

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 # 392

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?** Benchmark-Clarence Associates 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? <small>Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)</small>	Where should notices to the creditor be sent?	Where should payments to the creditor be sent? (if different)
	<u>James J. Zawodzinski, Jr., Esq.</u> Name <u>140 Pearl Street Suite 100</u> Number Street <u>Buffalo NY 14202</u> City State ZIP Code Contact phone <u>(716) 856-4000</u> Contact email <u>jzawodzi@hodgsonruss.com</u> Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____	_____ Name _____ Number Street _____ City State ZIP Code _____ Contact phone _____ Contact email

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

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

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

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

7. How much is the claim? \$ 173,732.30. 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.
Real Estate Lease

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. \$ 173,732.30

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

Jeffrey A. Withee

Signature

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

Name Jeffrey A. Withee
First name Middle name Last name

Title Vice President of manager, Benchmark Properties Management Corp.

Company Benchmark-Clarence Associates LLC
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address 4053 Maple Road
Number Street

Amherst NY 14226
City State ZIP Code

Contact phone (716) 833-4986 Email jwithee@benchmarkgrp.com

Attachment 1 - Rider.pdf

Description -

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:

Chapter 11

FRESH ACQUISITIONS, LLC¹

Case No.: 21-30721
(Jointly Administered)

Debtors.

RIDER TO PROOF OF CLAIM

Benchmark-Clarence Associates LLC (“Landlord”), submits this Proof of Claim (“Claim”) against OCB Restaurant Company, LLC (the “Debtor”), a debtor under Case No. 21-30726, jointly administered under Case No. 21-30721, for a claim in an amount not less than \$173,732.30 for past due rents, water bills, insurance, taxes and related fees from December 20, 2019, through April 20, 2021, as a result of the surrender and rejection of a Lease Agreement dated June 15, 1993 (the “Prime Lease Agreement”), between Clarence Mall Properties (“Original Landlord”) and Buffets, Inc. (the “Original Tenant”) for a building located at 4401 Transit Road, Clarence, New York 14221 (the “Premises”), as affected by the Letter Agreement on Lease dated June 16, 1993, between Original Landlord and Original Tenant (the “Letter Agreement”), as further affected by the Memorandum of Lease dated March 17, 1994, between Original Landlord and Original Tenant (the “Memorandum” and collectively with the Prime Lease Agreement, and Letter Agreement, the “Original Lease Documents”).

On July 14, 1994, the Original Tenant assigned its title, rights, and interests in the Original Lease Documents to OCB Realty Company (the “Assignee”) pursuant to an Assignment and Assumption of Lease entered into on July 14, 1994 (the “Assignment of Lease”). On July 14, 1994, the Assignee also entered into a Sublease with Debtor (the “Sublease”), as guaranteed by the Original Tenant on July 14, 1994 (the “Guaranty” and collectively with the Original Lease Documents, Assignment of Lease, and Sublease, the “Lease”).

The Lease was affected by the First Amendment to Lease entered into on December 21, 2005, between Benchmark Main-Transit Associates, LLC (“BMTA”) and Debtor (the “First Amendment”), and on August 9, 2007, BMTA assigned its title, rights, and interests in the Lease to Landlord pursuant to an Assignment and Assumption of Leases (the “Benchmark Assignment of Lease”). The Lease was further affected by the Second Amendment to Lease,

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtors’ taxpayer identification number are as follows: Alamo Fresh Payroll, LLC (1590); Fresh Acquisitions, LLC (2795); Alamo Ovation, LLC (9002); Buffets, LLC (2294); Hometown Buffet, Inc. (3002); Tahoe Joe’s Inc. (7129); OCB Restaurant Company, LLC (7607); OCB Purchasing, Co. (7610); Ryan’s Restaurant Group, LLC (7895); Fire Mountain Restaurants, LLC (8003); Food Management Partners, Inc. (7374); FMP SA Management Group, LLC (3031); FMP-Fresh Payroll, LLC (8962); FMP-Ovation Payroll, LLC (1728); and Alamo Buffets Payroll, LLC (0998). The Debtors’ principal offices are located at 2338 N. Loop 1604 W., Suite 350, San Antonio TX, 78248, United States.

entered into on June 15, 2020, between Landlord and Debtor (the “Second Amendment”). Pursuant to the terms and conditions of the Lease, on July 28, 2018, Debtor served a written notice to renew the Lease on the Landlord (“Lease Renewal Notice”) to extend the term of their Lease until December 31, 2023 (the “Expiration Date”).

On April 8, 2021, Debtor notified Landlord that Debtor has ceased operations and surrendered possession of the Premises (the “Lease Surrender Letter”), the Debtor subsequently filed for chapter 11 bankruptcy protection on April 20, 2021 (the “Petition Date”) in the United States Bankruptcy Court, Northern District of Texas (the “Court”). On April 23, 2021, the Court entered an order authorizing the rejection of certain leases and authorizing the abandonment of certain property (the “Order”), pursuant to which, as of the Petition Date, the Lease was effectively rejected. The following documents are being filed in support of the Claim:

- Exhibit A – Lease Agreement;
- Exhibit B – Letter Agreement on Lease;
- Exhibit C – Memorandum of Lease;
- Exhibit D – Assignment and Assumption of Lease;
- Exhibit E – Sublease;
- Exhibit F – Guaranty of Lease;
- Exhibit G – First Amendment to Lease;
- Exhibit H – Benchmark Assignment and Assumption of Leases;
- Exhibit I – Second Amendment to Lease;
- Exhibit J – Lease Renewal Notice;
- Exhibit K – Lease Surrender Letter;
- Exhibit L – Order Authorizing Rejection of Lease; and
- Exhibit M – Account Statement in the amount of \$173,732.30.

Landlord reserves the right to amend and/or supplement this Claim at any time and in any manner and/or to file additional proofs of claim for any additional amounts and/or claims that may be based on information not yet known, or the same or additional documents or grounds of liability, including, but not limited to, additional administrative expenses arising after the petition date.

This Claim is filed to protect Landlord from forfeiture of any claim it may have. Filing of this Claim is not (a) a waiver or release of Landlord’s rights, claims or defenses against any person, entity or property; (b) a waiver or release of Landlord’s right to have any and all final orders in any and all non-core matters entered only after *de novo* review by a United States District Judge; (c) a consent by Landlord to the jurisdiction of this Court for any purpose other than with respect to this Claim; (d) an election of remedy; (e) a waiver or release of any rights which Landlord may have to a jury trial; or (f) a waiver of the right to move to withdraw the reference with respect to the subject matter of this Claim, any objection thereto or any other proceedings which may be commenced in these cases against or otherwise involving Landlord, including without limitation, any adversary proceeding that was or may be commenced by any party or committee in this case.

Attachment 2 - Benchmark - OCB - Exhibit A to Rider.PDF

Description -

Exhibit “A”

LEASE

BY AND BETWEEN

BUFFETS, INC., AS TENANT,

AND

CLARENCE MALL PROPERTIES, AS LANDLORD

FOR SPACE IN

CLARENCE MALL
CLARENCE, NEW YORK

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EXHIBIT A	Site Plan
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EXHIBIT D	Rules and Regulations
EXHIBIT E	Memorandum of Lease
EXHIBIT F	Storage Tanks
EXHIBIT G	Non-Disturbance Agreement

L E A S E

This Lease is made and entered into this ____ day of _____, 19__, by and between CLARENCE MALL PROPERTIES, a New Jersey limited partnership ("Landlord") and BUFFETS, INC., a Minnesota corporation ("Tenant").

W I T N E S E T H :

1. Premises and Shopping Center. Subject to the terms and conditions of this Lease, Landlord leases to Tenant and Tenant leases from Landlord the premises consisting of approximately **ten thousand sixty (10,060)** square feet of leasable area ("Premises"), as cross-hatched on the site plans attached hereto as Exhibit A, which Premises is part of the shopping center development known as **Clarence Mall** located at **Transit Drive and Main Street** consisting of approximately **two hundred fifty thousand five hundred forty-one (250,541)** square feet of leasable area, inclusive of the Premises ("Shopping Center"), as outlined in red on the site plan attached hereto as Exhibit A and as legally described in Exhibit B attached hereto. In the event Tenant uses an enclosed garbage area, such area shall not be considered a portion of the Premises and rent shall not be payable thereon.

2. Term. This Lease shall be for a term of Fifteen (15) full Lease Years and any Partial Lease Year commencing either (i) one hundred fifty (150) days after the last to occur of: (a) the date Landlord approves Tenant's Plans (as defined below); (b) the date Landlord tenders possession of the Premises to Tenant; (c) the date Landlord provides Tenant with a nondisturbance agreement from the secured party under the existing first mortgagee or deed of trust with respect to the Shopping Center on terms and conditions reasonably satisfactory to Tenant and such secured party; and (d) the date Tenant obtains all necessary governmental permits and approvals concerning the construction and operation of the Premises, or (ii) the day Tenant opens the Premises for business, whichever comes first (the "Commencement Date"), and ending Fifteen (15) Lease Years after the last day of the First Partial Lease Year of the Term (the "Expiration Date"). Promptly following the Commencement Date, Landlord and Tenant shall enter into and record a memorandum of this Lease as set forth in Section 39G of this Lease. Following Landlord's approval of Tenant's Plans, Tenant shall promptly apply for and diligently pursue all necessary governmental permits and approvals concerning the construction and operation of the Premises. Notwithstanding anything in this Lease to the contrary, in the event Tenant has not obtained all necessary governmental permits and approvals concerning the construction and operation of its intended business in the Premises within one hundred fifty (150) days after Tenant has made application therefor (the "Permitted Period"), either Landlord or Tenant may terminate this Lease by delivery of written notice to the other party, so long as said notice is

INITIALS:

RS

received by the other party prior to the receipt by Tenant of all necessary permits and approvals; provided, however, Landlord and Tenant may mutually agree to extend the Permitted Period if Tenant is diligently pursuing and cooperating with the appropriate authorities for said permits and approvals. Tenant agrees to allow the existing tenant currently occupying the Premises to continue to occupy the Premises until Tenant obtains all necessary permits and approvals; provided, however, Landlord shall use its best efforts to tender possession of the Premises to Tenant within thirty (30) days after the first day of the month subsequent to the day Tenant receives all necessary governmental permits and approvals.

Landlord shall give Tenant written notice of its intent to tender possession of the Premises not less than seven (7) days prior to such tender of possession ("Notice of Tender"). It is presently estimated that the Premises will be available by July 1, 1993 (the "Target Date"), but such date is merely a target date, and Tenant agrees to accept Landlord's tender of possession when the Premises is available; provided, however, Landlord shall not tender possession of the Premises prior to such date; further provided, however, in the event Landlord has not given Notice of Tender within ninety (90) days after the Target Date, Tenant may elect to terminate this Lease upon thirty (30) days' written notice to Landlord, as long as said notice is received by Landlord prior to the receipt by Tenant of the Notice of Tender.

Tenant shall have two (2) options (the "Extension Option(s)") to renew and extend the Term for two (2) additional periods of five (5) years each (each, an "Extended Term"). The Extension Options shall be exercised by Tenant giving Landlord written notice thereof at least six (6) months prior to the end of the initial Term or previous Extended Term, as the case may be. During the Extended Term(s), all terms and conditions of this Lease shall remain in full force and effect except the Expiration Date shall be appropriately extended and the rent pursuant to Section 6 of this Lease and the expense limitation pursuant to Section 9C of this Lease shall be adjusted.

3. Lease Year. "Lease Year" shall mean that portion of the Lease Term consisting of the period from January 1 through December 31. Any portion of the Lease Term which is less than a Lease Year shall be a "Partial Lease Year." The portion of the Lease Term commencing on the Commencement Date and ending on the following December 31 shall be the "First Partial Lease Year."

RB

4. Landlord's Work. Landlord shall remove from the Premises all Hazardous Materials, as defined in Section 3' of this Lease.

Subject to Landlord's repair obligations pursuant to Section 15A of this Lease, Tenant acknowledges that Tenant is accepting the Premises in an "as is" condition, with the exception of Landlord's removal of all Hazardous Materials from the Premises, and with a further exception that Landlord warrants the availability to the Premises of sufficient electrical, water, sewer and natural gas capacities for Tenant's use including the following: (i) one thousand (1,000) amp electrical service, at 120/208 volts, three (3) phase including distribution panel (ii) three million (3,000,000) BTUs of natural gas at pressure equal to at least one-half (1/2) pound, (iii) two (2) inch water supply line at a pressure equal to at least fifty (50) pounds, (iv) a single four (4) inch sewer line at a minimum depth of forty-eight (48) inches. Landlord shall also provide access, within one hundred (100) feet of the Premises, to sixty (60) Amps of temporary electrical service at 120/208 volts with the usage costs to be paid by Tenant. Upon Landlord's Notice of Tender, Tenant shall take physical possession of the Premises, subject only to Landlord's removal of Hazardous Materials in accordance with this Section 4. Within twenty (20) days after the date of this Lease, Landlord shall deliver to Tenant any plans and space layouts for the Premises which Landlord may have in its possession.

5. Tenant's Work. Tenant agrees that upon Landlord tendering possession of the Premises to Tenant, that Tenant, at its sole cost and expense, will promptly perform all work within the Premises required to prepare the same for the conduct of Tenant's business therein ("Tenant's Work"). It is understood and agreed that upon Tenant's or its employees, agents or contractors entering the Premises prior to the Commencement Date, for any purpose, including without limitation, the performance of Tenant's Work, all of the covenants and conditions of this Lease shall apply to the parties as if the Lease Term had begun at such time with the exception of those provisions as to Minimum Rent, Percentage Rent, Additional Rent and any other charges payable by Tenant, which shall go into effect as of the Commencement Date, even if Tenant's Work is not completed; provided, however, the Commencement Date shall be delayed by one (1) day for each day, if any, that Tenant shall be delayed in the performance or completion of Tenant's Work by the actions or inactions of Landlord which directly causes such delay.

RB

Prior to the commencement of Tenant's Work, or any alterations or additions in, on or to the Premises, Tenant shall deliver to Landlord, for its written approval, all drawings, plans and specifications for Tenant's Work or any addition or alteration (collectively referred to as "Plans"), which written approval shall not be unreasonably withheld or unduly delayed. The Plans shall be deemed approved if Landlord has not objected thereto in writing within thirty (30) days after Tenant's submission of the Plans to Landlord. All of Tenant's Work or any addition or alteration to the Premises shall conform to the approved Plans and any changes thereto approved in writing by Landlord.

Tenant's Work, any alteration or addition, together with all repairs required to be made by Tenant pursuant to this Lease, shall be made in a good and workmanlike manner and shall comply with all applicable federal, state and local codes and ordinances. Tenant shall obtain all necessary permits from the appropriate governmental authorities. In the event a lien is filed against the Premises or Shopping Center by reason of Tenant's Work or any alteration, addition or repair to the Premises made by or at the order of Tenant, Tenant shall cause such lien to be discharged within thirty (30) days after the date Tenant receives notice of such lien except that Tenant shall be allowed to contest such lien; provided, however, Tenant shall cause such lien to be bonded within thirty (30) days after Tenant receives notice that such lien is filed and Tenant hereby agrees to hold Landlord harmless from and against any and all claims and demands by contractors or other third parties against the Premises or Shopping Center relating to or arising out of such work, alteration, addition or repair. In the event Tenant does not discharge or cause to be bonded, such lien within thirty (30) days after Tenant receives notice of such lien, Landlord may, at its option, discharge such lien and Tenant shall reimburse Landlord therefor upon demand.

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

Tenant shall use reasonable efforts not to substantially disrupt other tenants in the Shopping Center during the completion of Tenant's Work. Further, Tenant agrees to limit its contractors' use of the Common Areas (as defined below) to the "Staging Area" as outlined in green on Exhibit A and any other parts of the Common Areas reasonably required to bring utilities to the Premises.

JTB

As part of Tenant's Work, Tenant shall, at Tenant's sole cost and expense including all of Tenant's professional fees and building permit fees, construct an addition to be of approximately fifteen hundred (1,500) additional square feet of leasable area ("Tenant's Expansion Area") to the Premises tendered by Landlord to Tenant which consists of approximately eight thousand five hundred sixty (8,560) square feet of leasable area. Tenant's addition shall be compatible with the current architectural design of the Shopping Center. Tenant's Expansion Area is cross-hatched in blue on the site plans attached hereto as Exhibit A. For all purposes set forth in this Lease, the Tenant's Expansion Area and the improvements from time to time constructed thereon shall at all times be included within the "Premises" as such term is defined and used in this Lease; provided, however, in no event shall Tenant pay Minimum Rent or Additional Rent, except Tenant shall pay Taxes pursuant to Section 8 of this Lease, on Tenant's Expansion Area on more than eight thousand five hundred sixty (8,560) square feet of leaseable area in the Premises.

6. Rent.

A. Minimum Rent. Tenant agrees to pay to Landlord, without demand, a guaranteed rental ("Minimum Rent") equal to the following amounts per annum (based on eight thousand five hundred sixty (8,560) square feet of the Premises):

First Partial Lease Year and Lease Years	
1 through 5:	\$ 64,200.00
Lease Years 6 through 10:	\$ 68,480.00
Lease Years 11 through 15:	\$ 72,760.00
First Extension (Lease Years 16 through	
20):	\$ 77,040.00
Second Extension (Lease Years 21 through	
25):	\$ 81,320.00

payable in equal monthly installments of one-twelfth of the Minimum Rent each, on or before the first day of each month in advance to Landlord at c/o Brookhill Management Corp., 10 East 53rd Street, New York, NY 10022, or at such other place as Landlord may from time to time designate in writing, without deductions or setoff whatsoever, except as provided in this Lease. For Partial Lease Years or partial lease months, Minimum Rent shall be prorated as provided in Section 6D of this Lease. Minimum Rent shall be adjusted based on the actual leasable area of the Premises, with any such change being effective the first day of the first calendar month following the date of such change; provided, however, in no event shall the total Minimum Rent for any period of the Term be more than the amounts set forth above, respectively (which are based on eight thousand five hundred sixty (8,560) square feet of leasable area of the Premises only).

B. Percentage Rent. In addition to the Minimum Rent provided for in Section 6A of this Lease, Tenant agrees to pay percentage rent ("Percentage Rent") to Landlord in an amount equal to three percent (3%) of Gross Sales (as defined below) for a particular Lease Year in excess of the following amounts per Lease Year:

First Partial Lease Year and Lease Years	
1 through 5	\$ 2,400,000.00
Lease Years 6 through 10	\$ 2,600,000.00
Lease Years 11 through 15	\$ 2,800,000.00
First Extension (Lease Years 16 through 20)	\$ 3,000,000.00
Second Extension (Lease Years 21 through 25)	\$ 3,200,000.00

For Partial Lease Years or partial lease months, Percentage Rent shall be prorated as provided in Section 6D of this Lease. **Tenant shall receive a credit ("Shopping Center Expense Credit") against Percentage Rent payable by Tenant during the Lease Year or Partial Lease Year for Tenant's Shopping Center Expense paid in excess of the amounts set forth in Section 9C.**

The term "Gross Sales" means the gross amount received by Tenant from all orders placed and filled, and all sales and services made or rendered, in or from the Premises, whether for cash or credit. Gross Sales shall not include:

- (a) Receipts from vending machines, coin-operated amusement devices and pay telephones.
- (b) Receipts from the sale of gift certificates until such are redeemed.
- (c) Any meal or discounted sale to an employee of Tenant.
- (d) Any refund which is made to any customer.
- (e) Any sales tax or other payment required by governmental law or regulation.
- (f) Receipts from orders placed at the Premises, but filled elsewhere.
- (g) Bad debts and "nonsufficient funds" checks.
- (h) Sales of fixtures or equipment not in the ordinary course of business.
- (i) Any charge paid by Tenant as a finance charge for credit card services.

INITIALS:


Percentage Rent shall be due and payable annually within forty-five (45) days after the end of the applicable Lease Year. Concurrently with the payment of Percentage Rent, Tenant shall deliver a report of its Gross Sales for the applicable Lease Year. Said report shall be certified by an authorized officer of Tenant and kept in accordance with Tenant's usual accounting practices. Said report and all other financial information that Tenant gives to Landlord (including with regard to Tenant's Gross Sales) shall be confidential, and Landlord shall not disclose said report or any other such financial information of Tenant (except to any of Landlord's mortgagees with respect to the Shopping Center or to any potential purchasers of the Shopping Center) without, in each instance, Tenant's prior written consent. Should Landlord require an audit of Tenant's records of Gross Sales pertaining to the Premises, Tenant agrees to make available to Landlord, at Tenant's corporate offices, all of Tenant's books and records necessary to accomplish said audit. Landlord's right to audit such records shall be limited to the current Lease Year and the two (2) Lease Years immediately preceding the current Lease Year, and such right may be exercised by Landlord only one time in any consecutive twelve (12) month period. Tenant shall be allowed reasonable time to collect records and prepare for an audit.

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

"Tenant's Proportionate Share" as referred to in this Lease shall be a fraction, the numerator of which shall be **eight thousand five hundred sixty (8,560)**, (the gross leasable area of the Premises less Tenant's Expansion Area) and the denominator of which is the gross leasable area of the Shopping Center (which as of the date of this Lease is two hundred fifty thousand five hundred forty-one (250,541) square feet). Additional Rent shall be adjusted based on the actual leasable area of both the Premises and the Shopping Center, with any such change being effective as of the first day of the first calendar month following the date of such change; provided, however, in no event shall the leasable area of the Premises for purposes of this calculation be more than eight thousand five hundred sixty (8,560) square feet. Leasable area shall be computed by measuring from the outside face of corridor walls to the outside face of exterior walls and from the center line to center line of demising walls. No deduction or exclusion shall be made in the computation of leasable area by reason of interior partitions or other interior construction or equipment. **Notwithstanding anything in this Lease to the contrary, "Tenant's Proportionate Share" referred to in this Lease as it relates to Tenant's Tax**

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Expense shall be a fraction, the numerator of which shall be ten thousand sixty (10,060) square feet, (the gross leasable area of the Premises including Tenant's Expansion Area) and the denominator of which is the gross leasable area of the Shopping Center (which as of the date of this Lease is two hundred fifty thousand five hundred forty-one (250,541) square feet).

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

7. Failure to do Business. Subject to applicable laws and ordinances, from and after the date Tenant initially opens for business in the Premises, Tenant agrees to conduct its business in and operate one hundred percent (100%) of the Premises during the entire term of the Lease and any extension thereof on all days, except Christmas Eve and Christmas Day and due to inclement weather, during at least the following hours: 11:00 A.M. to 3:30 P.M. and 4:00 P.M. to 8:00 P.M. Tenant may extend such hours at its option and in such event shall not be responsible for the cost of any excess services during such extended hours except through Tenant's Shopping Center Expense.

8. Taxes.

A. Definition. The term "Taxes" as used herein shall include, to the extent due and payable during the Term of this Lease to any lawful taxing authority, real estate taxes, assessments (special or otherwise), interest on installment payments of Taxes and any other federal, state or local governmental tax or charge now or hereafter levied or assessed against the Shopping Center (but not including any franchise tax or any other taxes measured by Landlord's income or profits from the Shopping Center or the operation thereof, unless the same are imposed in lieu of real estate taxes or assessments, or any penalties for delinquent payments and not including any initial special assessments levied in connection with the original construction or any expansion of the Shopping Center). Taxes shall also mean any personal property taxes imposed upon the equipment of Landlord or machinery of Landlord located at and used in the operation or maintenance of the Shopping Center, and all costs and fees, including reasonable attorneys' and appraisers' fees incurred by Landlord in reasonably contesting Taxes and reasonably negotiating with public authorities as to the same. In the event that any Taxes may, at the option of the taxpayer, be paid in installments, such Taxes shall be deemed paid in installments over the maximum period permitted by the taxing authority assuming no additional costs or penalties are

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incurred and without being in default for non-payment of Taxes, and Taxes shall include only those installments payable with respect to the Term of this Lease. In this connection, to the best of Landlord's knowledge, Landlord warrants and represents to Tenant that neither the Shopping Center nor the Premises are presently subject to any special assessments, and Landlord has not received any notice from the appropriate authorities of any special assessments contemplated to come into effect against the Shopping Center or Premises during the Term of this Lease.

B. Payment. Tenant agrees to pay to Landlord, as Additional Rent as provided in Section 6C of this Lease, Tenant's pro rata share of Taxes which are due and payable during the term of this Lease or any extension thereof ("Tenant's Tax Expense"). Tenant's Tax Expense shall be determined by multiplying the Taxes by Tenant's Proportionate Share. Landlord's current estimate of Tenant's Tax Expense for the First Partial Lease Year, to be paid on a monthly basis, shall be the annual rate of \$1.03 per square foot of leasable area in the Premises.

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

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

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bill, then any overpayment made by the Tenant for the current year prior to the receipt of the Tax bill shall be credited to Tenant at the time of delivery of the Tax bill. For Partial Lease Years or partial lease months, Tenant's Tax Expense shall be prorated as provided in Section 6D of this Lease. Tenant agrees to pay before delinquency any taxes levied or assessed upon Tenant's personal property located in the Premises.

Landlord agrees to monitor the Taxes paid with respect to the Shopping Center through the consultation of outside professionals and, based on the consultation of its outside professionals, Landlord shall make a tax appeal at the time Landlord deems appropriate and advisable to make such an appeal.

