordance with all of the provisions of the Lease for the balance of the term thereof; provided that the Lease shall be deemed not to include any modification, amendment, termination or cancellation of the Lease (in whole or in part) that was effected without Lender's prior written consent; and Lessee hereby attorns to Lender as its landlord, and Lender hereby accepts such attornment, such attornment to be effective and self-operative without the execution of any further instrument immediately upon Lender succeeding to Lessor's interest in the Lease and giving written notice thereof to Lessee;

EXHIBIT G

AMENDED AND RESTATED MASTER LAND AND BUILDING LEASE



- 5.3 **No Offset.** Lender shall not be liable for, nor subject to, any offsets or defenses which Lessee may have by reason of any act or omission of Lessor under the Lease with respect to the period preceding the effectiveness of the attornment provided for herein, nor for the return of any sums which Lessee may have paid to Lessor under the Lease (a) as and for security deposits, rentals paid more than one (1) month before the time when they became due under the lease, or otherwise, except to the extent that such sums are actually delivered by Lessor to Lender and applied to amounts due in respect of the Loan (or held by Lender as collateral therefor); and, for purposes of determining the rentals due under the Lease, any amount paid in respect of rentals paid more than one (1) month before the time such amount became due under the Lease and not delivered by Lessor to Lender and applied to amounts due in respect of the Loan (or held by Lender as collateral therefor) shall be treated as if they had not been paid; or (b) any payment made by Lessee to Lessor in consideration of any modification, termination or cancellation of the Lease (in whole or in part) without Lender's prior written consent.
- 5.4 **Subsequent Transfer.** If Lender, by succeeding to the interest of Lessor under the Lease, should become obligated to perform the covenants of Lessor thereunder, then, upon any further transfer of Lessor's interest by Lender, all of such obligations shall terminate as to Lender.
6. **NON-DISTURBANCE.** In the event of a foreclosure under the Deed of Trust, so long as there shall then exist no "Event of Default" on the part of Lessee under (and as defined in) the Lease, Lender agrees for itself and its successors and assigns that the leasehold interest of Lessee under the Lease shall not be extinguished or terminated by reason of such foreclosure, but rather the Lease shall continue in full force and effect in accordance with the terms thereof except as modified or limited by this Agreement (including, without limitation, the provisions of Sections 4.3 and 5.2 hereof), and Lender shall recognize and accept Lessee as tenant under the Lease subject to the terms and provisions of the Lease except as modified or limited by this Agreement.
7. **MISCELLANEOUS.**
- 7.1 **Heirs, Successors, Assigns and Transferees.** The covenants herein shall be binding upon, and inure to the benefit of, the heirs, successors and assigns of the parties hereto; and
- 7.2 **Notices.** All notices or other communications required or permitted to be given pursuant to the provisions hereof shall be deemed served upon delivery or, if mailed, upon the first to occur of receipt or the expiration of three (3) days after deposit in United States Postal Service, certified mail,

EXHIBIT G

AMENDED AND RESTATED MASTER LAND AND BUILDING LEASE

postage prepaid and addressed to the address of Lessee or Lender appearing below:

**“Owner”:**

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

**“Lessee”:**

[ \_\_\_\_\_ ]  
120 Chula Vista  
Hollywood Park, TX 78232  
Attention: Real Estate Department  
Telephone: (210) 403-3725

with a copy to:

[ \_\_\_\_\_ ]  
120 Chula Vista  
Hollywood Park, TX 78232  
Attention: President  
Telephone: (210) 403-3725

**“Lender”:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Loan No.: \_\_\_\_\_

provided, however, any party shall have the right to change its address for notice hereunder by the giving of written notice thereof to the other party in the manner set forth in this Agreement; and

7.3 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which

EXHIBIT G  
AMENDED AND RESTATED MASTER LAND AND BUILDING LEASE

together shall constitute and be construed as one and the same instrument;  
and

- 7.4 **Remedies Cumulative.** All rights of Lender herein to collect rents on behalf of Lessor under the Lease are cumulative and shall be in addition to any and all other rights and remedies provided by law and by other agreements between Lender and Lessor or others; and
- 7.5 **Paragraph Headings.** Paragraph headings in this Agreement are for convenience only and are not to be construed as part of this Agreement or in any way limiting or applying the provisions hereof.
- 7.6 **Lender's Consent.** If the Lease is being entered into by Owner after the making of the Loan, Lender hereby consents to Owner's entry into the Lease.
- 7.7 **Owner's Consent.** By its execution and delivery of this Agreement, Owner consents to, and authorizes Lessee to comply with, each of the provisions hereof.