9. Operating Expenses.

A. Definition. The term "Operating Expenses" as used herein shall mean all costs and expenses paid or incurred by Landlord in operating, cleaning, equipping, protecting, lighting, heating, air conditioning, insuring, repairing and maintaining the Shopping Center and other costs paid or incurred by Landlord reasonably related to the operation of the Shopping Center. Operating Expenses shall include, but not be limited to: illumination and maintenance of pylon or Shopping Center directional signs within the Shopping Center; utilities; supplies; janitorial services; total employee compensation and benefits, including worker's compensation insurance for employees of Landlord devoted to the care of the Common Areas; garbage, snow and ice removal; insurance, including rent insurance and any other insurance required pursuant to Section 17B of this Lease or any mortgage or ground lease; maintenance and repairs, including those to any utility, security or lighting system located within or on the Shopping Center; landscaping; painting; lighting; amortization of equipment used in operation and maintenance of the Shopping Center; amortization of capital expenditures which as of the date incurred were reasonably intended and expected by Landlord to reduce the Operating Expenses of the Shopping Center; repairing, sealing and striping of parking lots and other areas; installation and operation of loudspeaker system and music program services; maintenance and repair of sprinkler systems; and, an amount equal to fifteen percent (15%) of the aggregate of the above expenses, except insurance, to cover administration, management, bookkeeping and accounting. Provided, however, notwithstanding anything in this Lease to the contrary, Operating Expenses shall not include: any costs properly classifiable as capital costs, or any amortization thereof, except the amortization of any capital improvements made to the Shopping Center which as of the date incurred were reasonably intended and expected by Landlord to reduce Operating Expenses; costs incurred in connection with the original construction or expansion of the Shopping Center, including any interest or payments on any financing; cost of correcting defects in the initial design or construction of the Shopping Center or expansion; any costs or

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expenses incurred by Landlord in bringing the Shopping Center, or any portion thereof, into compliance with any applicable federal, state or local statutes, codes, ordinances or rules; costs relating to the restoration and/or repair obligations of Landlord with respect to the Shopping Center or the Premises pursuant to Section 24 and/or Section 25 of this Lease; reserves for anticipated future expenses; legal and other fees; leasing commissions; advertising expenses; any items for which Landlord is reimbursed by insurance; any bad debt loss, rent loss or reserves for bad debts or rent loss; the cost of providing improvements within the Shopping Center of any other tenants; all interest or penalties incurred as a result of Landlord's failure to pay any bill as it shall become due; the cost of leasing anything other than items whose purchase price would be included in reimbursable expenses hereunder; any cost related to the operation of Landlord as an entity rather than the operating of the Shopping Center, including the cost and formation of the entity, internal accounting, legal matters, preparation of tax returns, etc.; the cost of garbage removal and maintenance and repair of common garbage areas if Tenant has an exclusive and enclosed garbage area which it maintains and repairs pursuant to Section 15B; the cost of any utility, maintenance, service or repair provided to any other premises in the Shopping Center; any Operating Expense incurred by Landlord with respect to other premises in the Shopping Center occupied or occupiable by other tenants of the Shopping Center.

B. Payment. Tenant agrees to pay to Landlord, as Additional Rent as provided in Section 6C of this Lease, Tenant's pro rata share of Operating Expenses incurred by Landlord during and for each Lease Year of the term of this Lease or any extension thereof ("Tenant's Shopping Center Expense"). Tenant's Shopping Center Expense shall be determined by multiplying Operating Expenses by Tenant's Proportionate Share.

Tenant's Shopping Center Expense shall be paid in monthly installments in advance on or before the first day of each calendar month in an amount reasonably estimated by Landlord at the commencement of each Lease Year ("Estimated Monthly Shopping Center Expense Payment"), which for the First Partial Lease Year the annual rate shall be \$0.92 per square foot of leasable area in the Premises. For Partial Lease Years or partial lease months, Tenant's Shopping Center Expense shall be prorated as provided in Section 6D of this Lease. Within ninety (90) days after the end of each Lease Year, Landlord shall furnish Tenant with a detailed statement prepared according to generally accepted commercial shopping center standards and which will itemize the various components and amounts of the Operating Expenses and specify the actual amount of Tenant's Shopping Center Expense for such period, the aggregate Estimated Monthly Shopping Center Expense Payments made by Tenant for such period, the deficiency or overage from such payments and the amount of Tenant's Estimated Monthly Shopping Center Expense Payment for

the then current Lease Year. Within thirty (30) days after the rendition of such statement by Landlord, Tenant shall pay to Landlord any deficiency shown on the statement for the prior Lease Year. If the statement indicates an overpayment by Tenant, then the amount so overpaid shall be paid to Tenant at the time of delivery to Tenant of the written statement of actual Operating Expenses. If the statement is rendered after the commencement of the Lease Year and there has been an increase in the Estimated Monthly Shopping Center Expense Payment for the current Lease Year, any deficiency in the payments already made by Tenant for the current Lease Year prior to the receipt of the statement shall be paid by Tenant with the first Estimated Monthly Shopping Center Expense Payment becoming due after the receipt of the statement. If there is a decrease in the Estimated Monthly Shopping Center Expense Payment for the current Lease Year, as shown on the statement, then any overpayment made by the Tenant for the current year prior to the receipt of the statement shall be paid to Tenant at the time of delivery of the written statement of actual Operating Expenses. Landlord shall use reasonable efforts to minimize Operating Expenses while at all times operating the Shopping Center in a first class manner.

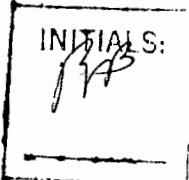
C. Limitation. Tenant shall receive a credit ("Shopping Center Expense Credit") against Percentage Rent payable by Tenant during the Lease Year or Partial Lease Year for Tenant's Shopping Center Expense paid in excess of the following sums in any Lease Year or Partial Lease Year:

First Partial Lease Year and Lease	
Years 1 through 5:	\$ 8,132.00
Lease Years 6 through 10:	\$ 10,272.00
Lease Years 11 through 15:	\$ 12,412.00
First Extension (Lease Years 16	
through 20):	\$ 14,552.00
Second Extension (Lease Years 21	
through 25):	\$ 16,692.00

Tenant shall deduct the Shopping Center Expense Credit from Percentage Rent payable hereunder.

For Partial Lease Years or partial lease months, these limitations and the Percentage Rent credit should be prorated as provided in Section 6D of this Lease.

10. Disputes. Any statement rendered by Landlord to Tenant for Tenant's Tax Expense and Tenant's Shopping Center Expense as respectively described in Sections 8 and 9 of this Lease shall be conclusive and binding on Tenant and deemed accepted by Tenant unless within nine (9) months after the receipt of such statement Tenant shall notify Landlord in writing of the items it disputes ("Notice of Dispute"); provided, however, such acceptance shall relate only to the calculations contained in said statements and shall not in any way derogate

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Tenant's right to challenge such statements on the basis of a contravention with the terms of this Lease reflected in such statements. If the dispute is not amicably settled between Landlord and Tenant within sixty (60) days after Landlord's receipt of the Notice of Dispute, either party may refer the disputed items to a reputable firm of independent certified public accountants, selected by Landlord and approved by Tenant, for a decision, and the decision of such firm shall be conclusive and binding upon Landlord and Tenant. The expenses involved in such determination shall be borne by the party against whom a decision is rendered by such accountants, provided that if more than one item is disputed and the decision shall be against both parties, then the expenses shall be apportioned according to the monetary value of the items decided against each party. If the dispute on any items shall be determined in Tenant's favor the amount of Tenant's overpayment shall be immediately refunded to Tenant. If the dispute on any items shall be determined in Landlord's favor, the amount of Tenant's underpayment shall immediately be paid by Tenant to Landlord. Tenant may request copies of invoices and audit and review the books and records of Landlord kept in connection with the Taxes and Operating Expenses, and Landlord agrees to make such invoices, books and records available to Tenant upon thirty (30) days notice. If any such audit shows that Tenant's Shopping Center Expense or Tenant's Tax Expense has been overstated by more than three percent (3%), Landlord shall immediately pay to Tenant the reasonable cost of such audit together with the total amount of such overstatement. Tenant's right to audit shall be limited to the current Lease Year and the two (2) Lease Years immediately preceding the current Lease Year. Such right shall only be exercised once in any consecutive twelve (12) month period.

11. Utilities. All utilities, including without limitation, gas, water, telephone, and electricity shall be provided to the Premises by either Landlord or the direct third party providers of such services. The cost of utilities which are not separately metered to the Premises shall constitute Operating Expenses. The cost of utilities which are separately metered to the Premises shall be paid by Tenant directly to the provider of such services on or before their due date, and Tenant agrees to protect and save Landlord harmless against any claim therefor. If utilities are submetered, in no event shall Tenant be required to pay a rate for any utility service to the Premises that is greater than the market rate charged by the direct third party provider of such utility service.

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

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temperature control during the hours that Tenant is open for business in such a manner as to maintain an adequate and comfortable temperature within the Premises.

In the event any utility supplied to the Premises by Landlord is interrupted for more than forty-eight (48) hours and Tenant is reasonably unable to conduct its business in all or a part of the Premises as a result thereof, Tenant shall be entitled to abatement of Minimum Rent, Percentage Rent and/or Additional Rent to the extent and for the period Tenant is unable to conduct its business in the Premises. To the extent that any such utility is interrupted for any reason beyond Landlord's control, Tenant shall only be entitled to such abatement to the extent that Tenant does not have insurance proceeds available to cover such rental payments and to the extent that Tenant is not entitled to reimbursement for such rental payments from any utility company. This paragraph shall not apply to utilities supplied directly to the Premises by third party utility providers.

12. Advertising and Promotion. If Landlord forms a merchants association or promotion fund, Tenant shall become a member thereof; provided, however, in no event shall Tenant be required to: (i) participate in any joint advertising or promotional event; (ii) pay more than ten cents (\$.10) per square foot of leasable area of the Premises during any Lease Year of the Term or any extension thereof as a contribution to any merchants association or promotion fund concerning the Shopping Center; or (iii) contribute to any such merchant's association or promotional fund if less than one hundred percent (100%) of the other tenants of the Shopping Center also contribute to such merchant's association or promotional fund, as the case may be.

13. Use of Common Areas. Tenant and its agents, employees, customers and invitees shall have the reasonable nonexclusive right in common with Landlord and all others to whom Landlord has or may hereafter grant rights, to use such sidewalks, roadways, public and common washrooms, corridors, parking facilities and other common areas and facilities as may from time to time exist and be generally available to all occupants of the Shopping Center (the "Common Areas"). Landlord shall at all times have full control, management and direction of the Common Areas and shall operate, maintain and repair the same in accordance with all applicable federal, state and local statutes, codes, ordinances or rules, and in any event in such a manner as Landlord in its reasonable discretion as the operator of a first class shopping center shall determine. Landlord reserves the right, at any time, to reasonably reduce, increase or otherwise change the size, number, location, layout and nature of the Common Areas and to change the name, number or designation by which the Shopping Center is commonly known; provided, however, that no such action by Landlord shall materially impair access to the Premises from Transit Road and Main Street,

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materially reduce visibility of the Premises or its signs from Transit Road, make the Premises less attractive or interfere in any way with Tenant's business in the Premises, cause additional structures to be constructed on top of the Premises, cause the relocation of the Premises, or reduce the parking immediately adjacent to the Premises (which is outlined in purple on Exhibit A, contains at least one hundred twenty (120) parking spaces and is referred to in this Lease and on Exhibit A as the "No Build Area") or the parking ratio of the Shopping Center below a ratio of the greater of five (5) parking spaces per one thousand (1,000) square feet of leasable area in the Shopping Center, or the minimum parking ratio required for the Shopping Center under any applicable governmental law, ordinance or rule (the "Required Parking Ratio"). Landlord represents and warrants that (i) the No Build Area shall, at all times during the Term or any Extended Terms of this Lease, contain at least one hundred twenty (120) parking spaces; (ii) no structure or building shall be constructed within the No Build Area outlined in purple on Exhibit A and (iii) for the remainder of the Term and any extension thereof, such area shall only be used and maintained for the purpose of a parking lot. With the exception of the buildings existing in the Shopping Center as of the date of this Lease, Landlord shall not construct any other building or structure within the Shopping Center except within the areas designated as Out Parcel No. 1, Out Parcel No. 2, Future Development "A" and Future Development "B" on Exhibit A; provided, however, any building or structure constructed in the area designated as Out Parcel No. 1 shall not exceed eighteen feet (18') in height and shall not contain a building footprint in excess of four thousand (4,000) square feet; further provided, that any building or structure constructed in the area designated as Out Parcel No. 2 shall not exceed twenty feet (20') in height and shall not contain a building footprint in excess of nine thousand one hundred (9,100) square feet.

14. Permitted Use; Exclusive Right.

A. Tenant's Use of the Premises. The Premises shall be used as a sit-down buffet-style restaurant which may, at the option of Tenant and subject to applicable laws and governmental regulation, serve alcohol. Tenant shall not do or permit anything to be done on, in or about the Premises or Shopping Center which in any way will obstruct or interfere with the rights of any other tenant or subtenant of the Shopping Center or use the Premises for any unlawful or improper purpose; provided, however, that Tenant shall not be in violation of this provision so long as it is using the Premises consistently with the above stated use clause. Tenant shall not commit waste upon the Premises and Tenant shall not do any act upon the Premises or make any use thereof which may make void or voidable any insurance on the Premises or Shopping Center and in the event any act upon the Premises or Shopping Center by Tenant or any use thereof by Tenant, including any unauthorized vacancy thereof,

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results in an increase or extra premium payable for insurance on the Premises or Shopping Center, said increase or extra premium shall be paid by Tenant upon demand by Landlord; provided, however, that Tenant's use of the Premises in accordance with the above stated use clause shall not trigger this provision. Tenant shall conduct its business from the Premises under its trade name, "Old Country Buffet" or any other name used by a majority of Tenant's restaurants in the State of New York.

B. Tenant's Exclusive Right. Tenant shall have the exclusive right to operate a sit-down buffet-style restaurant or cafeteria in the Shopping Center. Landlord covenants and agrees not to lease any space in the Shopping Center to (i) any other tenant whose primary business conducted in such space is the operation of a sit-down buffet-style restaurant or cafeteria, or (ii) any restaurant greater than four thousand (4,000) square feet or serving alcohol in Out Parcel No. 1 shown on Exhibit A, nor shall Landlord permit or consent, either explicitly or implicitly, to the operation of a sit-down buffet-style restaurant or cafeteria in the Shopping Center or to any restaurant greater than four thousand (4,000) square feet or serving alcohol in Out Parcel No. 1 shown on Exhibit A; provided, however, that this exclusive shall not apply to the following tenants of the Shopping Center: Hills Department Store, Burlington Coat Factory and Silo, each of whose current leases does not prohibit them from operating a buffet-style restaurant or cafeteria; further provided that Landlord agrees not to enter into any new Shopping Center leases without including a provision which would prevent said tenants from operating a buffet-style restaurant or cafeteria at the Shopping Center. If requested by Tenant, Landlord shall provide for the recording of a memorandum of this Lease which will include the exclusive right to operate a sit-down buffet-style restaurant or cafeteria as granted by this Section 14B. If at any time during the Term of this Lease Landlord shall be in violation of the provisions of this Section 14B, in addition to its other remedies available at law or in equity, Tenant, at its option exercised by delivering written notice to Landlord, shall be entitled to abatement of Minimum Rent, Percentage Rent and Additional Rent during such violation, and in lieu thereof Tenant shall pay to Landlord monthly as a gross rental for the Premises three percent (3%) of any Gross Sales during the period of violation.

15. Maintenance and Repairs of Shopping Center and Premises.

A. Landlord's Repair. Except as required to be performed by Tenant pursuant to Section 15B of this Lease, Landlord shall keep and maintain in good order, condition and repair all portions of the Shopping Center and Premises, including, without limitation the foundation, exterior walls, roof, slab floor, footings and all mechanical, electrical and utility systems located inside or outside the Premises which do

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(ii) its standard sign on any communal Shopping Center pylon with letters of no more than twenty-four (24") inches in height. In addition, Tenant may hang "coming soon" banners thirty (30) days prior to opening for business and "now open" banners thirty (30) days after opening for business on the front and sides of the Premises.

17. Insurance.

A. Tenant's Insurance. Tenant agrees to purchase, in advance, and to carry in full force and effect during the Term of this Lease and any extension thereof, at its sole expense, the following insurance:

- (i) Property insurance against loss by fire and other hazards covered by the so-called "all-risk" form of policy in an amount equal to the full replacement value of the storefront, Tenant's Work, alterations and improvements made by Tenant to the Premises and the equipment, stock in trade, fixtures, furnishings and other personal property located, leased or stored by it within the Premises.
- (ii) Commercial general liability insurance (on an Insurance Services Office form or equivalent) covering all acts of Tenant, its employees, agents, representatives and guests on or about the Premises, in a combined single limit amount of not less than Three Million and No/100 Dollars (\$3,000,000.00), and providing coverage on an "occurrence" rather than a "claims made" basis, which policy shall include, but not be limited to, coverage for Bodily Injury, Property Damage, Personal Liability and Contractual Liability (applying to this Lease).

Tenant may self insure with respect to plate glass. Where applicable, Tenant may maintain reasonable deductibles on the insurance required by this Section 17A. All of Tenant's insurance (except with respect to Tenant's equipment, stock in trade, fixture and furnishings and other personal property) shall name Landlord as an additional insured. All of Tenant's insurance shall provide for thirty (30) days' written notice to Landlord prior to cancellation, non-renewal or material modification. Certificates of all such insurance shall be delivered to Landlord prior to occupancy of the Premises by Tenant and at least thirty (30) days prior to the termination date of any existing policy. If Tenant fails to comply with the requests of this Section 17, Landlord may, but shall not be obligated to, obtain such insurance and keep the same in effect and Tenant shall pay Landlord the premium therefor upon demand.

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B. Landlord's Insurance. Landlord agrees to purchase in advance, and to carry in full force and effect during the Term hereof and any extension thereof, at its sole expense the following insurance:

- (i) Property insurance against loss by fire and other hazards covered by the so-called "all risk" form of policy covering the Shopping Center (including Landlord's Work, but exclusive of Tenant's leasehold improvements) in an amount equal to the full replacement value thereof. Said insurance shall include demolition and increased cost to rebuild coverages. If the Shopping Center includes steam or other equipment excluded from coverage pursuant to a boiler and machinery exclusion, boiler and machinery insurance in commercially reasonable amounts. If the Shopping Center or any part thereof is located in a designated official flood-hazardous area, flood insurance, insuring the Shopping Center to the maximum limit made available with respect to such buildings and improvements under the Federal Flood Disaster Protection Act of 1973, as amended, and the regulations issued thereunder.
- (ii) Commercial general liability insurance (on an Insurance Services Office form or equivalent) covering the Shopping Center, in a combined single limit amount of not less than Three Million and No/100 Dollars (\$3,000,000.00), and providing coverage on an "occurrence" rather than a "claims made" basis, which policy shall include, but not be limited to, coverage for Bodily Injury, Property Damage, Personal Liability, Contractual Liability (relating to this Lease) and Employer Liability, naming Tenant as an additional insured.

C. General. Landlord will provide Tenant with evidence of the insurance required by this Section 17B upon written request by Tenant. If any insurance required hereunder ceases to be available, or is available on terms so unacceptable that prudent landlords or tenants, as the case may be, generally do not carry such insurance, then in lieu of such insurance the pertinent party may carry the most comparable insurance which is available and generally carried by prudent parties. All policies of insurance required under this Section 17 may be in the form of blanket or umbrella policies so long as the Shopping Center or the Premises, as the case may be, are specifically designated therein, it being understood that the policy limits provided herein apply individually to each Premises or Shopping Center, as

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the case may be. Further, all insurance required hereunder shall be issued by financially responsible insurers. An insurer with a current A.M. Best Company rating of at least A:VII shall be conclusively deemed to be acceptable.

18. Waiver of Claims and Subrogation. Notwithstanding any other provision in this Lease to the contrary, Landlord and Tenant hereby release one another from any and all liability or responsibility (to the other or anyone claiming through or under them by way of subrogation or otherwise) for any loss or damage covered by a customary policy of the insurance required by Section 17A(i) or 17B(i) hereof (whichever is applicable), even if such loss or damage shall have been caused by the fault or negligence of the other party, or anyone for whom such party may be responsible.

19. Indemnification of Landlord. Tenant hereby agrees to protect, defend, indemnify and hold Landlord harmless against any and all claims, actions, damages, liability, causes of action, judgments, liens, costs and expenses in connection with injury or loss of life to person, or damage to property, arising out of the use, occupancy or operation of Tenant's business in the Premises or the condition of the Premises or any breach or default by Tenant in the performance of any term of this Lease on Tenant's part to be performed or any inaction or action of Tenant, its agents, concessionaires, contractors, employees or licensees in or about the Premises. In the event Landlord shall be made a party to any litigation or proceeding commenced by or against Tenant (except with respect to suits or litigation commenced by Tenant against Landlord as a result of a breach of this Lease by Landlord), then Tenant shall protect and hold Landlord harmless and shall pay all costs and expenses and reasonable attorneys' fees incurred or paid by Landlord in connection with such litigation or proceeding and shall satisfy any judgment or fines that may be entered against Landlord in such litigation or proceeding.

20. Indemnification of Tenant. Landlord hereby agrees to protect, defend, indemnify and hold Tenant harmless against any and all claims, actions, damages, liability, causes of action, judgments, liens, costs and expenses in connection with injury or loss of life to person, or damage to property, arising out of the use, occupancy or operation of the Landlord's business in the Shopping Center or the condition of the Shopping Center or any breach or default by Landlord in the performance of any term of this Lease on Landlord's part to be performed or any inaction or action of Landlord, its agents, concessionaires, contractors, employees or licensees in or about the Shopping Center. In the event Tenant shall be made a party to any litigation or proceeding commenced by or against Landlord (except with respect to suits or litigation commenced by Landlord against Tenant as a result of a breach of this Lease by Tenant), then Landlord shall protect and hold Tenant harmless and shall pay all costs and

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expenses and reasonable attorneys' fees incurred or paid by Tenant in connection with such litigation or proceeding and shall satisfy any judgment or fines that may be entered against Tenant in such litigation or proceeding.

21. Estoppel, Subordination, Nondisturbance and Attornment.

A. Estoppel. Each party agrees within twenty (20) days after request therefor to execute in recordable form and deliver to the requesting party, a statement in writing certifying, if correct, (a) that this Lease is in full force and effect; (b) confirming the Commencement and Expiration Dates of the Term; (c) certifying that Tenant is the occupant of the Premises and the date Tenant commenced operating Tenant's business therein; (d) that the Lease has not been assigned, modified, supplemented or amended except by such writings as shall be stated; (e) that rent is paid currently without any offset or defense thereto; (f) the amount of rent, if any, paid in advance; and (g) that the requesting party has fulfilled all its obligations under the Lease and that there are no known defenses or offsets against the requesting party's enforcement of this Lease except such as shall be stated. The requesting party warrants that Landlord or Tenant, as the case may be, and its respective mortgage lenders, lessors and/or purchasers shall be entitled to rely upon any such written declaration made by the other party.

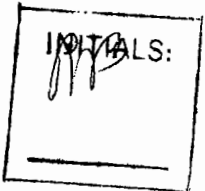
B. Subordination, Nondisturbance and Attornment. Provided that Tenant's use and occupancy of the Premises shall not be disturbed and all of Tenant's other rights under this Lease are fully recognized (unless Tenant's right of possession under this Lease shall have been terminated in accordance with the provisions of this Lease), Tenant agrees (i) that this Lease is and shall be subject and subordinate at all times to all ground or underlying leases which now exist or may hereafter be executed affecting the Premises and/or the Shopping Center and all existing and subsequent mortgages placed on or against the Shopping Center or Landlord's interest or estate therein, including all extensions, renewals, amendments and supplements to any such lease or mortgage, (ii) that in the event of a sale, transfer or assignment of Landlord's interest in the Shopping Center or any part thereof, or in the event any proceedings are brought for foreclosure of a mortgage made by Landlord covering the Premises or in the event of a cancellation, termination or foreclosure of any ground or underlying lease covering the Shopping Center or any part thereof, to attorn to and recognize such transferee, purchaser, lessor or mortgagee as Landlord under this Lease, and (iii) to promptly execute and deliver upon written request by Landlord all reasonable and necessary attornment and subordination documents required by Landlord's lenders, lessors and/or purchasers which recognize Tenant's rights as aforesaid. Tenant also agrees that any lender or

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lessor may elect to have this Lease be a prior lien to its mortgage or lease and in the event of such election and upon notification by such lender or lessor to Tenant to that effect this Lease shall be deemed prior to the lien of said mortgage or lease whether this Lease is dated prior to or subsequent to the date of said mortgage or ground lease.

Prior to delivery of possession of the Premises, Landlord shall provide Tenant with a nondisturbance agreement in the form attached as Exhibit G to this Lease from the existing first mortgagees, ground lessors or holders of deeds of trust with respect to the Shopping Center.

22. Assignment. Tenant shall not assign or in any manner transfer this Lease or any estate or interest therein or sublease any part or all of the Premises without Landlord's prior written consent, which consent shall not be unreasonably withheld or delayed. In the event that Tenant, with or without the previous consent of Landlord, does assign or in any manner transfer this Lease or any estate or interest therein or sublease the Premises, Tenant shall not be released from any of its obligations under this Lease; provided, however, in the event Tenant's assignee or transferee (i) has a net worth, which is prepared and certified in accordance with GAAP by a recognized certified public accounting firm, of equal to or greater than Fifteen Million and No/100 Dollars (\$15,000,000.00) and (ii) operates a minimum of seven (7) restaurants and (iii) operates in the Premises for a period of one (1) year without a monetary or material nonmonetary default under this Lease, Tenant shall be released from all further obligations under this Lease. Landlord's consent to any of the foregoing shall not release or waive the prohibition against them thereafter or constitute a consent to any other assignment, transfer or sublease. If this Lease is assigned or if the Premises or any part thereof be subleased or occupied by anybody other than Tenant, whether with or without Landlord's consent, Landlord may collect from the assignee, sublessee, occupant, licensee or concessionaire, any rental or other charges payable by Tenant under this Lease, and apply the amount collected to the rental and other charges herein reserved, but such collection by Landlord shall not be deemed an acceptance of the assignee, sublessee, occupant, licensee or concessionaire as Tenant nor a release of Tenant from the performance by Tenant of this Lease, except as otherwise provided in this Section 22. Notwithstanding anything contained herein to the contrary, Tenant may, without the necessity of the consent of Landlord, at any time assign or otherwise transfer this Lease or any portion thereof to any parent, subsidiary or affiliate corporation or entity; any corporation resulting from the consolidation or merger of Tenant into or with any other entity; or, any person, firm, entity or corporation acquiring a majority of Tenant's issued and outstanding capital stock or all or substantially all of Tenant's assets. As used herein, the expression "affiliate corporation or entity" means a person or

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business entity, corporate or otherwise, that directly or indirectly through one or more intermediaries, controls or is controlled by or is under control with Tenant. The word "control" means the right and power, direct or indirect, to direct or cause the direction of the management and policies of a person or business entity, corporation or otherwise.

23. Alterations. After the completion of Tenant's Work, Tenant may make alterations and additions to the Premises subject to Section 5 of this Lease; provided, however, that any alteration or addition which costs in excess of Forty Thousand and No/100 Dollars (\$40,000.00), concerns the building exterior or the storefront, or is structural in nature shall not be made without the prior written consent of Landlord, which consent shall not be unreasonably withheld or delayed. Any alterations or additions approved by Landlord shall be made at Tenant's sole cost and expense.

24. Damage or Destruction of Premises. In the event of any damage or destruction to the Shopping Center or the Premises by reason of fire or other casualty, and (i) such damage or destruction is "material", (ii) Landlord or Tenant, as the case may be, is prohibited from repairing or rebuilding the Shopping Center or the Premises by reason of any applicable law or ordinance, or (iii) Landlord and Tenant mutually and reasonably agree within forty-five (45) days after the date of such damage or destruction that the Shopping Center or Premises cannot be restored within one hundred eighty (180) days after the date of such damage or destruction, then either Landlord or Tenant may terminate this Lease upon thirty (30) days' written notice to the other party. In the event that any damage or destruction to the Shopping Center or the Premises results in a loss of the No Build Area, materially restricts reasonable ingress and egress to the Shopping Center from Transit Road or reduces the Shopping Center parking ratio below the Required Parking Ratio, and in any such event, Landlord does not replace within forty-five (45) days of the date of such destruction or damage, to the reasonable satisfaction of Tenant, the No Build Area, ingress and egress to the Shopping Center and the Premises from Transit Road, the Shopping Center parking ratio to the Required Parking Ratio, as the case may be, Tenant may terminate this Lease upon thirty (30) days' written notice to Landlord following the expiration of such forty-five (45) day period. If Landlord terminates this Lease, it must terminate all other tenants of the Shopping Center similarly situated and similarly affected by the damage or destruction. In the event this Lease is terminated as provided in this Section 24, the Term of this Lease shall expire as of the date of the applicable damage or destruction and Tenant shall vacate and surrender the Premises to Landlord within thirty (30) days after delivery of or receipt of such termination notice.

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"Material" damage or destruction, as used in this Section 24 shall mean damage or destruction that exceeds fifty percent (50%) of the square footage of the gross leasable area of the Shopping Center or the Premises, as the case may be.

If this Lease is not terminated as provided in this Section 24 and a portion of the Shopping Center and/or the Premises is damaged or destroyed by fire or other casualty: (i) Landlord shall diligently proceed at its sole expense to restore the Premises and the Shopping Center to the condition in which it existed immediately before the destruction or damage (provided, however, Landlord's obligations with respect to the Premises shall be limited to the basic building structure and Base Building Work, as described on Exhibit C), and (ii) Tenant shall be entitled to abatement of Minimum Rent, Percentage Rent and Additional Rent from the date of such damage or destruction in proportion to the extent in the reasonable opinion of Tenant, Tenant is unable to conduct its business in all or any part of the Premises. All rental will resume upon the earlier of (i) one hundred twenty (120) days after Landlord has finished its work in the Premises and delivered possession of the Premises to Tenant, whether or not Tenant has finished its work, unless Tenant's delay in finishing its work is caused in any way by Landlord, or (ii) the day Tenant reopens or resumes full operation of its business in the Premises. Tenant shall give prompt notice to Landlord of any fire or other damage to the Premises. In the event Landlord does not substantially complete such restoration within one hundred eighty (180) days after the destruction or damage, Tenant may terminate this Lease by giving Landlord written notice within twenty (20) days after the expiration of such one hundred eighty (180) day period. "Substantially complete," as used in this Section 24 shall mean having completed all construction except minor punch list items.

25. Condemnation. If the whole or any substantial part of the Shopping Center or the Premises shall be taken by any public or quasi public authority under the power of eminent domain, then in either event Landlord or Tenant may terminate this Lease by delivery of written notice to the other party. If any part of the Premises or a material part of the No Build Area shall be taken, or if so much of the parking facilities shall be so taken that the Shopping Center parking ratio is reduced below the Required Parking Ratio, or, if any means of ingress to and egress from the Shopping Center from Transit Road shall be taken so that reasonable means of ingress and egress for the continued operation of the Shopping Center from Transit Road shall not be available for use by patrons of the Shopping Center, then in any such event Tenant may terminate this Lease by delivery of written notice to Landlord. Any termination under this Section 25 shall be effective on the day possession shall be taken by such public or quasi public authority and Minimum Rent, Percentage Rent and Additional Rent shall be paid up to the day possession is taken with a proportionate refund by Landlord to Tenant of such rent as

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may have been paid in advance for a period subsequent to the date of the taking of possession. If Landlord terminates this Lease, it must terminate the leases of all tenants of the Shopping Center similarly situated and similarly affected by such taking.

"Substantial part," as used in this Section 25 shall mean a taking of more than fifty percent (50%) of the square footage of leasable area of the Shopping Center.

If the Lease is not terminated as provided in this Section 25 and a substantial portion of the Premises is taken by such public or quasi public authority: (i) Tenant shall pay Minimum Rent, Percentage Rent and Additional Rent up to the day possession is taken by such authority with appropriate refund by Landlord to Tenant of such rent as may have been paid in advance for a period subsequent to the date of taking for the portion of the Premises taken, and thereafter the Minimum Rent and Additional Rent shall be reduced in proportion to the amount of the Premises taken, (ii) Landlord shall, at its sole expense, diligently proceed to make all necessary repairs or alterations to the Premises and the Shopping Center so as to make both the Premises and the Shopping Center complete architectural and tenantable units, and (iii) Tenant shall be entitled to abatement of Minimum Rent, Percentage Rent and Additional Rent during such period of repair to the extent the Premises are rendered untenable thereby. All rental will resume upon the earlier of: (i) one hundred twenty (120) days after Landlord has finished its repair and restoration work in the Premises and delivered possession of the Premises to Tenant, whether or not Tenant has finished its work, unless Tenant's delay in finishing its work is caused in any way by Landlord, or (ii) the day Tenant reopens or resumes full operation of its business in the Premises.

All damages awarded for a taking under the power of eminent domain of all or any part of the Premises, or the Shopping Center shall belong to and be the property of Landlord; provided, however, that Tenant shall be entitled to any separate award made for Tenant's leasehold improvements, relocation of Tenant's business and depreciation or damage to and cost of removal of Tenant's personal property, equipment and trade fixtures (including the base building structure, Base Building Work and Tenant's Work, but not including Tenant's personal property, equipment or trade fixtures).

The provisions contained in this Section 25 shall apply in like way to any sale made under imminent threat of a taking under the power of eminent domain.

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26. Default.

A. Tenant's Default. If Tenant defaults in the payment of Minimum Rent, Percentage Rent or any Additional Rent or other charge payable by Tenant and Tenant does not cure such default within fifteen (15) days after written notice thereof shall have been given to Tenant; or if Tenant defaults in the prompt and full performance of any other provision of this Lease and Tenant does not cure the default within thirty (30) days after written notice is given to Tenant (or such longer period as may be necessary to cure such default so long as Tenant initiates the cure within said thirty (30) day period and prosecutes the cure to completion); or if Tenant vacates or abandons the Premises before the end of the Term; then Tenant shall be in breach of this Lease and Landlord may elect to either terminate this Lease or, without terminating this Lease, terminate Tenant's right to possession of the Premises. In addition to any other rights and remedies Landlord may have by law or otherwise, Landlord shall have the immediate right of re-entry and may remove all persons and property from the Premises. Landlord's entry upon and taking possession of the Premises shall not in any way terminate this Lease or release the Tenant in whole or in part from Tenant's obligation to pay the Minimum Rent and Additional Rent hereunder for the full Term or discharge Tenant from any loss or damage sustained by Landlord on account of Tenant's breach of the Lease unless Landlord elects in writing to terminate the Lease. Upon Landlord re-entering the Premises, it shall use reasonable efforts to relet all or any part of the Premises for such term or terms and at such rental or rentals as Landlord, in the exercise of Landlord's reasonable discretion, may deem advisable. Upon such reletting, all rent and other sums received by Landlord from such reletting shall be applied first to the payment of any indebtedness other than rent due hereunder from Tenant to Landlord; second to the payment of any costs and expenses of such reletting, including reasonable brokerage fees and attorneys' fees and the reasonable costs of alterations and repairs undertaken for such reletting; third to the payment of rent and other charges due and unpaid hereunder and the residue, if any, shall be held by Landlord and applied in the payment of future amounts that become due and payable hereunder. If such rentals and other sums received from such reletting during any month be less than that to be paid during such month by Tenant hereunder, Tenant shall pay such deficiency immediately to Landlord. Notwithstanding any such reletting without termination, Landlord may at any time hereafter elect to terminate this Lease for such previous breach.

Tenant shall pay all damages Landlord may incur by reason of Tenant's default, including without limitation reasonable costs and attorneys' fees.

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Landlord may, but shall not be obligated to, cure at any time upon reasonable notice to Tenant (but not less than thirty (30) days unless an emergency), any default by Tenant under this Lease and whenever Landlord so elects, all costs and expenses incurred by Landlord in curing the default, together with interest thereon at the annual rate of two percent (2%) over the rate then announced by Chase Manhattan Bank as its base or prime rate from the date of such payment by Landlord shall be payable as Additional Rent to the Landlord and the Landlord shall have in the event of the nonpayment thereof the same rights as in the case of default by Tenant in the payment of rent. If it shall be unlawful to charge Tenant the aforesaid interest rate, then in such event the interest rate shall be the highest rate per annum allowed by law.

No consent or waiver, express or implied by Landlord to any breach of any term of this Lease on the part of the Tenant shall be construed as a consent or waiver of any other breach of the same or any term, unless in writing signed by Landlord.

B. Landlord's Default. If Landlord shall (i) fail to pay when due taxes, mortgage payments, ground rent or any other charge or assessment, the lien of which is prior to this Lease, or (ii) fail to perform any of its covenants or conditions of this Lease and Landlord does not commence and diligently pursue to cure such default within thirty (30) days after written notice shall have been given to Landlord (or such longer period as may be necessary to cure such default so long as Landlord initiates such cure within said thirty (30) day period and diligently pursues the same to completion), unless such default in the reasonable opinion of Tenant constitutes an emergency in which event Landlord shall have a reasonable period of time to cure such default, then Tenant may, at its option, in addition to any other remedies available to Tenant at law or equity, incur any expense necessary to perform such obligation of Landlord and deduct such expense from the Minimum Rent, Percentage Rent and/or Additional Rent first coming due under this Lease, together with interest thereon at the annual rate of two percent (2%) over the rate then announced by Chase Manhattan Bank as its base or prime rate from the date of such expense. If it shall be unlawful to charge Landlord the aforesaid interest rate, then in such event the interest rate shall be the highest rate per annum allowed by law.

27. Right of Entry. Landlord and Landlord's agents shall have the right after twenty-four (24) hours' prior notice to Tenant to enter the Premises at all reasonable times to examine the same, to show them to prospective purchasers and mortgagees of the Shopping Center and to make such repairs, alterations, improvements or additions as Landlord may reasonably deem necessary or desirable. In the event such entry and/or exercise of Landlord's rights under this Section 27 interferes with Tenant's business in the Premises and Tenant, in its

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reasonable opinion, is unable to conduct its business in all or a part of the Premises for more than forty-eight (48) hours as a result thereof, Tenant shall be entitled to abatement of Minimum Rent, Percentage Rent and Additional Rent to the extent and for the period Tenant is unable to conduct its business in the Premises as a result thereof. During the six (6) months prior to the expiration of the Term of this Lease or any extension thereof, Landlord may exhibit the Premises to prospective tenants in accordance with this Section 27 and place upon the Premises the usual "to let" and "for rent" signs.

28. Surrender. On the last day of the Term or any extension thereof, or on the sooner termination of this Lease or Tenant's rights of possession, Tenant shall peaceably and quietly surrender the Premises in broom clean condition and good order and repair, reasonable wear and tear and damage by casualty excepted. On or before such date, Tenant shall remove its equipment, trade fixtures and personal property (hereinafter referred to as "Personal Property") from the Premises and Tenant shall pay the cost and expense to repair any damage caused by such removal. Personal Property not so removed shall be deemed abandoned by Tenant and shall become the property of the Landlord. If the Premises are not surrendered in the condition aforesaid, Tenant shall pay Landlord, upon demand, all costs incurred by Landlord in placing the Premises in such condition.

29. Holding Over. In the event Tenant remains in possession of the Premises or any part thereof after termination of this Lease, by lapse of time or otherwise, Tenant shall be deemed to be occupying the Premises as a tenant on a month-to-month basis (the "Hold Over Period") at a monthly rent equal to one and one half (1-1/2) times the last monthly installment of Minimum Rent payable during the Term of this Lease or any extension thereof, plus any applicable Percentage Rent and Additional Rent (the "Hold Over Payment"). If Landlord and Tenant are in good faith negotiation during the Hold Over Period, and an agreement is consummated between the parties to continue a Landlord/Tenant relationship, all rental payments under the new agreement ("New Rental Payments") shall be retroactive to the first day of the Hold Over Period. Any Hold Over Payments made by Tenant in excess of the New Rental Payments shall be a credit to the New Rental Payments first coming due, and any deficiency made between the New Rental Payments and the Hold Over Payments made during the Hold Over Period shall be paid by Tenant to Landlord with the first New Rental Payments. All other conditions, provisions and obligations of this Lease shall remain the same and in full force and effect.

30. Successors. All rights and liabilities herein given to or imposed upon the respective parties hereto shall extend to and bind the respective heirs, executors, administrators, successors and assigns of the parties.

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31. Rules and Regulations. Tenant agrees to comply with and observe all the rules and regulations contained on Exhibit D and all reasonable rules and regulations established by Landlord from time to time; provided all rules are applied nondiscriminatorily against all tenants of the Shopping Center and Tenant is given ten (10) days' written notice of any new rules and regulations.

32. Extensions. No extension of time, forbearance, neglect or waiver on the part of Landlord with respect to any one or more of the covenants, terms or conditions of this Lease shall be construed as a waiver of any of the other covenants, terms or conditions of this Lease or as an estoppel against Landlord, nor shall any extension of time, forbearance, or waiver on the part of Landlord in any one or more instance or particulars be construed to be a waiver or estoppel in respect to any other instance or particular covered by this Lease.

33. Quiet Enjoyment. Upon payment by the Tenant of the rents herein provided and upon the observance and performance of all other covenants, terms and conditions on Tenant's part to be observed and performed, Tenant shall quietly enjoy the Premises without hindrance or interruption by Landlord or anyone claiming through Landlord. Landlord represents and warrants that, to the best of its knowledge: (i) Landlord has good and marketable title to the Shopping Center; (ii) the Shopping Center is not subject to the lien of any deed of trust, mortgage or other similar encumbering instrument (except such instruments where the lienor has entered into an agreement described in Section 21B of this Lease); (iii) Landlord has the full and unencumbered power, right and authority to make this Lease for the Term hereof; and (iv) Landlord will put Tenant into complete and exclusive possession of the Premises free from all orders, restrictions, covenants, agreements, leases, easements, laws, codes, ordinances, regulations or decrees which would, in any way, prevent or inhibit the use of the Premises by Tenant as provided in Section 14 of this Lease, prevent or restrict the use of the access roads and passageways of the Shopping Center by Tenant, its agents, employees or invitees, or materially limit ingress and egress to and from Transit Road, (v) the Shopping Center will, at the time of Notice of Tender by Landlord, be properly zoned for the operation and maintenance of a buffet-style restaurant or cafeteria in the Premises by Tenant, (vi) the Shopping Center contains adequate parking facilities required by applicable codes or ordinances for the Shopping Center and the Premises as constructed and operated in accordance with the provisions of this Lease, and (vii) as of the date of this Lease, the Shopping Center, including, but not limited to, the Premises, are in compliance with all applicable federal, state and local statutes, codes, ordinances and rules. Within thirty (30) days following execution of the Lease, Landlord will deliver a commitment for a leasehold policy of title insurance in

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an amount not less than One Million Five Hundred Thousand Dollars (\$1,500,000.00), with Landlord bearing the applicable commitment costs only.

34. Sale by Landlord. In the event of any transfer(s) of Landlord's interest in the Premises, Landlord and its agent shall automatically be relieved of any and all obligations and liabilities on the part of Landlord occurring from and after the date of such transfer provided that Landlord provides Tenant written notice of such transfer(s), and Landlord's purchaser or grantee expressly assumes, in writing, all obligations and liabilities of Landlord from and after the date of such transfer; provided, however, Landlord shall continue to remain fully liable for all liability accrued prior to the date of such sale(s) or transfer(s).

35. Notice. All notices and demands which may or are required to be given by either party to the other hereunder shall be in writing and delivered in person or sent by United States certified or registered mail, postage prepaid, or by reputable nationally recognized overnight delivery service. Notices and demands to Tenant shall be addressed to it at its corporate offices, at 10260 Viking Drive, Suite 100, Eden Prairie, Minnesota 55344, Attn: Real Estate Department or at such other place as Tenant may from time to time designate in a written notice to Landlord. Notices and demands to the Landlord shall be addressed to it at c/o Brookhill Management Corp., 10 East 53rd Street, New York, NY 10022, or at such other place as Landlord may from time to time designate in a written notice to Tenant. Any such notice if mailed as provided herein shall be deemed to have been rendered or given on the second business day after its deposit, postage prepaid, in the U.S. Mail or with the overnight delivery service. Notwithstanding any of the foregoing, either party hereto may give the other party telephone notice of emergency repairs.

36. Intentionally Omitted.

37. Hazardous Substances. Landlord is responsible for the removal of all Hazardous Materials from the Premises.

To its knowledge, Landlord represents and warrants that:

(a) there has been no release, disposal or storage of Hazardous Materials on the Premises.

(b) the Premises have not been and are not presently used for the storage, manufacture, disposal, handling, transportation or use of any Hazardous Materials.

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(c) there are no past or present investigations, administrative proceedings, notices of violation or other civil or criminal action threatened or pending alleging noncompliance with or violation of any statutes, regulations or ordinances relating to any environmental permits, release or discharge of any Hazardous Materials.

(d) that Landlord has not, nor to the knowledge of Landlord has any prior tenant or any other third party, violated any statute, regulation or ordinance relating to any environmental permit or the release of any Hazardous Materials.

(e) either there are not now, and have never been any aboveground or underground storage tanks located on or under the Shopping Center, or each aboveground and underground storage tank located on or under the Shopping Center is listed on Exhibit F attached hereto and all such tanks have been properly registered pursuant to state or federal law and evidence of the registration has been given to Tenant.

Landlord warrants and covenants that it will not in the future, install, use, generate or dispose of or allow any other tenant of the Shopping Center or any third party to install, use, generate or dispose of on or about the Shopping Center any Hazardous Materials, except for immaterial quantities of Hazardous Materials customarily used in the construction, maintenance or operation of like properties which have been and should be used in accordance with applicable laws, statutes, regulations and ordinances then in effect. Landlord hereby agrees to protect, defend, indemnify and hold Tenant harmless from and against all claims, liabilities, penalties, costs, fines, damages and expenses, including, but not limited to, costs and expenses which Tenant is obligated to incur to correct or remedy the situation, the costs of defending civil enforcement actions, the costs of participating in regulatory proceedings, or any other civil or administrative action, including without limitation, attorneys' and expert fees and disbursements, directly or indirectly incurred by Tenant arising out of: (i) the presence of any Hazardous Materials in or about the Premises or the Shopping Center (except those which are stored, used, generated, installed or disposed of by Tenant), or (ii) the inaccuracy of any representation, covenant, or warranty by Landlord in this Section 37. Landlord and Tenant agree that it is their intention that Tenant shall have no liability or responsibility for damage or injury to human health, economic losses or damage to the environment or natural resources caused by, or otherwise relating to Hazardous Materials located on or at the Premises or the Shopping Center which were not stored, used, generated, installed or disposed of by Tenant.

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Tenant warrants and covenants that it shall not install, use, generate, store or dispose of, in or about the Premises or the Shopping Center any Hazardous Materials, except for immaterial quantities of Hazardous Materials customarily used in the construction, maintenance or operation of restaurants all of which shall be used in accordance with applicable laws, statutes, regulations and ordinances then in effect. Tenant hereby agrees to protect, defend, indemnify and hold Landlord harmless from and against any claims, liabilities, penalties, fines, costs, damages and expenses, including but not limited to, costs and expenses which Landlord is obligated to incur to correct or remedy the situation, the costs of defending civil enforcement actions, the costs of participating in regulatory proceedings, or any other civil or administrative action, including without limitation, attorneys' and expert fees and disbursements, arising out of Tenant's installation, use, generation, storage or disposal of any Hazardous Materials in or about the Premises or the Shopping Center.

In the event (i) any covenant, warranty or representation made by Landlord in this Section 37 is breached by Landlord or is inaccurate, or (ii) the presence, installation, use, generation or disposal of any Hazardous Materials in or about the Shopping Center or the Premises (a) interferes with Tenant's business in all or part of the Premises and Tenant in its reasonable opinion is unable to conduct its business in the Premises, or (b) in the reasonable opinion of Tenant poses a threat to the health and safety of Tenant's agents, employees or invitees, Tenant shall be entitled to terminate the Lease upon delivery of written notice to Landlord.

The representations, warranties and indemnifications set forth in this Section 37 shall survive the expiration or earlier termination of this Lease.

The term "Hazardous Materials" shall mean:
(a) polychlorinated byphenyls ("PCBs") or "PCB items" (as defined in 40 C.F.R. Sec. 761.3) or any equipment which contains PCB's;
(b) stored, leaked or spilled petroleum products; or (c) any other chemical, material or substance (i) which is regulated as a "toxic substance" (as defined by the Toxic Substance Control Act, 15 U.S.C. Sec. 2601 et seq., as amended), (ii) which is a "hazardous waste" (as defined by the Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6901 et seq., as amended), (iii) which is a "hazardous substance" (as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. Sec. 9601 et seq., as amended), or (iv) exposure to which is prohibited, limited or regulated by any federal, state, county, regional, local or other governmental statute, regulation, ordinance or authority of which, even if not

INITIALS:
JB

so regulated, may or could pose a hazard to the health and safety of the occupants of or invitees to the Premises, or the owners, tenants or occupants of the Shopping Center or the property adjacent to the Shopping Center.

38. Intentionally Omitted.

39. Miscellaneous.

A. Entire Agreement. This Lease and the exhibits and rider, if any, attached hereto set forth all of the covenants, promises, agreements, conditions and understandings between Landlord and Tenant concerning the Premises and there are no other covenants, promises, agreements, conditions, warranties, representations or understandings, either oral or written, between them other than as set forth herein. No alteration, amendment, change or addition to this Lease shall be binding upon Landlord or Tenant unless reduced to writing and signed by each party.

B. Interpretation and Use of Pronouns. Whenever herein the singular number is used, the same shall include the plural and the masculine gender shall include the feminine and the neuter genders. Nothing contained herein shall be deemed or construed by the parties hereto or any third party to create a relationship between the parties other than the relationship of Landlord and Tenant.

C. Caption and Section Numbers. The captions and section numbers 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 of this Lease nor in any way affect this Lease.