**INCORPORATION.** Exhibit A and Lease Guarantor's Consent are attached hereto and incorporated herein by this reference.

[NO FURTHER TEXT ON THIS PAGE]

EXHIBIT G  
AMENDED AND RESTATED MASTER LAND AND BUILDING LEASE

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

**NOTICE: THIS SUBORDINATION AGREEMENT CONTAINS A PROVISION WHICH ALLOWS THE PERSON OBLIGATED ON YOUR REAL PROPERTY SECURITY TO OBTAIN A LOAN A PORTION OF WHICH MAY BE EXPENDED FOR OTHER PURPOSES THAN IMPROVEMENT OF THE LAND.**

**IT IS RECOMMENDED THAT, PRIOR TO THE EXECUTION OF THIS AGREEMENT, THE PARTIES CONSULT WITH THEIR ATTORNEYS WITH RESPECT HERETO.**

**“OWNER”**

[ \_\_\_\_\_ ],

a [ \_\_\_\_\_ ]

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

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

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

**“LENDER”**

[ \_\_\_\_\_ ]

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

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

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

**“LESSEE”**

[ \_\_\_\_\_ ],

a [ \_\_\_\_\_ ]

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

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

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

**(ALL SIGNATURES MUST BE ACKNOWLEDGED)**

EXHIBIT G

AMENDED AND RESTATED MASTER LAND AND BUILDING LEASE





**LEASE GUARANTOR'S CONSENT**

The undersigned ("Lease Guarantor") consents to the foregoing Subordination Agreement; Acknowledgment of Lease Assignment, Attornment and Non-Disturbance Agreement and the transactions contemplated thereby and reaffirms its obligations under the lease guaranty ("Lease Guaranty") dated \_\_\_\_\_, 20\_\_\_. Lease Guarantor further reaffirms that its obligations under the Lease Guaranty are separate and distinct from Lessee's obligations.

AGREED AS OF THE FIRST DATE WRITTEN ABOVE:

**"LEASE GUARANTOR"**

Buffets, LLC, a Minnesota limited liability company, formerly known as Buffets, Inc.

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

EXHIBIT G  
AMENDED AND RESTATED MASTER LAND AND BUILDING LEASE

**EXHIBIT A**

**DESCRIPTION OF PROPERTY**

**EXHIBIT G**

**AMENDED AND RESTATED MASTER LAND AND BUILDING LEASE**

LA1 2037116

4815-1665-5921.7



## SCHEDULE 1

### RESTAURANT EQUIPMENT

The term "Restaurant Equipment" shall include without limitation, with respect to each Demised Property, all of the following, whether now or hereafter owned or acquired by, or in which Tenant has any interest (whether unattached or attached by bolts and screws and/or by utility connections): décor items, office equipment, computers, POS machines, tables, chairs, seating stations, bus stations, beverage stations, grill areas, host stations, serving stations and equipment, steam tables, warming tables, stoves, ovens, fryers, ranges, grills, dishwashing equipment, non-built in shelving and racking, decorative light fixtures, stereo equipment, furniture, trade fixtures (including, but not limited to, window grills and countertops) containing protected intellectual property owned by or licensed to Tenant, remote or movable refrigeration and freezer systems, signage panels, building lettering, fixtures (including, but not limited to, window grills and countertops) containing protected intellectual property owned by or licensed to Tenant, neon signage, food and customer service equipment, removable equipment, any and all inventory existing within or upon any Demised Property (including, without limitation, supplies, foods and beverages), and other similar type items of personal property now owned, acquired, held or used by Tenant in its restaurant operations, and all additions to, substitutions for and replacements of the foregoing.

## SCHEDULE 1

### AMENDED AND RESTATED MASTER LAND AND BUILDING LEASE