D. Delays. In the event that either party hereto shall be delayed, or hindered in, or prevented from the performance of any act required hereunder by reason of strikes, lockouts, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, war or other reason of like nature not the fault of, or within the control of, the party delayed in performing work or doing acts required under the terms of this Lease, then performance of such work or act shall be excused for the period of the delay and the period for the performance of any such work or act shall be extended for a period equivalent to the period of such delay. This provision shall not operate to excuse Tenant from prompt payment of Minimum Rent, Percentage Rent or Additional Rent or any other payments required by the terms of this Lease, unless the Commencement Date or periods permitting Tenant to abatement of rent are postponed or extended by such delays. This provision shall not operate to extend the time for performance of restoration after damage or destruction or partial condemnation for more than one hundred twenty (120) days.

INITIALS:
JS

E. Effective Date of Lease. The submission of this Lease for examination does not constitute a reservation of or option for the Premises, and this Lease shall become effective as a lease only upon execution by Landlord and Tenant.

F. Broker's Commission. Each of the parties represents and warrants that there are no claims for brokerage commissions or finders fees in connection with the execution of this Lease with the exception of **Berlow Real Estate, Inc.**, whose commission shall be paid by Landlord, and each of Landlord and Tenant indemnify the other against and hold it harmless from all liabilities arising from any such claim made through the indemnifying party.

G. Recording. Tenant shall not record this Lease without the prior written consent of Landlord; provided, however, upon the occurrence of the Commencement Date, or at the request of either Landlord or Tenant, the parties shall join in the execution of and record a memorandum or so-called short form of this Lease, in the form attached hereto as Exhibit E. All costs incurred in connection with recording said short form lease shall be shared equally by Landlord and Tenant up to \$500.00 of Landlord's expense.

H. Applicable Law and Construction. This Lease shall be governed by and construed in accordance with the laws of the State of **New York**. 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 the Lease shall be valid and enforceable to the fullest extent permitted by law.

I. Accord and Satisfaction. No payment by Tenant or receipt by Landlord of a lesser amount than the monthly Minimum Rent and Additional Rent and annual Percentage Rent herein stipulated shall be deemed to be other than on account and no endorsement or statement on any check or any letter accompanying any check or payment of any rent or charge shall be deemed an accord and satisfaction, and Landlord shall accept such check or payment without prejudice to Landlord's rights to recover the balance of such rent or charge or pursue any other remedy provided in this Lease.

J. Due Date. If the due date by which any amount payable by one party hereto to the other is not specifically stated herein, the amount shall be due and payable within thirty (30) days following request therefor or, if necessary, the rendering by the requesting party to the other party of the statement therefor.

INITIALS:


K. Exculpation. Tenant shall look solely to Landlord's interest in the Premises and the Shopping Center or to the proceeds from the sale of the Shopping Center for the satisfaction of any judgment or decree requiring the payment of money by Landlord based upon any default under this Lease, and no other property or assets of Landlord or of its officers, directors, principals, partners or employees of Landlord shall be subject to levy, execution or other enforcement procedures or satisfaction of any such judgment or decree.

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

LANDLORD:

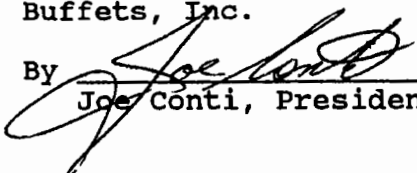
CLARENCE MALL PROPERTIES, a New Jersey limited partnership

By: BROOKHILL MANAGEMENT CORPORATION
AS AGENT

By 
Its: PRESIDENT RONALD B. BRUDER

TENANT:

Buffets, Inc.

By 
Joe Conti, President

NYCLARENCE.KS7

GUARANTY

The undersigned, Buffets, Inc., a Minnesota corporation ("Guarantor"), does hereby unconditionally guarantee to Clarence Mall Properties, a New Jersey limited partnership ("Landlord") in the event of the assignment of the lease originally by and between Buffets, Inc. and Landlord dated June 15, 1993 (the "Lease") to OCB Realty Co., and/or the sublease to OCB Restaurant Co., (i) the payment, when due, of all amounts of rent or other payments which may become due and payable pursuant to the terms and conditions of the Lease, and (ii) the performance of all other monetary obligations of the Tenant thereunder. Guarantor's obligations under this Guaranty shall extend through the entire term of the Lease and any renewal or extension of the Lease.

Guarantor hereby waives notice of (i) acceptance of this Guaranty, (ii) any action taken or omitted by Landlord in reliance on this Guaranty, and (iii) any default by OCB Realty Co. or OCB Restaurant Co. with respect to any term or condition of the Lease.

Guarantor agrees that, without its consent, the Lease may be modified, amended, and supplemented in any manner, including, but not limited to, a renewal or extension of the term of the Lease, and agrees that no such amendment, modification, supplement, renewal or extension shall release, affect or impair Guarantor's liability under this Guaranty.

Guarantor agrees that its liability under this Guaranty shall not be affected, reduced or impaired by reason of the failure of Landlord to pursue or enforce against OCB Realty Co. or OCB Restaurant Co. any right or remedy available to Landlord, and Guarantor hereby waives all right to require Landlord to pursue, enforce or resort to any or all such rights or remedies of Landlord.

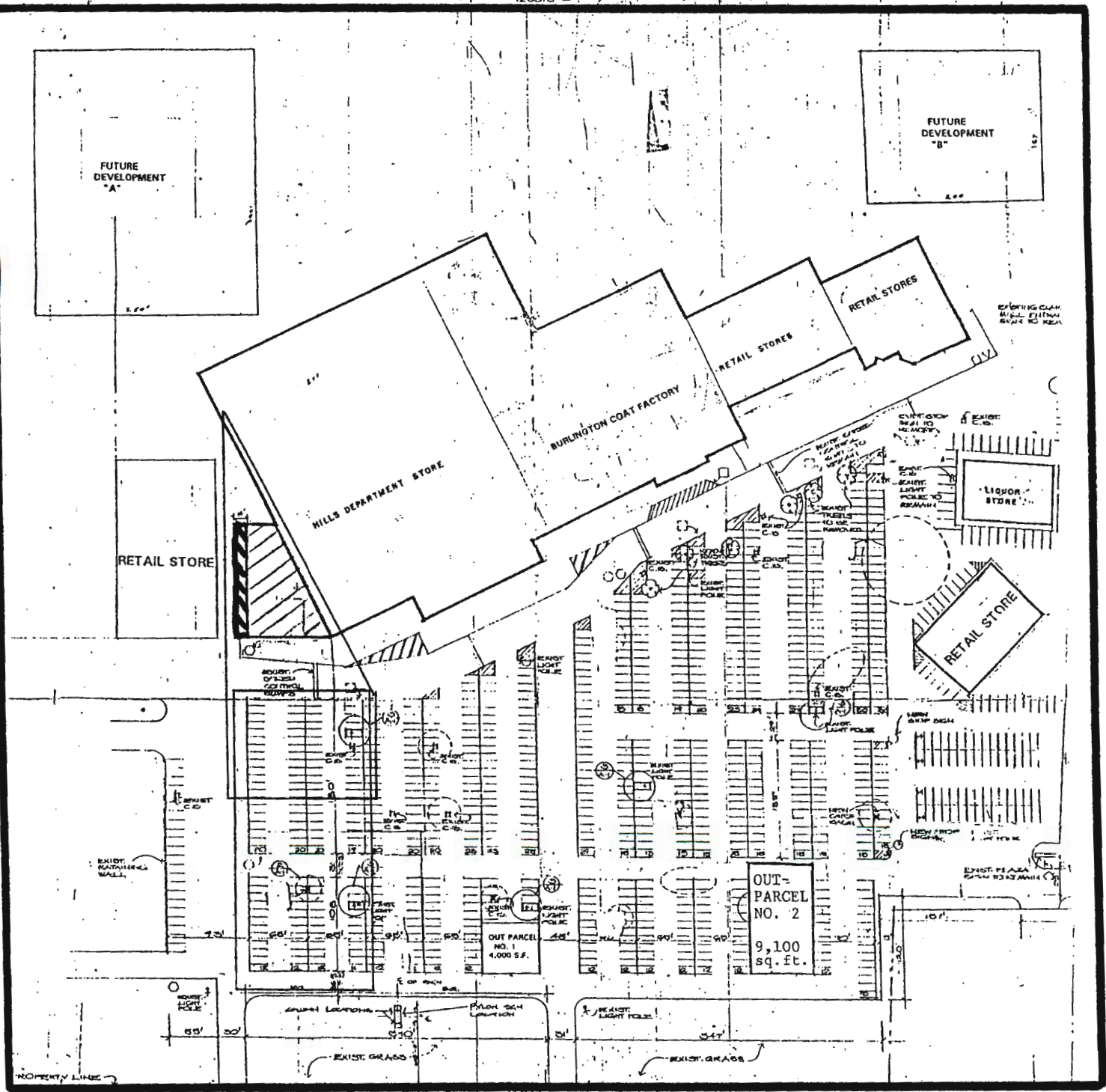
Dated: July 14, 1994.

BUFFETS, INC.

By: 

Roe H. Hatlen, CEO

1265.0' ±



TRANSIT ROAD
CLARENCE MALL
CLARENCE, NY
 SITE PLAN

SCALE - 1" = 50'



INITIALS:
[Handwritten Signature]

- NO BUILD AREA
- STAGING AREA

EXHIBIT A

EXHIBIT B

Legal Description of Shopping Center

ALL THAT TRACT OR PARCEL OF LAND situate in the town of Clarence, County of Erie and State of New York, being part of Lot 12, Section 13, Township 12, Range 6 of the Holland Land Company's Survey and more particularly described as follows:

BEGINNING at the southeast corner of Lot 12, Section 13, thence north $87^{\circ} 22' 20''$ west along the south line of Lot 12, said line being the northerly right of way of Main Street as laid out 99.00 feet in width, 1227.54 feet to a point, said point being the intersection of the south line of Lot 12 and the easterly right of way of Transit Road as shown on Transit Acquisition Map, Part 1, S.E. 88, Map 2, Parcel 3; thence north $0^{\circ} 12' 50''$ east along the easterly right of way of Transit Road, said line also being parallel to and 67.00 feet at right angles, easterly of the west line of Lot 12, 1202.82 feet to a point; thence south $89^{\circ} 47' 10''$ east along a line, said line being at right angles to the previous course, 1235.48 feet to a point, said point lying on the east line of Lot 12; thence south $0^{\circ} 37' 10''$ west along the east line of Lot 12, 1254.57 feet to the point or place of beginning, containing 34.64 acres, more or less.

EXCEPTING AND RESERVING therefrom the following six parcels described as follows:

PARCEL 1: BEGINNING at a point in the south line of Lot 12, said point being 67.00 feet southeasterly of the southwest corner of Lot 12; thence north $0^{\circ} 12' 50''$ east along the existing right of way of Transit Road, 200.00 feet to a point; thence south $87^{\circ} 22' 20''$ east along a line parallel to the south line of Lot 12, 200.00 feet to a point; thence south $0^{\circ} 12' 50''$ west along a line parallel to the west line of Lot 12, 200.00 feet to a point, said point being the south line of Lot 12; thence north $87^{\circ} 22' 20''$ west along the south line of Lot 12, 200.00 feet to the point or place of beginning, containing .92 acres, more or less.

PARCEL 2: BEGINNING at a point in the south line of Lot No. 12, Section 13, said line being the northerly right of way of Main Street as laid out 99 feet in width, 470.30 feet westerly of the southeast corner of said Lot No. 12; measured along said south line of Lot No. 12; running thence westerly along the south line of Lot No. 12, 115.08 feet to a point; thence northerly parallel to the east line of said Lot No. 12, 170 feet to a point; thence easterly at right angles to the previous course 115 feet to a point; thence southerly in a direct line to the point of beginning, a distance of 174.03 feet.

PARCEL 3: That piece or parcel of land conveyed to F/V Enterprises, Inc. by deed recorded in the Erie County Clerk's Office in Liber 7898 of Deeds at page 63.

PARCEL 4: COMMENCING at the point of intersection between the easterly boundary line of Transit Road (as a street 100 feet wide) and the southerly line of lands conveyed to Sears, Roebuck and Co. by deed recorded in the Erie County Clerk's Office in Liber 7587 of Deeds at page 264; thence easterly along the southerly line of lands so conveyed to Sears, Roebuck and Co., 505 feet to a point; thence southerly along a course which is at right angles to the last described course, 150 feet to a point, which is the point or place of beginning;

INITIALS:
R/S

thence easterly along a course which is at right angles to the last described course, 286.11 feet to a point; thence northeasterly along a course which is at an interior angle of $205^{\circ} 58'$, 28.55 feet to a point; thence easterly at an exterior angle of $205^{\circ} 58'$ and along a line drawn parallel to the southerly line of lands so conveyed to Sears, Roebuck and Co., 45.68 feet to a point; thence southwesterly at an interior angle of $25^{\circ} 58'$, 175.14 feet to a point; thence southerly at an exterior angle of $115^{\circ} 58'$, 38.99 feet to a point; thence westerly along a course which is at right angles to the last described course, said course being along a line drawn parallel to the southerly line of lands so conveyed to Sears, Roebuck and Co., 200 feet to a point; thence northerly along a course which is at right angles to the last described course, 103.17 feet to the point or place of beginning, containing .58 acres, more or less.

PARCEL 5: COMMENCING at a point in the west line of Lot 12, Section 13, Township 12, Range 6, 1200.00 feet north of the southwest corner of said lot; thence easterly at right angles to said west lot line and along the south line of land described in a deed recorded in the Erie County Clerk's Office in Liber 7587 of Deeds at page 264, 572.00 feet to the point or place of beginning; thence southerly at right angles, 150.00 feet to a point; thence easterly at right angles, 286.11 feet to a point; thence northeasterly 20.55 feet to a point, said point being 137.50 feet south of the south line of land described in a deed recorded in the Erie County Clerk's Office in Liber 7587 of Deeds at page 264; thence easterly on a line parallel to the southerly line of said land described in a deed recorded in the Erie County Clerk's Office in Liber 7587 of Deeds at page 264, 213.23 feet to a point; thence northerly at right angles, 137.50 feet to a point, said point being in the south line of land described in a deed recorded in the Erie County Clerk's Office in Liber 7587 of Deeds at page 264; thence westerly at right angles along the south line of said land described in a deed recorded in the Erie County Clerk's Office in Liber 7587 of Deeds at page 264, 525.00 feet to the point or place of beginning, containing 1.74 acres more or less.

PARCEL 6: COMMENCING at the intersection of the east line of Transit Road (as a 100 foot wide right of way) with the north line of Main Street (99 feet wide) being also the south line of Lot 12, Section 13, Township 12, Range 6; thence north $89^{\circ} 52' 35''$ east, 550.85 feet along said north line of Main Street to a point; thence north $00^{\circ} 07' 25''$ west along a line 30.42 feet to the point of beginning; thence north $40^{\circ} 48' 52''$ east along a line 105.00 feet to a point; thence north $49^{\circ} 11' 18''$ west along a line 150.00 feet to a point; thence south $40^{\circ} 40' 42''$ west along a line 105.00 feet to a point; thence south $49^{\circ} 11' 18''$ east along a line 150.00 feet to the point of beginning containing 0.36 acre more or less.

INITIALS:
RAB

EXHIBIT C

Base Building Work

Landlord agrees that in the event that the Premises are damaged or destroyed by fire or other casualty and this Lease is not terminated, Landlord shall, at its sole cost, provide to the Premises the following to the extent that such items existed prior to the damage or destruction, each located in accordance with Tenant's Landlord-approved Plans: (i) one thousand (1,000) amp electrical service, at 120/208 volts, three (3) phase including a distribution panel and all disconnects required by Tenant, (ii) three million (3,000,000) BTUs of natural gas at pressure of at least equal to one half (1/2) pound, with meter, (iii) two (2) inch water supply line at pressure of at least fifty (50) pounds of pressure, (iv) five (5) inch sewer line at a minimum depth of forty-eight (48) inches, appropriate for restaurant purposes, (v) storefront wall and exterior walls, sheet-rocked, taped, sanded and insulated up to the ceiling deck per applicable code for restaurants, (vi) concrete floor suitable for Tenant's finish flooring, (vii) all other base building improvements necessary to comply with all state and local fire codes and ordinances applicable to restaurants of the size and capacity depicted on the Plans ((i) through (vii) shall be referred to herein as "Base Building Work"). Landlord shall also provide access, within one hundred (100) feet of the Premises, to sixty (60) amps of temporary electrical service at 120/208 volts with the usage costs to be paid by Tenant. The Base Building Work shall be completed in a good and workmanlike manner and in accordance with all applicable federal, state and local statutes, codes, ordinances and rules for restaurants constructed and operated in accordance with the provisions of this Lease and Tenant's Plans.

INITIALS
R.B.

EXHIBIT D

Rules and Regulations

1. Tenant shall:

(a) Conduct no auction, fire, going-out-of-business or bankruptcy sales or similar practice.

(b) Display no merchandise outside the Premises nor in any way obstruct the adjacent sidewalks; and store all trash and refuse in an enclosed garbage facility located behind the Premises and maintain and keep such garbage facility in a neat, orderly and clean condition and attend to the daily disposal thereof in the manner required by local ordinance. Tenant's garbage facility shall be enclosed in such a way that inhibits the visibility of the receptacles maintained therein. Tenant shall not burn any trash or rubbish in or about the Premises or anywhere also within the confines of the Shopping Center. Tenant shall not operate a garbage grinder without Landlord's prior consent. In the event compactor service is not provided, Tenant shall use a refuse disposal service reasonably approved by Landlord.

(c) Following Tenant's opening for business in the Premises, load or unload all merchandise, supplies, fixtures, equipment and furniture and cause the collection of rubbish only through the rear of the Premises.

(d) Take no action which would violate Landlord's union contracts, if any, affecting the Shopping Center, nor create any work stoppage, picketing, labor disruption or dispute, or any interference with the business of Landlord or any tenant or occupant in the Shopping Center or with the rights and privileges of any customer or other person(s) lawfully in and upon the Shopping Center, nor cause any impairment or reduction of the good will of the Shopping Center.

(e) Keep the display windows in the Demised Premises, including but not limited to all windows, doors and glass, in a neat, orderly and clean condition.

(f) Obey and observe (and compel its officers, employees, contractors, licensees, invitees, subtenants, concessionaires and all other doing business with it to obey and observe) all reasonable rules and regulations established by Landlord from time to time for the conduct of Tenant and/or for the welfare of the Shopping Center, provided that such rules are uniformly applied to all tenants of the Shopping Center and do not materially interfere with Tenant's operations in the Premises.

(g) Operate its business in the Premises with functional, efficient and first-class equipment and trade fixtures in good condition.

INITIALS:
KAP

(h) Not use the plumbing facilities for any purpose injurious to same or dispose of any garbage or any other foreign substance therein, nor place a load on any floor in the Premises exceeding the floor load per square foot which such floor was designed to carry, nor install, operate and/or maintain in the Premises any heavy equipment except in a location approved by Landlord, nor install, operate and/or maintain in the Premises any electrical system therein, or any part thereof, beyond its capacity for proper and safe operation.

(i) Not operate on the Premises any vending machine or similar device, for the sale of any merchandise, including but not limited to lockers, toilets, scales, amusement devices, or devices for the sale of beverages, candies, cigarettes, foods or other commodities, or any coin operated or other type of video gaming or arcade-style amusement games, including pinball, electronic games or any similar related items without Landlord's prior approval, which approval shall not be unreasonably withheld or delayed.

2. Tenant agrees, at its own costs and expense, to keep in a neat and clean condition and maintain in good order, condition and repair any loading platform, truck dock and/or truck maneuvering space therefor which is used exclusively by Tenant or to which Tenant has the right of exclusive use, and for the purposes hereof, the same shall not be considered part of the parking area.

INITIALS:
RJ

EXHIBIT E

Memorandum of Lease

THIS MEMORANDUM OF LEASE, is made and entered into as of this ____ day of _____, 199__, and dated by and between Clarence Mall Properties, a New Jersey limited partnership ("Landlord"), and Buffets, Inc., a Minnesota corporation ("Tenant").

RECITALS

A. Landlord, as landlord, and Tenant, as tenant, have entered into that certain Lease dated _____, 19__ (the "Lease"), relating to certain leased premises (the "Premises") in Clarence Mall Shopping Center (the "Shopping Center"), situated on certain real property in the City of Clarence, _____ County, New York, legally described on Exhibit A attached hereto.

B. Landlord and Tenant now wish to memorialize of record the existence of the Lease and certain specific terms of the same.

NOW, THEREFORE, in consideration of the Lease and other good and valuable consideration, Landlord and Tenant agree as follows:

1. Landlord and Tenant have entered into the Lease to demise and let the Premises, upon the terms and conditions more particularly set forth in the Lease.

2. The term of the Lease shall be for an initial term of fifteen (15) full Lease Years and any Partial Lease Year, as such terms are defined in the Lease, commencing on _____, 19__ (the "Commencement Date"), and expiring on _____,

3. Subject to the terms and conditions more particularly set forth in the Lease, Tenant has the option to extend the term of the Lease for two (2) additional periods of five (5) years each, such periods to commence at the expiration of the initial term or preceding extended term of this Lease, as the case may be.

4. Landlord has granted Tenant the exclusive right to operate a sit-down buffet-style restaurant or cafeteria in the Shopping Center. Landlord covenants and agrees not to lease any space in the Shopping Center to (i) any other tenant whose primary business conducted in such space is the operation of a sit-down buffet-style restaurant or cafeteria; or (ii) any restaurant greater than four thousand (4,000) square feet or serving alcohol in Out Parcel No. 1 shown on Exhibit A; nor shall Landlord permit or consent, either explicitly or implicitly, to the operation of a sit-down buffet-style restaurant or cafeteria in the Shopping Center or to any restaurant greater than four thousand (4,000) square feet or serving alcohol in Out Parcel No. 1 shown on Exhibit A.

INITIALS:
AP

5. Reference is made to the Lease for a full statement of the terms and conditions of the Lease, all of which are hereby incorporated by reference.

6. Nothing in this Memorandum of Lease shall be construed to amend, modify, change, alter, amplify, interpret or supersede any of the terms and provisions of the Lease, which shall in all things control.

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

Witness:

LANDLORD:

CLARENCE MALL PROPERTIES, a
New Jersey limited partnership

By

By _____
Its _____

TENANT:

BUFFETS, INC.

By _____
Roe H. Hatlen, CEO

INITIALS:
RR

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me
this _____ day of _____, 19____, by _____,
the _____ of _____, a
_____ on behalf of the _____.

Notary Public

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me
this _____ day of _____, 19____, by _____,
the _____ of Buffets, Inc., a Minnesota
corporation, on behalf of the corporation.

Notary Public

This instrument was drafted
by and to be returned to:
Buffets, Inc. (KAS)
10260 Viking Drive
Suite 100
Eden Prairie, MN 55344

INITIALS:
RP

EXHIBIT F

Storage Tanks

None

INITIALS
AP

EXHIBIT G

Non-Disturbance Agreement

SUBORDINATION, NON-DISTURBANCE,
ATTORNEYMENT, ESTOPPEL AND MODIFICATION OF LEASE AGREEMENT

THIS AGREEMENT made as of the 22 day of JUNE, 1993 among KEY BANK OF NEW YORK, a New York banking corporation with an office for the transaction of business at 66 South Pearl Street, Albany, New York 12207 ("Mortgagee"), CLARENCE HALL PROPERTIES, a New Jersey limited partnership with an office for the transaction of business at c/o The Brookhill Group, 10 East 53rd Street, New York, New York 10022 ("Landlord"), and BUFFETS, INC., a Minnesota corporation with offices at 10260 Viking Drive, Suite 100, Eden Prairie, Minnesota 55344 ("Tenant").

RECITALS

WHEREAS, the Landlord is the owner of an improved parcel of land located in the Town of Clarence, Erie County, New York (the "Facility"); and

WHEREAS, the Landlord has a loan with the Mortgagee (the "Loan"); and

WHEREAS, as security for the Loan, Landlord has entered into or is otherwise obligated on a mortgage or mortgages (collectively, the "Mortgage") referred to in Schedule A annexed hereto and made a part hereof which grants to the Mortgagee a first mortgage lien on the Facility and has entered into a certain Assignment of Rents and Leases (the "Assignment") which assigns to Mortgagee all of the right, title and interest of Landlord under all present and future leases of any part of the Facility including the Lease (as hereinafter defined); and

WHEREAS, the Mortgage and Assignment have been recorded in the Clerk's Office of Erie County, New York (the "Public Records"); and

WHEREAS, Landlord and Tenant have entered into a certain Lease Agreement dated _____, 1993, (the "Lease") for the lease by Tenant of certain premises more particularly described in Schedule B annexed hereto and made a part hereof in the Facility (the "Leased Premises"); and

WHEREAS, the Lease is subordinate to the lien, operation and effect of the Mortgage; and

WHEREAS, Tenant desires to be assured of continued occupancy of the Leased Premises under the terms of the Lease in the event that the Mortgagee succeeds to the rights of the Landlord under the Lease pursuant to the terms of the Mortgage or Assignment.

PROVISIONS

NOW, THEREFORE, in consideration of the sum of One Dollar (\$1.00) by each party in hand paid to the other, the receipt of which is hereby acknowledged, and in consideration of the mutual promises, covenants and agreements herein contained, the parties hereto, intending to be legally bound hereby, promise, covenant and agree as follows:

1. Incorporation of Recitals. The Recitals portion of this Agreement is hereby incorporated by this reference as fully as though it were here rewritten.
2. Approval of Lease by Mortgagee. Except as may otherwise be set forth herein, Mortgagee hereby consents and approves the Lease and the term thereof, including the options to extend the term as set forth in the Lease, and covenants and agrees that the exercise by Tenant of any of the rights, remedies and options therein contained shall not constitute a default under the Mortgage.
3. Subordination of Lease. The Lease and all estates, rights, options, liens and charges therein contained or created, thereunder are and shall be subject and subordinate to the lien, operation and effect of the Mortgage and Assignment insofar as either of those instruments affect the Facility or other real and personal property owned by the Landlord of which the Leased Premises is a part, and to all renewals, modifications, consolidations, replacements and extensions thereof, and to any additional mortgage financing secured by the Facility provided by the Mortgage, to the full extent of the principal sum secured thereby together with interest thereon, including any interest which at any time may be capitalized and any interest thereon, with the same force and effect as if the Mortgage and Assignment had been executed, delivered, and duly recorded in the Public Records prior to execution and delivery of the Lease. Notwithstanding the foregoing, Mortgagee consents to the removal by Tenant of its trade fixtures in the Leased Premises in accordance with the terms of the Lease.
4. Non-Disturbance of Tenant. In the event that Mortgagee takes possession of the Leased Premises as a mortgagee-in-possession, by foreclosure of the Mortgage, by acquisition of

title in lieu of foreclosure, or pursuant to the Assignment, Mortgagee agrees not to disturb Tenant's right to possession of the Leased Premises so long as Tenant is not then in default after receipt of notice of such default and expiration of any cure period applicable thereto under the Lease under terms, covenants or conditions of the Lease. Tenant shall not be named or joined as a party or otherwise in any suit, action or proceeding for the foreclosure of the Mortgage or to enforce any rights under the Mortgage or the bond or note of other obligation secured thereby.

5. Attornment to Mortgagee. (a) In the event that Mortgagee succeeds to the interest of Landlord under the Lease, Mortgagee and Tenant hereby agree to be bound to one another under all of the terms, covenants and conditions of the Lease. Accordingly, from and after such event, Mortgagee and Tenant shall have the same remedies against one another for the breach of any agreement contained in the Lease as Tenant and Landlord had before Mortgagee succeeded to the interest of Landlord.

However, provided Mortgagee has given Tenant notice of its succession to the interest of Landlord, Mortgagee shall not be bound by any rent, additional rent or other sum which Tenant might have paid under the Lease other than the rent paid in accordance with the Lease before Mortgagee succeeds to the interest of Landlord under the Lease, and Mortgagee shall not be required to pay for any monetary damages as a result of any act or omission of any prior landlord (including Landlord).

In the event that Mortgagee succeeds to the interest of Landlord under the Lease, Tenant shall look solely to Mortgagee's interest in the Leased Premises and the Facility for the satisfaction of any judgment or decree requiring the payment of money by Mortgagee based upon any default under the Lease, and no other property or assets of Mortgagee shall be subject to levy, execution or enforcement procedures or satisfaction of any such judgment or decree.

(b) This attornment shall be self-operative, without the execution of any further instrument by any of the parties hereto upon the Mortgagee succeeding to the interest of the Landlord under the Lease, and the respective rights and obligations of Tenant and Mortgagee upon such attornment, to the extent of the then remaining balance of the terms of the Lease and any extension or renewal permitted thereby, shall be and are the same as are now set forth therein.

6. Attornment to New Owner. In the event that anyone else acquires title to or the right to possession of the Leased

Premises upon the foreclosure of the Mortgage, or upon the sale of the Facility or any part thereof by Mortgagee or its successors or assigns after foreclosure or acquisition of title in lieu thereof or otherwise, Tenant agrees not to seek to terminate the Lease by reason thereof, but shall remain bound unto the new owner and the new owner agrees to be bound to Tenant under all of the terms, covenants and conditions of the Lease, as provided in Paragraph 4 above, and any liability of Mortgagee to Tenant under the Lease or hereunder arising or to be performed after the date of any such transfer shall terminate upon transfer of title to the Leased Premises to such new owner. It shall be deemed and construed without further instrument or agreement that such new owner has assumed and agreed to carry out any and all covenants and obligations of Mortgagee, as Landlord under the Lease, arising or to be performed after the date of such transfer.

7. Representation and Covenants by Both Landlord and Tenant. Landlord and Tenant, jointly and severally, warrant and represent, covenant and agree to and with Mortgagee that:

(a) The Lease sets forth all agreements of Landlord and Tenant with respect to the Leased Premises. The Lease has not been modified or amended and is in full force and effect according to its terms on the date hereof. The term of the Lease is fifteen (15) full Lease Years and any Partial Lease Year commencing on the Commencement Date, as said terms are defined in the Lease, subject to renewal options, if any, set forth in the Lease.

(b) Neither Landlord, nor Tenant nor any prior Landlord is in default under the terms of the Lease and no event or events have occurred which, but for the passage of time, the giving of notice or both, would constitute a default under the Lease.

(c) Without Mortgagee's prior written consent, Landlord or Tenant will, so long as the Mortgage is a lien on the Facility, or the Loan remains unpaid, not amend or modify the Lease in such manner as would (i) reduce fixed rent under the Lease, (ii) reduce the term of the Lease, (iii) reduce any other monetary obligation of Tenant under the Lease or (iv) in any way diminish the security of Mortgagee, or terminate the Lease for any reason other than as permitted under the terms of the Lease for any reason other than as permitted under the terms of the Lease, subject, however, to the provision of the paragraph 8(a) below.

(d) Landlord and Tenant will send to Mortgagee copies of all statements or notices of default or other material items involving the Lease required to be given or given by either of them under the Lease or received by either of them with respect

to the Leased Premises, which shall be sent to Mortgagee at the same time as such statement or notice is sent by that party to the other.

8. Tenant Representations and Covenants. Tenant hereby warrants and represents, covenants and agrees to and with Mortgagee that:

(a) Tenant shall not seek to terminate the Lease by reason of any default of Landlord without prior written notice thereof to Mortgagee and the lapse thereafter of the greater of (i) thirty (30) days after giving of such notice to Mortgagee or (ii) such time as under the Lease was offered to Landlord in which to remedy the default, within which time Mortgagee, at its exclusive option, may remedy any such default provided, however, that with respect to any default of Landlord under the Lease which cannot be remedied within such time, if Mortgagee commences to cure such default within such time and thereafter diligently proceeds with such efforts, Mortgagee shall have such time as is reasonably necessary to complete curing such default; provided, however, the foregoing shall not limit Tenant's abatement or set-off rights, if any, as may expressly be provided in the Lease.

(b) Tenant shall promptly certify in writing to Mortgagee in connection with any proposed assignment of the Mortgage or Assignment, whether or not to Tenant's knowledge, any default on the part of Landlord then existing under the Lease or whether any event has occurred which, but for the passage of time, the giving of notice or both, would constitute a default under the Lease.

(c) Tenant has no charge, lien, claim or offset of any kind against Landlord (or any prior Landlord) except as may be provided in the Lease, and Tenant will not withhold or reduce payments due under the Lease, except as expressly permitted under the Lease.

(d) Mortgagee or its successors and assigns shall, if they expressly so demand in writing, be named as the additional insured, as its interest may appear, in any policies of liability insurance now or hereafter required under the Lease.

(e) Upon receipt by Tenant from Mortgagee of notice of any default under the Mortgage or Assignment, Tenant shall pay all rents and other sums due under the Lease directly to Mortgagee, Landlord agreeing that any such payment to Mortgagee will be an absolute release to Tenant of any obligation to pay the same sum to Landlord.

(f) Tenant shall comply with all terms and conditions of the Lease to be performed and observed by it and will not pay

rent or any other sums due under the Lease in advance, it being agreed that any such advance payment shall not relieve Tenant of any obligation it may have to pay rent to Mortgagee.

9. Representations and Covenants by Mortgagees. Mortgagee warrants, represents, covenants and agrees with Tenant that, in the event of a foreclosure of that certain Mortgage, dated May 20, 1984, granted by Landlord in favor of Northeastern Industrial Park, Inc. and F/V Enterprises, Inc. (collectively, the "Second Mortgage"), recorded in Liber 9014 of Mortgages at Page 332 in the Office of the Clerk of the County of Erie, New York on December 24, 1984 (the "Second Mortgage"), Mortgagee will not allow the Second Mortgage to affect the Lease in any way, including, without limitation, not allow the Second Mortgage to disturb Tenant's right to possession of the Leased Premises, as a result of the foreclosure of the Second Mortgage.

10. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of all of the parties hereto.

11. Notices; Captions; and Gender. Any notices required or permitted to be given hereunder shall be in writing and (i) personally delivered or (ii) given by registered or certified mail, postage prepaid, return receipt requested, or (iii) forwarded by overnight courier service, in each instance addressed to the following addresses or such other addresses as the parties may for themselves designate in writing as provided herein for the purposes of receiving notices hereunder:

Mortgagee:

Key Bank of New York
66 South Pearl Street
Albany, New York 12207

Tenant:

Buffets, Inc.
10260 Viking Drive, Suite 100
Eden Prairie, MN 55344
Attn: Real Estate Department

Landlord:

Clarence Mall Properties
c/o The Brookhill Group
10 East 53rd Street
New York, New York 10022

Any notice hereunder shall be deemed given, in the case of personal delivery, upon actual delivery, and in the case of appropriate mail or courier service, upon deposit with the U.S. Postal Service or delivery to the courier service.

12. Entire Agreement. This Agreement contains the entire understanding between the parties hereto. This Agreement may be modified or amended in full or in part only by an agreement in writing executed in the same manner as this Agreement.

13. Miscellaneous. The captions used at the beginning of each paragraph of this Agreement are for the convenience of the reader and do not form a part of this Agreement.

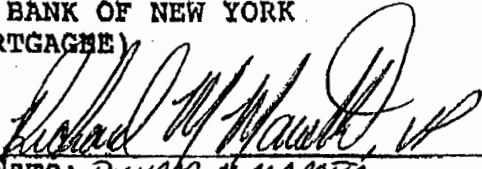
Whenever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

This instrument shall be governed and construed in accordance with the laws of the State of New York.

This Agreement may be recorded at the request of any of the parties hereto.


IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective duly authorized officer or partner as of the day and year first above written.

KEY BANK OF NEW YORK
(MORTGAGEE)


By: 
Name: *Richard M. Morata*
Title: *Vice President*

CLARENCE MALL PROPERTIES
(LANDLORD)

By: ~~XXX~~ Brookhill ~~Group~~ Capital Resources, Inc.
Its General Partner

By: 
Name: Ronald B. Bruder
Title: President

BUFFET'S, INC.
(TENANT)

By: 
Name: *Nancy See Conti*
Title: *President*

SCHEDULE "A"

**Mortgage With Consolidation and Spreading Provisions
Dated December 20, 1984**

Between

Clarence Mall Properties, a New Jersey Limited Partnership

- and -

Empire Funding, Inc.

**Mortgage recorded in Liber 9014 of Mortgages
at Page 310 in the Office of the Clerk of the
County of Erie on the 24th day of December, 1984.**

SCHEDULE "B"

Exhibit A from the main Lease
(the picture with shaded portions of the property)

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE, is made and entered into as of this 17th day of March, 1994, by and between Clarence Mall Properties, a New Jersey limited partnership ("Landlord"), and Buffets, Inc., a Minnesota corporation ("Tenant").

RECITALS

A. Landlord, as landlord, and Tenant, as tenant, have entered into that certain lease dated June 15, 1993 and that certain letter agreement dated June 16, 1993 (collectively, the "Lease"), relating to certain leased premises (the "Premises") in the shopping center development commonly known as Clarence Mall (the "Shopping Center"), situated on certain real property in the City of Clarence, County of Erie, New York, legally described on Exhibit A attached hereto.

B. Landlord and Tenant now wish to memorialize of record the existence of the Lease and certain specific terms of the same.

NOW THEREFORE, in consideration of the Lease and other good and valuable consideration, Landlord and Tenant agree as follows:

1. Landlord and Tenant have entered into the Lease to demise and let the Premises, upon the terms and conditions more particularly set forth in the Lease.

2. The term of the Lease shall be for an initial term of Fifteen (15) full Lease Years and any Partial Lease Year (as such terms are defined in the Lease), commencing on November 22, 1993 (the "Commencement Date"), and expiring on December 31, 2008.

3. Subject to the terms and conditions more particularly set forth in the Lease, Tenant has the option to extend the term of the Lease for two (2) additional periods of five (5) years each, such periods to commence at the expiration of the initial term or preceding extended term of the Lease, as the case may be.

4. As of the date of this Memorandum of Lease, the gross leasable area of the Premises is ten thousand sixty (10,060) square feet.

5. Tenant shall have the exclusive right to operate a sit-down buffet-style restaurant or cafeteria in the Shopping Center. Landlord covenants and agrees not to lease any space in the Shopping Center to (i) any other tenant whose primary business conducted in such space is the operation of a sit-down buffet-style restaurant or cafeteria, or (ii) any restaurant greater than four thousand (4,000) square feet or serving alcohol in Out Parcel No. 1 shown on Exhibit A of the Lease, nor shall Landlord permit or consent, either explicitly or implicitly, to the operation of a

sit-down buffet-style restaurant or cafeteria in the Shopping Center or to any restaurant greater than four thousand square feet or serving alcohol in Our Parcel No. 1 shown on Exhibit A of the Lease; provided, however, that this exclusive shall not apply to the following tenants of the shopping Center: Hills Department Store, Burlington Coat Factory and Silo, each of whose current leases does not prohibit them from operating a buffet-style restaurant or cafeteria; further provided that Landlord agrees not to enter into any new Shopping Center leases without including a provision which would prevent said tenants from operating a buffet-style restaurant or cafeteria at the Shopping Center.

6. Reference is made to the Lease for a full statement of the terms and conditions of the Lease, all of which are hereby incorporated by reference.

7. Nothing in this Memorandum of Lease shall be construed to amend, modify, change, alter, amplify, interpret or supersede any of the terms and provisions of the Lease, which shall in all things control.

IN WITNESS WHEREOF, Landlord and Tenant have caused this Memorandum of Lease to be executed as of the day and year first above written.

Witness:

Witness:

Dina M. Bernhardt
[Signature]

LANDLORD:

CLARENCE MALL PROPERTIES,
a New Jersey limited
partnership

By: [Signature]
Its: Ronald B. Bruder, President

By: Brookhill Capital Resources, Inc.
Managing General Partner

TENANT:

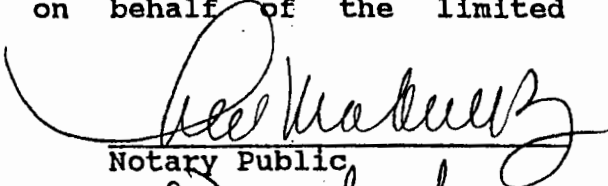
BUFFETS, INC.,
a Minnesota corporation

By: [Signature]
Its: [Signature]

STATE OF New York)
) ss.
COUNTY OF New York)

The foregoing instrument was acknowledged before me this 22 day of February, 1994, by Ronald B. Bruder, President, the of Brookhill Capital Resources, Inc of Clarence Mall Properties, a New Jersey limited partnership on behalf of the limited partnership.

(seal)


Notary Public

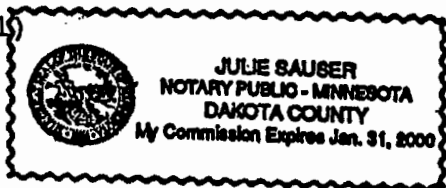
Greenwich,

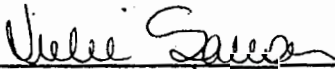
#02WA5022859

STATE OF MINNESOTA)
) ss.
COUNTY OF Dakota)

The foregoing instrument was acknowledged before me this 17th day of March, 1994, by Roe H. Hatlen, the CEO of Buffets, Inc., a Minnesota corporation on behalf of the corporation.

(seal)




Notary Public

THIS INSTRUMENT WAS DRAFTED BY
AND TO BE RETURNED TO:
Buffets, Inc. (JGS)
10260 Viking Drive, Suite 100
Eden Prairie, MN 55344
(612) 946-0612

Exhibit A

Legal Description of Shopping Center

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Clarence, County of Erie and State of New York, being part of Lot 12, Section 13, Township 12, Range 6 of the Holland Land Company's Survey and more particularly described as follows:

BEGINNING at the southeast corner of Lot 12, Section 13, thence north $87^{\circ} 22' 20''$ west along the south line of Lot 12, said line being the northerly right of way of Main Street as laid out 99.00 feet in width, 1227.54 feet to a point, said point being the intersection of the south line of Lot 12 and the easterly right of way of Transit Road as shown on Transit Acquisition Map, Part 1, S.E. 88, Map 3, Parcel 3; thence north $0^{\circ} 12' 50''$ east along the easterly right of way of Transit Road, said line also being parallel to and 67.00 feet at right angles, easterly of the west line of Lot 12, 1202.82 feet to a point; thence south $89^{\circ} 47' 10''$ east along a line, said line being at right angles to the previous course, 1235.48 feet to a point, said point lying on the east line of Lot 12; thence south $0^{\circ} 37' 10''$ west along the east line of Lot 12, 1254.57 feet to the point or place of beginning, containing 34.64 acres, more or less.

EXCEPTING AND RESERVING therefrom the following six parcels described as follows:

PARCEL 1: **BEGINNING** at a point in the south line of Lot 12, said point being 67.06 feet southeasterly of the southwest corner of Lot 12; thence north $0^{\circ} 12' 50''$ east along the existing right of way of Transit Road, 200.00 feet to a point; thence south $87^{\circ} 22' 20''$ east along a line parallel to the south line of Lot 12, 200.00 feet to a point; thence south $0^{\circ} 12' 50''$ west along a line parallel to the west line of Lot 12, 200.00 feet to a point, said point being the south line of Lot 12; thence north $87^{\circ} 22' 20''$ west along the south line of Lot 12, 200.00 feet to the point or place of beginning, containing .92 acres, more or less.

PARCEL 2: **BEGINNING** at a point in the south line of Lot No. 12, Section 13, said line being the northerly right of way of Main Street as laid out 99 feet in width, 470.30 feet westerly of the southeast corner of said Lot No. 12; measured along said south line of Lot No. 12; running thence westerly along the south line of Lot No. 12, 115.08 feet to a point; thence northerly parallel to the east line of said Lot No. 12, 170 feet to a point; thence easterly at right angles to the previous course 115 feet to a point; thence southerly in a direct line to the point of beginning, a distance of 174.03 feet.

PARCEL 3: That piece or parcel of land conveyed to F/V Enterprises, Inc. by deed recorded in the Erie County Clerk's Office in Liber 7898 of Deeds at page 63.

PARCEL 4: **COMMENCING** at the point of intersection between the easterly boundary line of Transit Road (as a street 100 feet wide) and the southerly line of lands conveyed to Sears, Roebuck and Co. by deed recorded in the Erie County Clerk's Office in Liber 7587 of Deeds at page 264; thence easterly along the southerly line of lands so conveyed to Sears, Roebuck and Co., 505 feet to a point; thence southerly along a course which is at right angles to the last described course, 150 feet to a point, which is the point or place of beginning;

INITIALS.
RJB

thence easterly along a course which is at right angles to the last described course, 286.11 feet to a point; thence northeasterly along a course which is at an interior angle of $205^{\circ} 58'$, 28.55 feet to a point; thence easterly at an exterior angle of $205^{\circ} 58'$ and along a line drawn parallel to the southerly line of lands so conveyed to Sears, Roebuck and Co., 43.68 feet to a point; thence southwesterly at an interior angle of $25^{\circ} 58'$, 175.14 feet to a point; thence southerly at an exterior angle of $115^{\circ} 58'$, 38.99 feet to a point; thence westerly along a course which is at right angles to the last described course, said course being along a line drawn parallel to the southerly line of lands so conveyed to Sears, Roebuck and Co., 200 feet to a point; thence northerly along a course which is at right angles to the last described course, 103.17 feet to the point or place of beginning, containing .58 acre, more or less.

PARCEL 5: COMMENCING at a point in the west line of Lot 12, Section 13, Township 12, Range 6, 1200.00 feet north of the southwest corner of said lot; thence easterly at right angles to said west lot line and along the south line of land described in a deed recorded in the Erie County Clerk's Office in Liber 7587 of Deeds at page 264, 572.00 feet to the point or place of beginning; thence southerly at right angles, 130.00 feet to a point; thence easterly at right angles, 286.11 feet to a point; thence northeasterly 28.55 feet to a point, said point being 137.50 feet south of the south line of land described in a deed recorded in the Erie County Clerk's Office in Liber 7587 of Deeds at page 264; thence easterly on a line parallel to the southerly line of said land described in a deed recorded in the Erie County Clerk's Office in Liber 7587 of Deeds at page 264, 213.23 feet to a point; thence northerly at right angles, 137.50 feet to a point; said point being in the south line of land described in a deed recorded in the Erie County Clerk's Office in Liber 7587 of Deeds at page 264; thence westerly at right angles along the south line of said land described in a deed recorded in the Erie County Clerk's Office in Liber 7587 of Deeds at page 264, 525.00 feet to the point or place of beginning, containing 1.74 acres more or less.

PARCEL 6: COMMENCING at the intersection of the east line of Transit Road (as a 100 foot wide right of way) with the north line of Main Street (99 feet wide) being also the south line of Lot 12, Section 13, Township 12, Range 6; thence north $89^{\circ} 52' 35''$ east, 550.85 feet along said north line of Main Street to a point; thence north $00^{\circ} 07' 25''$ west along a line 30.42 feet to the point of beginning; thence north $40^{\circ} 48' 52''$ east along a line 105.00 feet to a point; thence north $49^{\circ} 11' 18''$ west along a line 150.00 feet to a point; thence south $40^{\circ} 48' 42''$ west along a line 105.00 feet to a point; thence south $49^{\circ} 11' 18''$ east along a line 150.00 feet to the point of beginning containing 0.36 acre more or less.

INITIALS:
RFB

Attachment 3 - Benchmark - OCB - Exhibit B to Rider.PDF

Description -

Exhibit “B”

Buffets, Inc.

10260 Viking Drive • Suite 100 • Eden Prairie, Minnesota 55344 • (612) 942-9760 • Fax (612) 942-9658

June 16, 1993

VIA FAX AND
FEDERAL EXPRESS

Mr. Ron Bruder
The Brookhill Group
10 East 53rd Street
New York, New York 10022

RE: Old Country Buffet
Clarence Mall
Clarence, New York

Dear Mr. Bruder:

Pursuant to that certain lease dated June 15, 1993, by and between Clarence Mall Properties, as Landlord, and Buffets, Inc., as Tenant, (the "Lease") for that certain Premises described in the Lease, Tenant agrees that Landlord shall have the right to terminate the Lease in the event that those certain terms set forth in Section 2(i)(a), (b) and (c) of the Lease regarding the Commencement Date, i.e. "(a) the date Landlord approves Tenant's Plans; (b) the date Landlord tenders possession of the Premises to Tenant; (c) the date Landlord provides Tenant with a nondisturbance agreement from the secured party under the existing first mortgagee or deed of trust with respect to the Shopping Center on terms and conditions reasonably satisfactory to Tenant and such secured party", do not occur within six (6) months from the later of (i) the date Tenant receives a fully executed copy of the Lease, or (ii) the date Landlord obtains Bankruptcy Court approval of the Lease in Bankruptcy Case No. 93B40234 (TLB) in the United States Southern District of New York, provided that Landlord's approval of such Plans are reasonable and provided Landlord tenders possession of the Premises free from any Hazardous Materials by July 1, 1993, all pursuant to the Lease. In the event Tenant is diligently pursuing such terms as set forth in Section 2(i)(a), (b) and (c) of the Lease during said six (6) month period, Landlord agrees to extend Landlord's right to terminate the Lease for an additional three (3) month period.

**Old Country
Buffet**



Mr. Ron Bruder
June 16, 1993
Page 2

Tenant's obligations under the Lease are contingent upon Bankruptcy Court's approval in Landlord's Bankruptcy Case No. 93B40234(TLB) in the United States Southern District of New York. Landlord agrees to use all reasonable means to obtain, at Landlord's sole cost and expense, such Bankruptcy Court approval. Landlord further agrees that Tenant is not obligated to commence any construction on the Premises nor shall the 150 day period for the Commencement Date as set forth in Section 2 of the Lease start until Landlord has received Bankruptcy Court approval of the Lease.

Except as hereby specifically amended, the Lease and all the terms and provisions thereof shall remain in full force and effect.

By executing this document below, both parties agree to be bound by the terms set forth herein.

Very truly yours,

BUFFETS, INC.

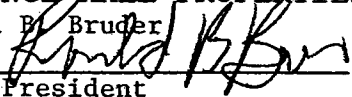
By 
Roe H. Hatlen, CEO

Dated: 6/16/93

Brookhill Management Corp., as Agent for

CLARENCE MALL PROPERTIES

Ronald B. Bruder

By 
Its President

Dated: 6/16/93

NY138LL.KS1

Attachment 4 - Benchmark - OCB - Exhibit C to Rider.PDF

Description -

Exhibit “C”

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE, is made and entered into as of this 17th day of March, 1994, by and between Clarence Mall Properties, a New Jersey limited partnership ("Landlord"), and Buffets, Inc., a Minnesota corporation ("Tenant").

RECITALS

A. Landlord, as landlord, and Tenant, as tenant, have entered into that certain lease dated June 15, 1993 and that certain letter agreement dated June 16, 1993 (collectively, the "Lease"), relating to certain leased premises (the "Premises") in the shopping center development commonly known as Clarence Mall (the "Shopping Center"), situated on certain real property in the City of Clarence, County of Erie, New York, legally described on Exhibit A attached hereto.

B. Landlord and Tenant now wish to memorialize of record the existence of the Lease and certain specific terms of the same.

NOW THEREFORE, in consideration of the Lease and other good and valuable consideration, Landlord and Tenant agree as follows:

1. Landlord and Tenant have entered into the Lease to demise and let the Premises, upon the terms and conditions more particularly set forth in the Lease.

2. The term of the Lease shall be for an initial term of Fifteen (15) full Lease Years and any Partial Lease Year (as such terms are defined in the Lease), commencing on November 22, 1993 (the "Commencement Date"), and expiring on December 31, 2008.

3. Subject to the terms and conditions more particularly set forth in the Lease, Tenant has the option to extend the term of the Lease for two (2) additional periods of five (5) years each, such periods to commence at the expiration of the initial term or preceding extended term of the Lease, as the case may be.

4. As of the date of this Memorandum of Lease, the gross leasable area of the Premises is ten thousand sixty (10,060) square feet.

5. Tenant shall have the exclusive right to operate a sit-down buffet-style restaurant or cafeteria in the Shopping Center. Landlord covenants and agrees not to lease any space in the Shopping Center to (i) any other tenant whose primary business conducted in such space is the operation of a sit-down buffet-style restaurant or cafeteria, or (ii) any restaurant greater than four thousand (4,000) square feet or serving alcohol in Out Parcel No. 1 shown on Exhibit A of the Lease, nor shall Landlord permit or consent, either explicitly or implicitly, to the operation of a

sit-down buffet-style restaurant or cafeteria in the Shopping Center or to any restaurant greater than four thousand square feet or serving alcohol in Our Parcel No. 1 shown on Exhibit A of the Lease; provided, however, that this exclusive shall not apply to the following tenants of the shopping Center: Hills Department Store, Burlington Coat Factory and Silo, each of whose current leases does not prohibit them from operating a buffet-style restaurant or cafeteria; further provided that Landlord agrees not to enter into any new Shopping Center leases without including a provision which would prevent said tenants from operating a buffet-style restaurant or cafeteria at the Shopping Center.

6. Reference is made to the Lease for a full statement of the terms and conditions of the Lease, all of which are hereby incorporated by reference.

7. Nothing in this Memorandum of Lease shall be construed to amend, modify, change, alter, amplify, interpret or supersede any of the terms and provisions of the Lease, which shall in all things control.

IN WITNESS WHEREOF, Landlord and Tenant have caused this Memorandum of Lease to be executed as of the day and year first above written.

Witness:

Witness:

Dina M. Bernhardt
[Signature]

LANDLORD:

CLARENCE MALL PROPERTIES,
a New Jersey limited
partnership

By: [Signature]
Its: Ronald B. Bruder, President

By: Brookhill Capital Resources, Inc.
Managing General Partner

TENANT:

BUFFETS, INC.,
a Minnesota corporation

By: [Signature]
Its: [Signature]

STATE OF New York)
) ss.
COUNTY OF New York)

The foregoing instrument was acknowledged before me this 22 day of February, 1994, by Ronald B. Bruder, President, the of Brookhill Capital Resources, Inof Clarence Mall Properties, a New Jersey limited partnership on behalf of the limited partnership.

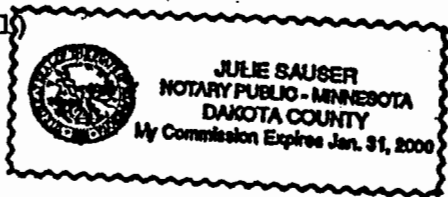
(seal)

[Signature]
Notary Public
Greenwich,
#02MA5022809

STATE OF MINNESOTA)
) ss.
COUNTY OF Dakota)

The foregoing instrument was acknowledged before me this 17th day of March, 1994, by Roe H. Hatlen, the CEO of Buffets, Inc., a Minnesota corporation on behalf of the corporation.

(seal)



[Signature]
Notary Public

THIS INSTRUMENT WAS DRAFTED BY
AND TO BE RETURNED TO:
Buffets, Inc. (JGS)
10260 Viking Drive, Suite 100
Eden Prairie, MN 55344
(612) 946-0612

Exhibit A

Legal Description of Shopping Center

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Clarence, County of Erie and State of New York, being part of Lot 12, Section 13, Township 12, Range 5 of the Holland Land Company's Survey and more particularly described as follows:

BEGINNING at the southeast corner of Lot 12, Section 13, thence north $87^{\circ} 22' 20''$ west along the south line of Lot 12, said line being the northerly right of way of Main Street as laid out 99.00 feet in width, 1227.54 feet to a point, said point being the intersection of the south line of Lot 12 and the easterly right of way of Transit Road as shown on Transit Acquisition Map, Part 1, S.E. 88, Map 2, Parcel 3; thence north $0^{\circ} 12' 50''$ east along the easterly right of way of Transit Road, said line also being parallel to and 67.00 feet at right angles, easterly of the west line of Lot 12, 1202.82 feet to a point; thence south $89^{\circ} 47' 10''$ east along a line, said line being at right angles to the previous course, 1235.48 feet to a point, said point lying on the east line of Lot 12; thence south $0^{\circ} 37' 10''$ west along the east line of Lot 12, 1254.57 feet to the point or place of beginning, containing 34.64 acres, more or less.

EXCEPTING AND RESERVING therefrom the following six parcels described as follows:

PARCEL 1: **BEGINNING** at a point in the south line of Lot 12, said point being 67.06 feet southeasterly of the southwest corner of Lot 12; thence north $0^{\circ} 12' 50''$ east along the existing right of way of Transit Road, 200.00 feet to a point; thence south $87^{\circ} 22' 20''$ east along a line parallel to the south line of Lot 12, 200.00 feet to a point; thence south $0^{\circ} 12' 50''$ west along a line parallel to the west line of Lot 12, 200.00 feet to a point, said point being the south line of Lot 12; thence north $87^{\circ} 22' 20''$ west along the south line of Lot 12, 200.00 feet to the point or place of beginning, containing .92 acres, more or less.

PARCEL 2: **BEGINNING** at a point in the south line of Lot No. 12, Section 13, said line being the northerly right of way of Main Street as laid out 99 feet in width, 470.30 feet westerly of the southeast corner of said Lot No. 12; measured along said south line of Lot No. 12; running thence westerly along the south line of Lot No. 12, 115.08 feet to a point; thence northerly parallel to the east line of said Lot No. 12, 170 feet to a point; thence easterly at right angles to the previous course 115 feet to a point; thence southerly in a direct line to the point of beginning, a distance of 174.03 feet.

PARCEL 3: That piece or parcel of land conveyed to F/V Enterprises, Inc. by deed recorded in the Erie County Clerk's Office in Liber 7894 of Deeds at page 63.

PARCEL 4: **COMMENCING** at the point of intersection between the easterly boundary line of Transit Road (as a street 100 feet wide) and the southerly line of lands conveyed to Sears, Roebuck and Co. by deed recorded in the Erie County Clerk's Office in Liber 7587 of Deeds at page 264; thence easterly along the southerly line of lands so conveyed to Sears, Roebuck and Co., 505 feet to a point; thence southerly along a course which is at right angles to the last described course, 150 feet to a point, which is the point or place of beginning;

INITIALS.
FRB

thence easterly along a course which is at right angles to the last described course, 286.11 feet to a point; thence northeasterly along a course which is at an interior angle of $205^{\circ} 58'$, 28.55 feet to a point; thence easterly at an exterior angle of $205^{\circ} 58'$ and along a line drawn parallel to the southerly line of lands so conveyed to Sears, Roebuck and Co., 45.68 feet to a point; thence southwesterly at an interior angle of $25^{\circ} 58'$, 175.14 feet to a point; thence southerly at an exterior angle of $115^{\circ} 58'$, 38.99 feet to a point; thence westerly along a course which is at right angles to the last described course, said course being along a line drawn parallel to the southerly line of lands so conveyed to Sears, Roebuck and Co., 200 feet to a point; thence northerly along a course which is at right angles to the last described course, 103.17 feet to the point or place of beginning, containing .58 acres, more or less.

PARCEL 5: COMMENCING at a point in the west line of Lot 12, Section 13, Township 12, Range 6, 1200.00 feet north of the southwest corner of said lot; thence easterly at right angles to said west lot line and along the south line of land described in a deed recorded in the Erie County Clerk's Office in Liber 7587 of Deeds at page 264, 572.00 feet to the point or place of beginning; thence southerly at right angles, 150.00 feet to a point; thence easterly at right angles, 286.11 feet to a point; thence northeasterly 28.55 feet to a point, said point being 137.50 feet south of the south line of land described in a deed recorded in the Erie County Clerk's Office in Liber 7587 of Deeds at page 264; thence easterly on a line parallel to the southerly line of said land described in a deed recorded in the Erie County Clerk's Office in Liber 7587 of Deeds at page 264, 213.23 feet to a point; thence northerly at right angles, 137.50 feet to a point; said point being in the south line of land described in a deed recorded in the Erie County Clerk's Office in Liber 7587 of Deeds at page 264; thence westerly at right angles along the south line of said land described in a deed recorded in the Erie County Clerk's Office in Liber 7587 of Deeds at page 264, 525.00 feet to the point or place of beginning, containing 1.74 acres more or less.

PARCEL 6: COMMENCING at the intersection of the east line of Transit Road (as a 100 foot wide right of way) with the north line of Main Street (99 feet wide) being also the south line of Lot 12, Section 13, Township 12, Range 6; thence north $89^{\circ} 52' 39''$ east, 550.85 feet along said north line of Main Street to a point; thence north $00^{\circ} 07' 25''$ west along a line 30.42 feet to the point of beginning; thence north $40^{\circ} 48' 52''$ east along a line 105.00 feet to a point; thence north $49^{\circ} 11' 19''$ west along a line 150.00 feet to a point; thence south $40^{\circ} 48' 42''$ west along a line 105.00 feet to a point; thence south $49^{\circ} 11' 18''$ east along a line 150.00 feet to the point of beginning containing 0.36 acre more or less.

INITIALS:

RSB

Attachment 5 - Benchmark - OCB - Exhibit D to Rider.PDF

Description -

Exhibit ‘D’

ASSIGNMENT AND ASSUMPTION OF LEASE

THIS ASSIGNMENT AND ASSUMPTION OF LEASE is made as of the 14th day of July, 1994, by and between BUFFETS, INC., a Minnesota corporation ("Assignor"), and OCB REALTY CO., a Minnesota corporation ("Assignee").

RECITALS

A. Clarence Mall Properties, as landlord (hereinafter referred to as "Landlord"), and Assignor, as tenant, entered into that certain Lease Agreement dated June 15, 1993 (hereinafter referred to as the "Lease"), relating to certain real property and improvements located in Clarence Mall, Clarence, New York, and more specifically described in the Lease.

B. Assignor now desires to assign to Assignee all of Assignor's right, title, interest and obligations in the Lease, and Assignee desires to accept the same and assume all right, title, interest and obligations of Assignor under the Lease.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignor and Assignee hereby agree as follows:

1. Assignor hereby assigns, sells, transfers and conveys to Assignee, its successors and assigns, all of Assignor's right, title and interest and obligations under the Lease.

2. Assignee hereby assumes all of the obligations of the tenant under the Lease occurring or accruing from and after the date of this Assignment and Assumption Agreement. Assignee hereby agrees to indemnify, defend and hold harmless Assignor

from any and all obligations, liabilities, claims and causes of action arising out of the Lease from and after the date of this Assignment and Assumption Agreement.

3. This Assignment and Assumption Agreement and the terms and conditions hereof shall be binding upon and shall inure to the benefit of Assignor, Assignee and their respective heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF, Assignor and Assignee have caused this Assignment and Assumption Agreement to be executed and delivered as of the day and year first above written.

BUFFETS, INC.

By: [Signature]
Roe H. Hatlen, CEO

OCB REALTY CO.

By: [Signature]
Roe H. Hatlen, CEO

THIS INSTRUMENT WAS DRAFTED BY:

Faegre & Benson (JEK)
2200 Norwest Center
90 South Seventh Street
Minneapolis, MN 55402
Phone: (612) 336-3000

MUR0B269.WP5

Attachment 6 - Benchmark - OCB - Exhibit E to Rider.PDF

Description -

Exhibit “E”

SUBLEASE

This Sublease, made and entered into as of the 14th day of July, 1994, by and between OCB Realty Co., a Minnesota corporation ("Sublandlord") and OCB Restaurant Co., a Minnesota corporation ("Subtenant").

RECITALE

1. Buffets, Inc. entered into that Lease Agreement dated June 15, 1993, by and between Clarence Mall Properties, as landlord ("Landlord"), and Buffets, Inc., as tenant, (the "Prime Lease"), covering certain space (the "Premises") located in Clarence Mall, Clarence, New York.

2. Buffets, Inc. assigned all of its right, title, interest and obligations under the Prime Lease to Sublandlord pursuant to that Assignment and Assumption Agreement dated July 14, 1994.

3. Subtenant desires to Sublease the Premises from Sublandlord and Sublandlord desires to Sublease the same to Subtenant, on the terms and conditions hereof.

NOW THEREFORE, in consideration of the terms, covenants and conditions set forth below, and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. **Grant.**

Sublandlord does hereby Sublease to Subtenant, and Subtenant does hereby lease from Sublandlord, the Premises and all appurtenant rights under the Prime Lease, under the terms and conditions set forth herein.

2. Term.

The term of this Sublease shall commence as of July 14, 1994 (the "Commencement Date"), and shall end on one (1) day prior to expiration, or the sooner termination, of the Prime Lease as that term may be extended pursuant to the Prime Lease and upon mutual agreement of Sublandlord and Subtenant.

3. Sublease Rent.

3.1 Subtenant shall pay to Sublandlord a guaranteed annual rental ("Sublease Rent") in an amount equal to ten percent (10%) of gross sales made or rendered, in or from the Premises ("Gross Sales") for each calendar year or portion thereof during the term hereof. In the event that the aggregate of Sublandlord's expenses during any calendar year including, but not limited to, all rental, common area expenses, real estate taxes, advertising/promotional expense payments, and all other charges paid under the Prime Lease and all other restaurant subleases to Subtenant, shall exceed the amount of Sublease Rent and all other sublease rent under all other restaurant subleases to Subtenant received by Sublandlord from Subtenant during the same calendar year by more than eighty percent (80%), Sublandlord shall have the right to increase Subtenant's Sublease Rent; provided, however, such increase in Sublease Rent shall not exceed ten percent (10%) of the Sublease Rent due during the same calendar year; provided, further that Sublandlord's right to increase Subtenant's Sublease Rent shall be exercised no more than one time every four (4) year period during the term,

including any extensions hereof, commencing with the Commencement Date of this Sublease.

3.2 All Sublease Rent shall be payable within fifteen (15) days after the end of each accounting period agreed to by Sublandlord and Subtenant, without notice, demand, deduction, abatement or offset during the term hereof and any renewal or extended term, and delivered together with a statement of the gross sales of the Subtenant made at, in on and from the Premises for such accounting period. All Sublease Rent and written statements of gross sales shall be provided to Sublandlord at the following address:

OCB Realty Co.
Suite 100
10260 Viking Drive
Eden Prairie, MN 55434

or such other address as may be designated upon notice to Subtenant.

4. Prime Lease.

This Sublease is subject and subordinate to the Prime Lease. Subtenant acknowledges that it has received a copy of the Prime Lease and agrees that all of its rights under this Sublease shall be subject to the Prime Lease. Except as expressly provided by the terms of this Sublease, Subtenant agrees to be bound by and perform all the terms, provisions and conditions to be performed by or applicable to the tenant under the Prime Lease except the obligation to pay rent to the Landlord and for purposes of said limited incorporation any references in the Prime Lease to "Lessor" or "Landlord" and "Lessee" or "Tenant" shall be deemed references to Sublandlord and Subtenant.

respectively. Sublandlord shall have the benefit of all rights and remedies available to the Landlord under the Prime Lease, including but not limited to the right of re-entry.

5. Assignment and Subletting.

Subtenant shall not assign this Sublease in whole or in part, or sublet all or any part of the Premises, or permit occupancy of all or any part of the Premises under any arrangement by a party other than Subtenant, without in each instance the prior written consent of Sublandlord in its absolute and sole discretion.

6. Default: Performance by Sublandlord.

6.1 If installments of Sublease Rent or any other amount payable hereunder are not paid by Subtenant when the same becomes due, or Subtenant shall default under any other term, condition, covenant or obligation on the part of Subtenant to be kept or performed, and such default shall continue after ten (10) days' written notice from Sublandlord, then, in any of said cases Sublandlord may, in addition to any other rights and remedies, terminate this Sublease without further notice and re-enter and take possession of the Premises, and remove all persons and their property therefrom so as to recover at once full and exclusive possession of all the Premises, whether in possession of Subtenant or of third persons, or vacant, and Subtenant's liability for rent and all other liability shall survive any such termination and re-entry.

6.2 If Subtenant shall fail to perform any act on its part to be performed hereunder, Sublandlord may (but shall not be

obligated so to do) perform such act without waiving or releasing Subtenant from any of its obligations relative thereto. All sums paid or costs incurred by Sublandlord in so performing such acts under this Section 6.2, together with reasonable attorneys' fees and interest thereon at a rate per annum equal to the First Bank National Association Minneapolis Reference Rate, from the date each such payment was made or each such cost incurred by Sublandlord, shall be payable by Subtenant to Sublandlord on demand.

6.3 No reference to nor exercise of any specific right or remedy by Sublandlord shall prejudice or preclude Sublandlord from exercising or invoking any other remedy in respect thereof, whether allowed at law or in equity or expressly provided for herein. No such remedy shall be exclusive or dependent upon any other such remedy, but Sublandlord may from time to time exercise any one or more of such remedies independently or in combination.

7. Indemnification.

Subtenant agrees to indemnify and hold harmless Sublandlord from any and all claims, damages, liabilities, causes of action or costs (including attorneys' fees and costs of suit), however caused, to the extent they arise out of (or are alleged to arise out of), directly or indirectly, (a) Subtenant's use or occupancy of the Premises or (b) any breach by Subtenant of its obligation hereunder (including those in respect of the Prime Lease).

8. Waiver of Claims.

Notwithstanding any other provision in this Sublease to the contrary, Sublandlord and Subtenant hereby release one another, (to the other or anyone claiming through or under them by way of subrogation or otherwise) for any loss or damage covered by insurance or coverable by the insurance even if such loss or damage shall have been caused by the fault or negligence of the other party, or anyone for whom such party may be responsible, except that in any event Subtenant shall not be released from any liability to the extent Sublandlord would have any liability under the Prime Lease.

9. Premises Taken "As-Is".

Subtenant agrees that by executing this Sublease it is accepting the Premises from Sublandlord in its condition "AS-IS."

10. Notices.

All notices of any kind required under the provisions of this Sublease shall be by personal service or by United States mail, postage prepaid, certified or registered, return receipt requested, addressed as follows:

If to Sublandlord:

OCB Realty Co.
Suite 100
10260 Viking Drive
Eden Prairie, MN 55344
Attn: Real Estate Department

If to Subtenant:

OCB Restaurant Co.
Suite 100
10260 Viking Drive
Eden Prairie, MN 55344
Attn: Real Estate Department

Either party may, by such notice, designate a new or other address to which notice may be mailed. Any notice given hereunder shall be deemed received upon deposit in the United States Mail in accordance with the foregoing. Notices given in any other manner shall be deemed given only upon actual receipt by the party in question.

11. Miscellaneous Provisions.

11.1 This Sublease shall be construed under the laws of the State of Minnesota.

11.2 Each provision herein shall be deemed separate and distinct from all other provisions, and if any one of them shall be declared illegal or unenforceable, the same shall not affect the legality or enforceability of the other terms, conditions, and provisions hereof, which shall remain in full force and effect.

11.3 This Sublease shall bind and apply to the benefit of the successors and assigns of the respective parties hereto but this provision shall not authorize the assignment or under letting of this Sublease contrary to the provisions herein contained.

11.4 In the event of any action or proceeding between the parties hereto arising under or in respect of this Sublease, the prevailing party shall be entitled to recover its attorney fees and costs in connection therewith.

Attachment 7 - Benchmark - OCB - Exhibit F to Rider.PDF

Description -

Exhibit “F”

GUARANTY

The undersigned, Buffets, Inc., a Minnesota corporation ("Guarantor"), does hereby unconditionally guarantee to Clarence Mall Properties, a New Jersey limited partnership ("Landlord") in the event of the assignment of the lease originally by and between Buffets, Inc. and Landlord dated June 15, 1993 (the "Lease") to OCB Realty Co., and/or the sublease to OCB Restaurant Co., (i) the payment, when due, of all amounts of rent or other payments which may become due and payable pursuant to the terms and conditions of the Lease, and (ii) the performance of all other monetary obligations of the Tenant thereunder. Guarantor's obligations under this Guaranty shall extend through the entire term of the Lease and any renewal or extension of the Lease.

Guarantor hereby waives notice of (i) acceptance of this Guaranty, (ii) any action taken or omitted by Landlord in reliance on this Guaranty, and (iii) any default by OCB Realty Co. or OCB Restaurant Co. with respect to any term or condition of the Lease.

Guarantor agrees that, without its consent, the Lease may be modified, amended, and supplemented in any manner, including, but not limited to, a renewal or extension of the term of the Lease, and agrees that no such amendment, modification, supplement, renewal or extension shall release, affect or impair Guarantor's liability under this Guaranty.

Guarantor agrees that its liability under this Guaranty shall not be affected, reduced or impaired by reason of the failure of Landlord to pursue or enforce against OCB Realty Co. or OCB Restaurant Co. any right or remedy available to Landlord, and Guarantor hereby waives all right to require Landlord to pursue, enforce or resort to any or all such rights or remedies of Landlord.

Dated: July 14, 1994.

BUFFETS, INC.

By: 

Roe H. Hatlen, CEO

Attachment 8 - Benchmark - OCB - Exhibit G to Rider.PDF

Description -

Exhibit “G”

FIRST AMENDMENT TO LEASE

This First Amendment to Lease (the "**First Amendment**") is made and entered into this _____ day of December 21, 2005, by and between BENCHMARK MAIN-TRANSIT ASSOCIATES, LLC, a New York limited liability company (hereinafter referred to as "**Landlord**"), and OCB RESTAURANT COMPANY, LLC, a Minnesota limited liability company (hereinafter referred to as "**Tenant**").

WITNESSETH:

WHEREAS, Landlord and Tenant are the current parties to that certain lease dated June 15, 1993, as modified, amended, supplemented and/or transferred by that certain Memorandum of Lease dated March 17, 1994; that certain Subordination, Non-Disturbance and Attornment Agreement dated July 21, 2003; that certain letter of notice of sale dated July 22, 2003 and that certain letter of notice of conversion dated August 23, 2005 (hereinafter, collectively called the "**Lease**"), relating to certain leased premises more particularly described therein (the "**Premises**") in the shopping center development commonly known as Clarence Mall (the "**Shopping Center**"), situated on certain real property in the City of Clarence, County of Erie, State of New York.; and

WHEREAS, Landlord desires to demolish and reconstruct the Shopping Center ("**Landlord's Reconstruction**") as depicted on the site plan attached hereto as Exhibit A and consequently relocate Tenant to newly constructed premises (the "**Replacement Premises**") as depicted on the layout attached hereto as Exhibit A-1 and in the location crosshatched on the site plan attached hereto as Exhibit A; and

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

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

PART 1 - RECONSTRUCTION

1. UNDERSTANDING. It is understood and agreed that the Lease remains in full force and effect with respect to the Premises during Landlord's Reconstruction of the Shopping Center and construction of the Replacement Premises. More specifically, all terms and conditions set forth in the Lease remain binding upon the parties, including Landlord's obligation to maintain the Common Areas and its covenant not to materially impair access to the Premises from Transit Road and Main Street, materially reduce visibility of the Premises or its signs from Transit Road or interfere in any way with Tenant's business in the Premises, or reduce the parking immediately adjacent to the Premises (which is outlined in purple on Exhibit A, contains at least one hundred twenty (120) parking spaces and is referred to in the Lease and on Exhibit A as the "No Build Area." During Landlord's Reconstruction, parking in the No Build Area may be temporarily reduced for the shortest possible period necessary to complete an aspect of Landlord's Reconstruction, except that in no event shall there be less than one hundred twenty (120) parking spaces available within two hundred fifty feet (250') of the Premises entrance.

2. **LANDLORD'S WORK.** Landlord shall be solely responsible for the costs of demolition and construction of the Shopping Center and the Replacement Premises, including design and indirect costs, in accordance with Exhibit A, Exhibit C-1 and this First Amendment. Further, Landlord shall be responsible, at its sole cost and expense, to provide the work identified on Exhibit C attached hereto (referenced herein as "**Landlord's Replacement Work**"), for the Premises each located in accordance with Landlord's Tenant approved construction documents (the "**Plans**") and for the installation of and reimbursement to Tenant for the "tenant managed" items designated on the Plans (such as, but not limited to, interior and exterior signage, kitchen equipment and installation, hoods, exhaust, airhandling equipment, HVAC units, equipment installation, fire/burglar alarm monitoring, musak, refrigeration units, wall trim, millwork, wallcovering, carpeting, décor (i.e. art, decorative props on food bars, silk plants), food bars, booths, safe, etc.). It is understood that the final result of Landlord's Replacement Work will result in a completed restaurant meeting Tenant's specifications (utilizing Tenant's standard furniture, fixtures and equipment) for Tenant in fully "turn-key" fashion. More specifically, Tenant shall bear no cost or responsibility related to the construction and opening of the Replacement Premises, with Landlord responsible to provide facilities ready to open consistent with the Plans.

3. **ELECTION OF OPTION.** Notwithstanding anything contained in the Lease or this First Amendment to the contrary, Landlord and Tenant acknowledge and agree that Tenant is hereby exercising its First Extension Option (January 1, 2009 through December 31, 2013).

PART II - LEASE MODIFICATIONS

Effective as of the date that Tenant opens for business from the Replacement Premises, the Lease shall be modified as follows:

1. Section 1. Premises and Shopping Center. of the Lease is hereby deleted in its entirety and replaced with the following:

"1. Premises and Shopping Center. Subject to the terms and conditions of this Lease, Landlord leases to Tenant and Tenant leases from Landlord the premises consisting of approximately 10,320 square feet of leasable area ("**Premises**"), as cross-hatched on the site plans attached hereto as Exhibit A, which Premises is a part of the shopping center development known as "The Shops at Main/Transit" located at Transit Road and Main Street anticipated to consist of approximately 248,800 square feet of leasable area, inclusive of the Premises ("**Shopping Center**"), as outlined in red on the site plan attached hereto as Exhibit A and as legally described in Exhibit B attached hereto. In the event Tenant uses an exterior enclosed garbage area, such area shall not be considered a portion of the Premises and rent shall not be payable thereon."

2. The third paragraph of Section 2. Term. of the Lease is hereby deleted in its entirety and replaced with the following:

"Tenant shall have four (4) options (the "**Extension Option(s)**") to renew and extend the Term for four (4) additional periods of five (5) years each (each, an "Extended Term"), the first of which has been exercised as indicated in Part I above. The Extension Options shall be exercised by Tenant giving Landlord written notice thereof at least six (6) months prior to the end of the initial Term or previous Extended Term, as the case may be. During the Extended Term(s), all terms and conditions of this Lease shall remain in

full force and effect except the Expiration Date shall be appropriately extended and the rent pursuant to Section 6 of this Lease and the expense limitation pursuant to Section 9C of this Lease shall be adjusted."

3. Section 4. Landlord's Work. is hereby deleted in its entirety and replaced with the Landlord's Work description attached hereto as Exhibit C and Exhibit C-1.
4. The last paragraph of Section 5. Tenant's Work. is hereby deleted in its entirety.
5. The Minimum Rent table of Section 6.A. Minimum Rent. is hereby deleted in its entirety and replaced with the following:

"First Partial Lease Year and Lease Years1 through 5:	\$64,200.00
Lease Years 6 through 10:.....	\$68,480.00
Lease Years 11 through 15:.....	\$72,760.00
First Extension (Lease Years 16 through 20):.....	\$92,880.00
Second Extension (Lease Years 21 through 25):	\$98,040.00
Third Extension (Lease Years 26 through 30):	\$103,200.00
Fourth Extension (Lease Years 31 through 35):.....	\$108,360.00"

6. The Percentage Rent table of Section 6.B. Percentage Rent. is hereby deleted in its entirety and replaced with the following:

"First Partial Lease Year and Lease Years1 through 5:	\$2,400,000.00
Lease Years 6 through 10:.....	\$2,600,000.00
Lease Years 11 through 15:.....	\$2,800,000.00
First Extension (Lease Years 16 through 20):.....	\$3,000,000.00
Second Extension (Lease Years 21 through 25):	\$3,200,000.00
Third Extension (Lease Years 26 through 30):	\$3,600,000.00
Fourth Extension (Lease Years 31 through 35):.....	\$3,800,000.00"

7. The Limitation table of Section 9.C. Limitation. is hereby deleted in its entirety and replaced with the following:

"First Partial Lease Year and Lease Years1 through 5:	\$8,132.00
Lease Years 6 through 10:.....	\$10,272.00
Lease Years 11 through 15:.....	\$12,412.00
First Extension (Lease Years 16 through 20):.....	\$17,544.00
Second Extension (Lease Years 21 through 25):	\$20,124.00
Third Extension (Lease Years 26 through 30):	\$22,704.00
Fourth Extension (Lease Years 31 through 35):.....	\$25,284.00"

8. Section 12. Advertising and Promotion. is hereby deleted in its entirety.
9. The last sentence of Section 13. Use of Common Areas. is hereby deleted in its entirety and replaced with the following:

"With the exception of the buildings existing in the Shopping Center as of the date of this Lease, Landlord shall not construct any other building or structure within the

Shopping Center except within the areas designated as Outlot A, Outlot B, Outlot C, Retail D and Future Development; provided, however, any building constructed in the area designated as Outlot A shall not exceed twenty feet (20') in height (with the exception of an architecturally prominent storefront elevation which may exceed twenty feet (20') feet in height subject to Tenant's prior written consent, such consent not to be unreasonably withheld or unduly delayed) and shall not contain a building footprint in excess of four thousand (4,000) square; further provided, however, any building constructed in the area designated as Outlot B shall not exceed twenty-three feet (23') in height (with the exception of an architecturally prominent storefront elevation which shall not exceed twenty-seven feet (27') feet in height (such elevation shall be substantially similar to the elevation drawing attached hereto as Exhibit C-3), shall not contain a building footprint in excess of two thousand seven hundred (2,700) square feet and whose use shall be limited to that of a retail/service operation; lastly, however, that any building or structure constructed in the area designated as Outlot C shall not exceed twenty feet (20') feet in height, shall not contain a building footprint in excess of nine thousand one hundred (9,100) square feet and whose use shall be limited to that of: (i) a retail/service operation, or (ii) a fast food operation. With respect to Outlot C, any other use shall require Tenant's prior written consent, such consent not to be unreasonably withheld or unduly delayed. The buildings situated on Outlot A and Outlot B shall be spaced at least one hundred ten feet (100') apart so as to provide a view corridor to Tenant's Premises."

10. The first two sentences of Section 14B. Tenant's Exclusive Right. are hereby deleted in their entirety and replaced with the following:

"Subject to the qualifications stated below, so long as this Lease has not been terminated, Landlord agrees that no other portion of the Shopping Center will be leased, subleased, operated or otherwise used for the operation of a buffet, buffet-style restaurant, or a cafeteria or cafeteria-style restaurant (the "Exclusive Use"), nor shall any part of the Shopping Center be used for the operation of a so-called "home-meal replacement" business (such as by way of example and not in limitation, the type of food operation operated by Boston Market, Cracker Barrel Corner Market, and/or Eatzi's), or (with respect to any portion of the Shopping Center within 300 feet of the front entrance of the Premises) as a child-oriented play/amusement center (such as, by way of example and not in limitation, the type of centers presently operated by Discovery Zone, Leaps & Bounds or Fandangles), or (with respect to Outlot A, Outlot B, Outlot C or any portion of the Shopping Center within 300 feet of the front entrance of the Premises) an establishment serving alcohol (provided, however, that this restriction shall not apply to the following tenants of the Shopping Center (or replacement tenants' in same location(s)): Brennan's, Tully's or Caffe Espresso, each of whose current leases does not prohibit them from serving alcohol; provided, further, Outlot C shall be permitted to contain a table-side service restaurant serving alcohol, (provided the square footage is less than 3,500 and food sales generate at least seventy percent (70%) of its gross sales), a theater, or a health club (the "Restricted Uses"); provided, that the foregoing will not apply to or restrict the following (the "Allowed Uses"): any department store having an undivided floor area greater than 60,000 square feet engaged in the Exclusive Use or a Restricted Use which is incidental to a primary retail use; provided, however, in the event that Landlord ever regains control of any of said premises, Landlord agrees not to lease said premises to any

other tenant whose primary business is the operation of a buffet, buffet-style restaurant, or a cafeteria or cafeteria-style restaurant.”

11. Exhibit A attached to the Lease is hereby deleted in its entirety and replaced with Exhibit A attached hereto.
12. Exhibit A-1 attached to this First Amendment is incorporated into and made a part of the Lease.
13. Exhibit B attached to the Lease is hereby deleted in its entirety and replaced with Exhibit B attached hereto.
14. Exhibit C attached to the Lease is hereby deleted in its entirety and replaced with Exhibit C attached hereto.
15. Exhibit C-1 attached to this First Amendment is incorporated into and made a part of the Lease.
16. Exhibit C-2 attached to this First Amendment is incorporated into and made a part of the Lease.

PART III - STANDARD CLAUSES

1. All capitalized terms not otherwise defined herein shall have the meanings provided in the Lease. Further, from and after Tenant's possession of the Replacement Premises, the defined term "Replacement Premises" shall mean the "Premises" and the defined term "Landlord's Replacement Work" shall mean "Landlord's Work."
2. Notwithstanding anything contained in the Lease to the contrary, Tenant shall continue to pay Minimum Rent and Additional Rent based on the 8,560 square feet and not the 10,320 square feet the Replacement Premises contain. Effective upon the commencement of the First Extension, Minimum Rent and Additional Rent shall be paid based on the 10,320 square feet.
3. Tenant represents and warrants to Landlord that (i) Tenant is the tenant under the Lease, Tenant has full power and authority to execute and deliver this First Amendment, (ii) the person(s) executing and delivering this First Amendment on behalf of the Tenant has or have been authorized by all required corporate action to so execute and deliver this First Amendment, and (iii) no other consents or approvals of any entity or person are necessary for the due execution and delivery of this First Amendment by or on behalf of Tenant or for this First Amendment to be binding upon Tenant.
4. Except as expressly modified hereby, all other terms and provisions of the Lease (a) shall remain unchanged and in full force and effect and are hereby ratified; (b) are incorporated herein by this reference; and (c) shall govern the conduct of the parties hereto; provided, however, to the extent of any inconsistency between the provisions of the Lease and the provisions of this First Amendment, the provisions of this First Amendment shall control.

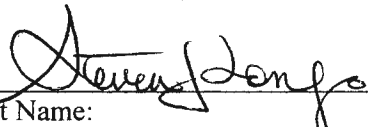
(remainder of page left intentionally blank - signature page follows)

IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to be executed as of the day and year first written above.

LANDLORD:


BENCHMARK MAIN-TRANSIT ASSOCIATES, LLC,
a New York limited liability company

By: Benchmark Properties Management Corporation,
a Delaware corporation
Its: General Partner

By: 
Print Name: _____
Its: Steven J. Longo
Vice President

TENANT:

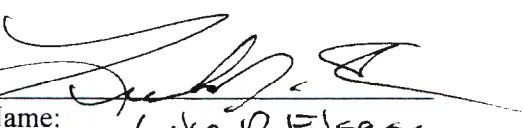
OCB RESTAURANT COMPANY, LLC
a Minnesota limited liability company

By: 
Print Name: H. Thomas Mitchell
Its: Secretary

Tenant, Landlord and LaSalle Bank National Association ("Lender") are parties to a Subordination, Non-Disturbance and Attornment Agreement dated July 21, 2003, which provides in part, that Lender shall not be bound by any material amendment or modification of the Lease made without its consent. Tenant and Landlord are prepared to enter into this First Amendment. Tenant has requested Lenders consent to such First Amendment. Please acknowledge your consent by signing below.

LENDER:

LASALLE BANK NATIONAL ASSOCIATION,
a national banking association

By: 
Print Name: Luke D. Elsass
Its: Vice President

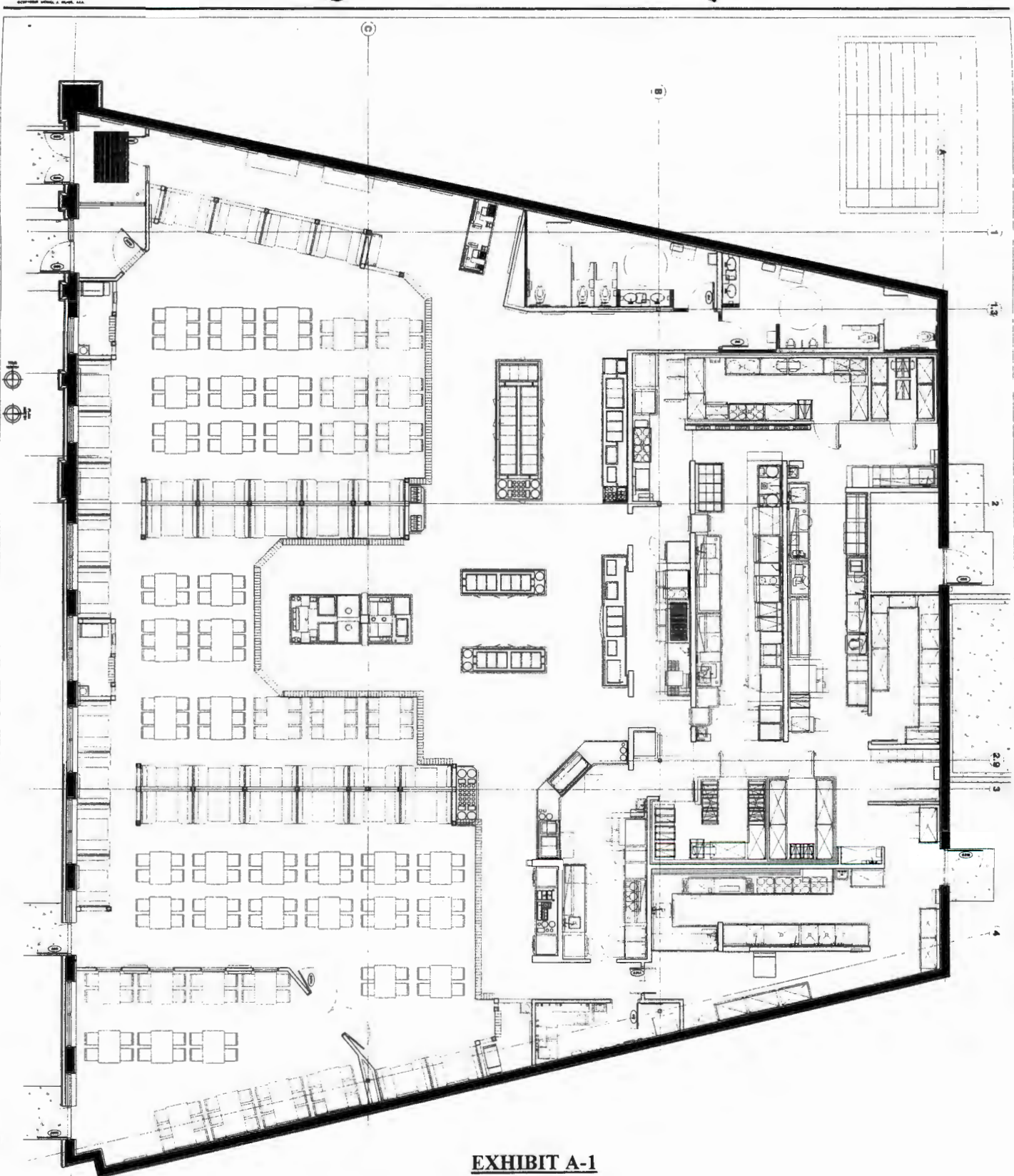


EXHIBIT A-1

REPLACEMENT PREMISES LAYOUT

10-04-05

OCB
Restaurant
Co.
 1000 BROADWAY
 NEW YORK, NY 10018
 (212) 512-1000

DATE: 10-04-05
 PROJECT: CLARENCE, NY
 SHEET NUMBER: 7 / 11

EXHIBIT C

LANDLORD'S REPLACEMENT WORK

The following to be located in accordance with the Plans:

- a. **Electrical:** Twelve hundred (1,200) amp electrical service with distribution panel, switch gear and disconnects at 120/208 volts, three (3) phase, wired to the Replacement Premises. Service to include all appropriate conduit and cable.
- b. **Gas:** A gas line to the Replacement Premises, with meter, capable of supplying three (3) million BTU's of natural gas at a pressure equal to seven inches (7") of water column.
- c. **Telephone:** Provide four inch (4") conduit (or such other size as required by code to accommodate ten (10) lines) and pull string to the Replacement Premises from main backboard or service.
- d. **Water:** A dedicated two inch (2") dedicated water supply line to the Replacement Premises, with a two inch (2") meter and backflow device at a pressure equal to 60 pounds.
- e. **Sprinkler System:** A standard grid sprinkler system to code for restaurants of Tenant's size and nature, including, but not limited to a four inch (4") (or larger if required by code) service line with backflow prevention, valves, flow and tamper devices, fire department connection and post indicator valve (with the appropriate conduit). Post indicator valve and fire department connection need only be installed if required by code.
- f. **Sanitary Sewer:** A minimum four inch (4") dedicated sewer line with a minimum fifteen hundred (1,500) gallon grease interceptor (or larger as required by code) to the Replacement Premises at a minimum depth of forty-eight inches (48") from finished floor elevation.
- g. **HVAC:** Sixty-five (65) tons of pre-conditioned make up air and HVAC with plenums and economizers in the size and types specified by Tenant and located on the roof as directed by Tenant, with all required framing, curbs, roof flashing and appropriate gas and electrical connections.
- h. **Walls:** Demising walls for adequate occupancy and area separations (for a restaurant exceeding 350 seats) in strict accordance with all applicable codes, framed/furred, insulated, drywalled, taped, sanded and ready to receive finishes to the bottom of the roof deck (seal to deck per code). Provide all in-wall blocking in demising walls per Tenant's specification prior to drywalling.
- i. **Ceiling:** Acoustical ceiling tile system with a fourteen foot (14') minimum height to the lowest point of the roof structure as required by Tenant.
- j. **Floor:** Provide a four inch (4"), non-structural, slab on grade concrete floor suitable for finish as required by Tenant. The forty-eight inches (48") of subgrade/fill/soils immediately below the slab are to be non-corrosive and non-expansive.

- k. **Exterior Storefront:** An aluminum storefront system with insulated glass and doors as required and specified by Tenant.
- l. **Roof Top Screening:** Screening of Tenant's roof mounted equipment as required by the governing authorities.
- m. **Garbage Area:** Exclusive use of an enclosed garbage area (20 x 22 minimum or as otherwise required by Tenant and local codes).
- n. **Roof System:** Complete roofing system including, but not limited to, the following components: structural, thermal, moisture and drainage with a fourteen foot (14") minimum clear height from finished floor to the lowest point of the roof system as required by Tenant. Landlord to install curbs for roof mounted equipment.
- o. **Leaseholds/Equipment:** As indicated in the Plans.

All of the above to meet local/city/state code for restaurants exceeding 350 seats. All work to be performed by Landlord to satisfy the foregoing requirements will be performed promptly, in a good and workmanlike manner, and in accordance with the requirements of the Lease. Landlord's Work must be completed by the tender date.

Landlord warrants to Tenant that the Premises is, or will be prior to Landlord's tender of possession of the Premises, at Landlord's sole cost and expense, free from any utilities other than those utilities exclusively serving the Premises.

Landlord warrants to Tenant that: (i) an A2.1 occupancy is allowable on the Premises under the Uniform Building Code ("UBC") and applicable local codes and governmental requirements or if the UBC is not the governing code, an occupancy classification in the governing code equivalent to the aforementioned; and (ii) the Shopping Center and Premises is of a building type 5 under the UBC or if the UBC is not the governing code, a construction type in the governing code equivalent to the aforementioned.

EXHIBIT C-1

CONSTRUCTION OF THE SHOPPING CENTER AND REPLACEMENT PREMISES

1. CONSTRUCTION

1.1 **Working Drawings and Specifications.** An architect acceptable to Tenant (the "**Project Architect**") will design the Replacement Premises, Shopping Center and other on-site improvements and any off-site improvements required by applicable governmental authorities for the redevelopment of the Shopping Center (the "**Off-Site Improvements**") (the Shopping Center and other on-site improvements and any Off-Site Improvements are, collectively, the "**Project**"). Tenant shall also have the right of review and approval as to all material contractors and consultants to be engaged by the Project Architect or Landlord in connection with the development of the Project.

The Project Architect shall establish the architectural design and theme for the Project, in consultation with Landlord and Tenant, and shall prepare the building exterior design including building elevations, materials, colors, and other pertinent details and the site design, including parking lot layout, lighting, access ways, and landscaping ("**Project Design Drawings**"). Tenant hereby approves the shell package drawings for the Replacement Premises (schematic elevations) prepared by DeWolff Partnership Architects dated September 15, 2005, and attached hereto as Exhibit C-2. After approval of the Project Design Drawings, the Architect shall proceed to prepare final working drawings, plans and specifications for the Improvements and Off-Site Improvements ("**Final Working Drawings and Specifications**"), in consultation with Landlord and Tenant. The Final Working Drawings and Specifications shall be approved or disapproved (with reasons specified) by the parties within 15 days of receipt. Any disapproval will specify what aspect(s) of such Drawings were unacceptable to the party and what changes or corrections could be made (if known) to make the Drawings acceptable. The approval of the Final Working Drawings and Specifications shall be evidenced by a letter identifying the Final Working Drawings and Specifications in detail and signed by each party. Upon approval, Landlord will initial and return three sets of the Final Working Drawings and Specifications to Tenant. Once approved, the Final Working Drawings and Specifications shall not be changed in any respect or detail, except as provided in this Exhibit C-1.

1.2 **Selection of Contractor.** Upon approval of the Final Working Drawings and Specifications, Landlord shall obtain three (3) bids which conform to the requirements of the Final Working Drawings and Specifications from qualified contractors selected by Landlord. Landlord shall submit a copy of such bids to Tenant for its review. Landlord shall select (and notify Tenant of its selection) and enter into a contract with the contractor (the "**Contractor**"). Tenant will accept Landlord's selection of Contractor and in consideration therefor, Landlord shall cause Contractor to perform all work in a good and workmanlike manner, and in accordance with the Final Working Drawings and Specifications.

1.3 **Construction Schedule; Progress Updates.** Prior to commencement of construction, Landlord shall obtain Tenant's written approval of a detailed construction schedule, which will be incorporated as part of this First Amendment. The construction schedule will establish the completion dates for all phases of Landlord's Work, and will establish the work to be performed and the specific delivery dates of the various components necessary to meet the construction schedule (including the dates for completion of the site work, the shell of the Replacement Premises and the interior finish and leasehold improvement work). In addition, the construction schedule will specify the projected date when the Project is substantially completed, as defined in paragraph 1.12 (the "**Projected Completion Date**"). On a monthly basis after the construction contract is executed and until the construction work is completed in full,

Contractor will prepare and submit to the Architect, Landlord and Tenant an update of the construction schedule, which shall specify the status for the scheduled construction work. In the event the Project falls behind schedule for any reason other than events for which the Lease expressly provides that Landlord is not responsible, Landlord shall immediately take all necessary action to return the Project to an "on schedule" condition, and shall be solely responsible for any additional costs associated with such action. The Architect, Landlord and Tenant shall be entitled to all information necessary to verify any item in the construction schedule. Landlord shall inform Tenant of any anticipated and/or actual delays.

In consideration of the aforementioned construction schedule, Tenant will, as agent for Landlord, order, purchase and arrange for delivery to the Replacement Premises those items designated on the Plans as "tenant managed" (such as, but not limited to, interior and exterior signage, kitchen equipment and installation, hoods, exhaust, airhandling equipment, HVAC units, equipment installation, fire/burglar alarm monitoring, musak, refrigeration units, wall trim, millwork, wallcovering, carpeting, décor (i.e. art, decorative props on food bars, silk plants), food bars, booths, safe, etc.). Landlord shall be responsible for the installation of the same in accordance with the Plans.

Landlord shall reimburse Tenant for costs incurred as a result of the ordering and purchasing of the aforementioned "tenant managed" items and a management fee in the amount of Sixty Thousand and No/100 Dollars (\$60,000.00). Reimbursement in each instance shall be paid to Tenant within fifteen (15) days following Tenant's written request therefor, supported by invoices identifying said expenses. The management fee in the amount of Sixty Thousand and No/100 Dollars (\$60,000.00) shall be paid by Landlord to Tenant within ten (10) days of Tenant's opening for business in the Replacement Premises. Failure by the Landlord to pay any installment of the reimbursement when due shall constitute a default of Landlord under the Lease. In addition to any remedies available to Tenant under the Lease or at law or equity as a result of Landlord's default, Tenant may: (a) charge Landlord interest on the overdue amount from the date such installment is due on all delinquent installments at the lesser of (i) the highest rate allowed by law or (ii) a rate of two percent (2%) over the rate then announced by Chase Manhattan Bank as its base or prime rate per annum; and (b) set off any delinquency and applicable interest against one hundred percent (100%) of the Minimum Rent and/or Additional Rent payments first coming due under the Lease until such delinquency is fully repaid.

1.3 **Change Orders.** Tenant shall have the right at any time (whether prior to or during the progress of the work) to require a change to the Final Working Drawings and Specifications, to the extent necessary to adapt the Premises for Tenant's use, by complying with the change order procedure set forth in the Construction Documents and this Lease. The Construction Documents shall provide the procedure to determine whether a change order requires an adjustment to the construction contract price or an adjustment to the construction schedule and if so, the formula for determining the amount of such change and the responsibility therefor. Change orders must be in writing, prepared by or submitted to Tenant prior to the change covered by the change order to be authorized by Tenant. Landlord will notify Tenant whether any change orders requested by Tenant require an adjustment to the construction contract price or cause an adjustment to the construction schedule. In such event, Tenant will have the option to waive the change order request or assume responsibility for the actual costs incurred as a result of the change order. Notwithstanding the foregoing, upon sixty percent (60%) completion of Landlord's Work in the Premises, Tenant will not be permitted to request a change to the Final Working Drawings and Specifications that would require an adjustment to the construction schedule.

1.4 **Building Permit.** Landlord will be responsible for causing the Final Working Drawings and Specifications to be submitted to the Building Department of the appropriate jurisdiction and obtaining the building permit (and any other permits or approvals required of governmental authorities in

connection with the construction). Prior to construction, Landlord shall submit to Tenant for review any comments by the Building Department (or other governmental authorities) on the Drawings and evidence of approval thereof.

1.5 **Compliance of Work.** The construction will be performed in accordance with the Final Working Drawings and Specifications, and Landlord shall pursue the construction work diligently to completion. Such construction will comply in all respects with: (i) the Uniform Building Code and/or federal, state, county, city or other laws, codes, ordinances, and regulations, as each may apply according to the rulings of the controlling public official, agent or other person; (ii) applicable standards of the National Fire Protection Association, the National Electrical Code, the American Gas Association, and the American Society of Heating, Refrigerating and Air Conditioning Engineers; (iii) all building material manufacturer's specifications for the materials and equipment used in the construction; and (iv) all American's With Disabilities requirements ("**ADA**") Landlord agrees to indemnify and hold Tenant harmless from and against any and all claims arising from the construction of the Replacement Premises, unless caused by or due to the negligence of Tenant or its employees. Further Landlord will be responsible for bringing the Replacement Premises into compliance with any and all federal, state, county, city or other laws, codes, ordinances, regulations and ADA requirements.

1.6 **Construction Schedule.** Construction shall be commenced on the date mutually agreed by the parties. Landlord shall follow the construction schedule referred to in paragraph 1.2. Timely completion of the Project shall be subject only to delays caused by governmental orders, regulations, embargoes, acts of God, extraordinarily adverse weather conditions (beyond those which could reasonably be anticipated based on official records of monthly precipitation, temperatures and weather conditions and other historical data for the period in question), fire, flood, earthquake and strikes, walkouts and other labor disputes not caused by Landlord's breach of the Construction Documents (collectively referred to as "**force majeure delays**"), in which event construction shall be completed as soon as possible. Landlord shall inform Tenant of any anticipated and/or actual delays.

1.7 **Landlord's Work.** Landlord will be responsible for monitoring and directing the Contractor to perform responsibilities in a timely manner and in accordance with the construction schedule approved pursuant to this Exhibit and the Construction Documents approved by the parties. Landlord will cooperate in providing Tenant with such information as Tenant may reasonably require concerning the construction and Project. Tenant (and its agents and representatives) may periodically observe, test and examine the construction in the manner set forth in the Construction Documents and notify Landlord of quality discrepancies which Landlord, at Landlord's expense, shall correct to conform to Tenant's standards (but any such actions by Tenant shall not make Tenant responsible in any way for supervision of the work or any defects therein or constitute an acceptance of the work or any defects).

1.8 **Quality of Construction.** Landlord warrants that it will cause the Project to be constructed and completed in conformance with the requirements of all easements, conditions, restrictions and encumbrances affecting the Project and all applicable laws, ordinances, rules and regulations of duly constituted public authorities (collectively, "**Legal Requirements**"). Landlord further warrants that all work performed by or under Landlord pursuant to this Exhibit will be performed in a good and workmanlike manner and shall be free from any defects or deficiencies in workmanship and materials for a period ending at the later of the following dates: (i) the first anniversary of the date of substantial completion of the work; or (ii) the expiration date of any warranty or guaranty covering the workmanship or materials which may be contained in (or be required by) the Construction Documents or other documents pursuant to which work or materials were provided to or constructed within the Project or which may arise by operation of law. Landlord shall be responsible for the replacement or repair, without

additional charge or expense to Tenant, of any such defect or deficiency discovered or occurring within such time period. The correction of such work shall include, without additional charge, all additional expenses and damages in connection with the removal or replacement of all or any part of Tenant's work and/or Landlord's work which may be damaged or disturbed by the correction work. If Tenant notifies Landlord in writing of any defect or deficiency in construction or noncompliance with any Legal Requirement, Landlord shall (within ten working days after such notice) cause to be commenced and thereafter diligently pursued appropriate action to correct and cure the same. The one-year (or other) warranty period will begin to run anew on any defective or deficient work so corrected from the date of acceptance of the corrected work by Tenant. Tenant's remedies for Landlord's breach of this paragraph include, without limitation, the right to correct and cure such defects or deficiencies in a manner satisfactory to Tenant, for the account of Landlord, and to deduct the expenses incurred by Tenant from the base rent next becoming due to Landlord under this Lease. Tenant's taking possession of the Premises shall not constitute a waiver of any warranty, defect or deficiency in regard to workmanship or material of the Improvements.

1.9 **Substantial Completion of Improvements.** The "**substantial completion**" of the Project will occur on the date agreed to by Landlord and Tenant, when construction is sufficiently complete, in accordance with the Construction Documents, so that Tenant can occupy and utilize the Replacement Premises for its intended use. Landlord shall notify the Tenant at least seven (7) working days prior to the date of the substantial completion, for purposes of the parties completing a walk-through examination of the Premises and Project. The walk-through will be completed by the Architect, the Contractor, Landlord and Tenant. A certificate of substantial completion will be delivered to Tenant signed by the Architect and Landlord, attesting to the substantial completion of the Project in accordance with the Final Working Drawings and Specifications. Tenant will take possession of the Premises pursuant to Section 2 below and upon the issuance of the certificate of substantial completion and a certificate of occupancy. Landlord shall have thirty (30) days after the date of notice from Tenant to complete the "punch list" items or any work items which do not conform to the requirements herein set forth. At the time Tenant takes possession of the Premises for installing its personal property as provided in this Exhibit, all the provisions of this Lease shall be in full force and effect except for Tenant's responsibilities for rent and other charges under this Lease which shall not begin until the Commencement Date.

1.10 **Punch List Items.** In the event all "punch list" items are not completed by Landlord within 30 days after the punch list is made, then Tenant may elect in its discretion to perform the work required to complete the punch list, and the cost of such work, plus fifteen percent (15%) for the cost of administration, will be promptly repaid by Landlord within 20 days after receipt of a certified statement by Tenant of the costs incurred. Such costs will bear interest at the same rate as specified in the Lease and Tenant may deduct such amounts from the rent thereafter to become due under this Lease, after written notice to Landlord (and any mortgagee of Landlord which has requested such notice) as to the costs so incurred.

1.11 **Tenant's Entry for Installations.** Tenant shall have the right of entry for installing its personal property upon substantial completion of Landlord's Work. Such entry by Tenant shall not constitute a delivery or acceptance of possession by Tenant, or any approval of the condition of the Premises or any work performed, or make Tenant liable for any defects or nonconforming condition of the Premises. Landlord and Tenant agree that Tenant will transfer its tables, chairs and smallwares to the Replacement Premises. In the event Tenant chooses not to transfer said items, Tenant will provide for new items to be provided to the Replacement Premises at Tenant's sole cost and expense. Any other items will be at Tenant's discretion.

1.12 **Effect of Acceptance; Correction of Defects; Warranty.** Upon Landlord's Notice of Tender (as such term is defined below), Tenant shall take physical possession of the Replacement Premises, subject only to completion of Landlord's Work (including any punch-list items), the warranties provided below, the correction of patent defects identified by Tenant within sixty (60) days after Tenant's opening for business in the Replacement Premises, and correction of latent defects identified by Tenant within one hundred eighty (180) days after Tenant's opening for business in the Replacement, which items Landlord at its sole cost and expense shall be obligated to replace, repair and/or remedy.

Except with respect to repairs directly resulting from the sole negligence of Tenant, its employees, agents, or contractors, during the one (1) year period following the opening of the Replacement Premises (the "**Warranty Period**"), Landlord unconditionally warrants to Tenant the good, sound and workmanlike condition of Landlord's Work and Landlord shall make, at its sole cost and expense, all necessary repairs and replacements thereto required in order to remedy any defects in workmanship, equipment or material therein. The foregoing warranty shall in no manner derogate Landlord's obligations with respect to defects as provided in this Section or with respect to Landlord's repair of the Premises and the Shopping Center as provided in Section 15A of the Lease. Landlord and Tenant acknowledge and agree that Tenant will be responsible for the maintenance of the "tenant managed" items.

2. **RELOCATION.**

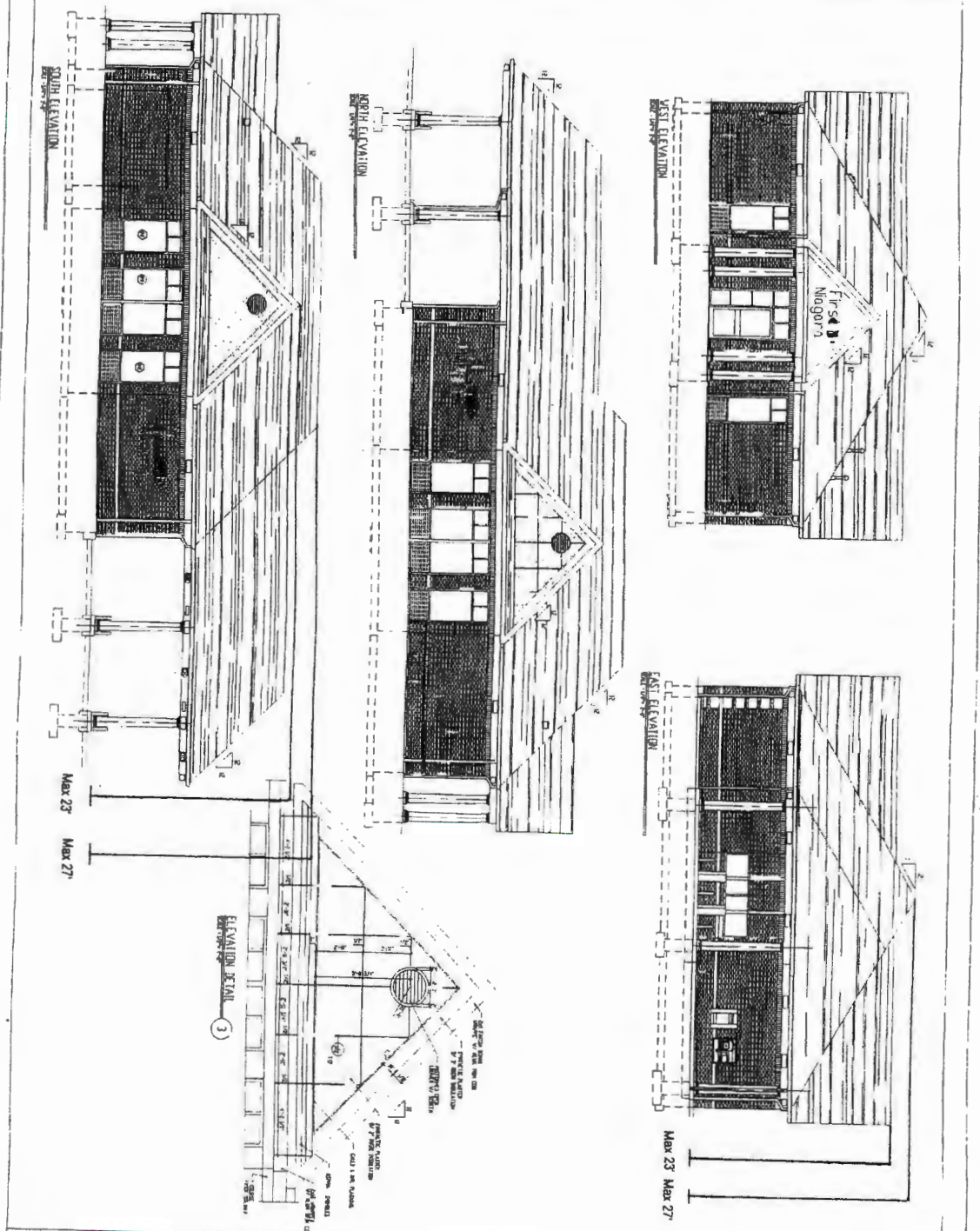
2.1 **Notice of Tender and Target Date.** Landlord shall give Tenant written notice of its intent to tender possession of the Replacement Premises to Tenant, upon completion of Landlord's Work, not less than seven (7) days prior to such tender of possession ("**Notice of Tender**"). It is presently estimated that completion of Landlord's Work in the Replacement Premises will be by May 1, 2006 (the "**Target Date**"), but such date is merely a target date, and Tenant will accept Landlord's tender of possession upon completion of Landlord's Work; provided, however, that Tenant may, but will not be required to, accept tender of possession prior to the Target Date. Tenant's entry upon the Replacement Premises shall not be construed as acceptance of the condition of the Replacement Premises or Landlord's Work.

2.2 **Surrender/Relocation.** Following the parties agreement that the Replacement Premises are ready for Tenant's occupancy, Tenant agrees to close the operation of its business to the public at the existing Premises no later than two (2) weeks following the date such agreement is reached (the "**Store Closure Date**"), and within thirty (30) days following the Store Closure Date, Tenant will thereafter remove its FF&E that Tenant desires to remove and peacefully vacate and surrender possession of the existing Premises in its then "as is" condition, together with all of its right, title and interest in said existing Premises, time being of the essence. Any items or property remaining in the existing Premises as of the Termination Date will conclusively be deemed to be abandoned by Tenant, and Landlord may dispose of the same in any manner that Landlord wishes and retain any proceeds of such disposition.

2.3 **Rent During Closure.** Tenant shall be entitled to abatement of Minimum Rent, Percentage Rent and/or Additional Rent to the extent and for the period Tenant is reasonably unable to conduct its business in the existing Premises and during relocation to the Replacement Premises.

EXHIBIT C-3

OUTLOT B ARCHITECTURAL ELEVATIONS



A-2 EXTERIOR ELEVATIONS 1 ELEVATION DETAILS	GEORGE LIBRASCIVICZ ARCHITECT P.C. 100 W. 10th St. Buffalo, N.Y. 14203	MAIN & TRANCIT FIRST CLARENCE MALL AT MAIN & TRANCIT ROADS	BRANCH BANK NIAGARA CLARENCE, NEW YORK
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HOMETOWN
—BUFFET—

◆ *Buffets, Inc.* ◆

Old
Country
◆ *Buffet.* ◆

1460 Buffet Way ■ EAGAN, MN 55121-1133 ■ (651) 994-8608

August 23, 2005

Benchmark Main Transit Associates, LLC
4053 Maple Road, Suite 200
Amherst, NY 14226

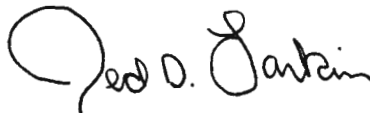
RE: Landlord: Benchmark Main Transit Associates, LLC
Tenant: OCB Restaurant Co.
Lease Dated: 11/22/1993
Premises: Store ID 0138 • Clarence Mall • 4401 Transit Road • Clarence • NY • 14221

To Whom It May Concern:

Effective September 24, 2005, OCB Restaurant Co., a Minnesota corporation will be converted into a Minnesota limited liability company pursuant to Minnesota Statutes section 302A.681. This conversion represents a mere change in corporate form and OCB Restaurant Co. remains, for all legal purposes, the same legal entity. The existing ownership, assets/liabilities and rights/obligations of OCB Restaurant Co. will be unaffected by the conversion. This change will have no impact on the relationship between the Landlord and the Tenant or the Lease.

Please accept this letter as Tenant's Notice of such conversion.

Sincerely,
OCB Restaurant Co.



Jed D. Larkin, Esq.
Corporate Counsel

Attachment 9 - Benchmark - OCB - Exhibit H to Rider.PDF

Description -

Exhibit ‘H’

ASSIGNMENT AND ASSUMPTION OF LEASES

THIS AGREEMENT, made as of the 9th day of August, 2007 by and between **Benchmark Main Transit Associates LLC**, having an address of 4053 Maple Road, Amherst, New York 14226 ("**Assignor**"), and **Benchmark-Clarence Associates LLC**, having as address of 4053 Maple Road, Amherst, New York 14226 ("**Assignee**").

WITNESSETH:

WHEREAS, the Assignor is the ground lessee of premises commonly known as Shops at Main Transit located in Clarence, New York, as described on Exhibit "A" attached hereto (hereinafter referred to as the "**Premises**") pursuant to that certain Lease Agreement dated September 1, 2005 with the Town of Clarence, Erie County, Industrial Development Agency (the "IDA") as ground lessee (the "Initial Ground Lease"), a memorandum of which was recorded on September 12, 2005 in the Erie County Clerk's Office in Liber 11101 of Deeds at Page 701; and

WHEREAS, the Initial Ground Lease is being amended and restated to exclude the Premises and,

WHEREAS, the Assignee will be entering into a ground lease for the Premises with the IDA, and.

WHEREAS, the Premises are subject to leases with the tenants listed on Schedule "A" attached hereto; and

WHEREAS, the parties hereto desire that the leases listed on Schedule "A" (together with all amendments and other modifications thereto) (collectively the "Leases") be assigned to and be assumed by the Assignee on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable considerations, the receipt and sufficiency of which are hereby mutually acknowledged, the parties hereto mutually covenant and agree as follows:

1. Effective as of the date hereof, the Assignor hereby assigns and transfers to the Assignee the Leases and all of the right, title and interest of the Assignor in, to and under the Leases, together with the rents, issues and profits due and to become due thereunder from and after the date hereof.

2. As of the date hereof, the Assignee hereby accepts such assignment of the Leases and hereby assumes all of the obligations, responsibilities and liabilities arise from and after the date hereof.

3. The Assignee hereby agrees to indemnify and hold the Assignor safe and harmless from and against any claims, causes of action, losses, damages, costs or expenses with respect to the Leases including, without limitation, attorneys' fees and disbursements, suffered or

incurred by, or asserted against, the Assignor by reason of facts or circumstances alleged to have occurred from and after the date hereof.

4. The Assignor hereby agrees to indemnify and hold the Assignee safe and harmless from and against any claims, causes of action, losses, damages, costs or expenses with respect to the Leases including, without limitation, attorneys' fees and disbursements, suffered or incurred by, or asserted against, the Assignee by reason or facts or circumstances alleged to have occurred prior to the date hereof.

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

BALANCE OF PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties hereby have duly executed this Agreement as of the first date hereinabove written.

ASSIGNOR: BENCHMARK MAIN TRANSIT ASSOCIATES LLC
By: Benchmark Properties Management Corp.

By: Steven J. Longo
Steven J. Longo, Vice President

ASSIGNEE: BENCHMARK-CLARENCE ASSOCIATES LLC

By: Steven J. Longo
Steven J. Longo, Vice President

STATE OF NEW YORK)
SS:)
COUNTY OF ERIE)

On the 6th day of August in the year 2007 before me, the undersigned, a notary public in and for said state, personally appeared Steven J. Longo, 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 capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

Deborah M. Slisz
Notary Public

STATE OF NEW YORK)
SS:)
COUNTY OF Erie)

DEBORAH M. SLISZ
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN ERIE COUNTY
My Commission Expires July 7, 2011

On the 6th day of August in the year 2007 before me, the undersigned, a notary public in and for said state, personally appeared Steven J. Longo, 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 capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

Deborah M. Slisz
Notary Public

DEBORAH M. SLISZ
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN ERIE COUNTY
My Commission Expires July 7, 2011



Schedule "A"

4053 Maple Road
Suite 200
Amherst, NY 14226-1058
t (716) 833-4986
f (716) 833-2954
benchmarkgrp.com

July 27, 2007

Blaine Schwartz, Esq.
Lippes, Mathias, Wexler & Friedman, LLP
665 Main Street, Suite 300
Buffalo, NY 14203

Re: Shops at Main Transit – Assignment to Benchmark Clarence Associates, LLC

Dear Blaine:

I believe all of the leases were assigned to Benchmark Main-Transit Associates, LLC when we bought the property. The tenant information is as follows:

HSBC Building, 4455 Transit Road, Williamsville, NY 14221

HSBC Bank USA
Office of General Counsel
One HSBC Center
Buffalo, NY 14203
Attn: Suzanne Murray
Eastern Hills Branch #CC#611761
Lease dated: July 11, 1997

Sarette Services, Inc.
c/o Ms. Sarah Pittman
162 Paradise Road
Williamsville, NY 14221
Lease dated: June 17, 2005

The THD Group
c/o Tim Hortons
Operated by the TDL Group Corp.
874 Sinclair Road
Oakville, ON L6K 2Y1
Attn: Meredith Michetti
Lease dated: June 16, 2000

Mary Kay Cosmetics
c/o Ms. Amy Schule
74 Misty Lane
East Amherst, NY 14051
Lease dated: November 11, 1996

Page 2
Blaine Schwartz, Esq.
July 27, 2007

Stephen G. Demmitt
Family First Insurance Group
4455 Transit Road, Suite 3-A
Williamsville, NY 14221
Lease dated: October 3, 2000

Mr. Doug Lenz
Falconeer Technologies, LLC
4455 Transit Road
Williamsville, NY 14221
Lease dated: June 21, 2006

Mr. David R. Taber
Presbyterian Homes of WNY, Inc.
4455 Transit Road, Suite 2A
Williamsville, NY 14221
Lease dated: June 13, 1990

Thomas F. Keefe
4455 Transit Road, Suite 2A
Williamsville, NY 14221
Lease dated: October 25, 1996

Mark G. Farrell
4455 Transit Road
Williamsville, NY 14221
Lease dated: March 6, 2000

First Niagara Bank – 4435 Transit Road, Williamsville, NY
Mr. Robert J. Ganson, CCIM
Assistant Vice President
First Niagara Bank
P.O. Box 514
Lockport, NY 14095
Lease dated: January 11, 2005

8040 Main Street, Williamsville, NY 14221

Jill Hofstetter
Lease Administration
Office Depot
2200 Old Germantown Road
Delray Beach, FL 33445
Store #493
Lease dated: August 14, 1998

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Blaine Schwartz, Esq.
July 27, 2007

Strip Plaza – 4401 Transit Road, Williamsville, NY 14221

Penny Manus
Property Manager
Petco
9125 Rehco Road
San Diego, CA 92121
Store #1863
Lease dated: June 5, 2006

Mr. David P. Simons
Chief Financial Officer
Dunn Tire, LLC
3570 Broadway
Buffalo, NY 14227
Lease dated: June 16, 1997

Mr. David J. Shatzel
4401 Realty, Inc.
1104 Elmwood Avenue
Buffalo, NY 14222
Lease dated: April 28, 1987

Jennifer Moya
Lease Administration
OCB Restaurant Company, LLC
1460 Buffet Way
Eagan, MN 55121
Store #0138
Lease dated: June 15, 1993

Joanne Rizzo
Hair Cuts Too
4401 Transit Road
Williamsville, NY 14226
Lease dated: September 28, 1983

Rose M. Parlato
Espresso Yourself, Inc.
4401 Transit Road
Williamsville, NY 14226
Lease dated: June 6, 2001

Page 4
Blaine Schwartz, Esq.
July 27, 2007

Bed Bath & Beyond, Inc.
650 Liberty Avenue
Union, NJ 07083
Store #1059
Lease dated: May 20, 2005

Best Buy Stores, L.P.
7601 Penn Avenue South
Richfield, MN 55423
Lease dated: October 31, 2006

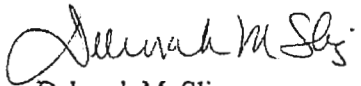
Barnes & Noble Booksellers, Inc.
122 Fifth Avenue
New York, NY 10011
Lease dated: November 10, 2006

8070 Main Street, Williamsville, NY 14221

Mr. John Rybak
Tully's Clarence, Inc.
One Technology Place
East Syracuse, NY 13057
Lease dated: January 7, 2004

Should you need anything further, please let me know.

Sincerely,



Deborah M. Slisz
Lease Administrator

dms/

Attachment 10 - Benchmark - OCB - Exhibit I to Rider.PDF

Description -

Exhibit ‘I’

SECOND AMENDMENT TO LEASE
(Store #138 – Clarence, NY)

THIS SECOND AMENDMENT TO LEASE (this “**Amendment**”) made and entered into effective as of June 15/11 2020 (the “**Effective Date**”), by and between Benchmark-Clarence Associates, LLC, a New York limited liability company (“**Landlord**”), and OCB Restaurant Company, LLC, a Minnesota limited company (“**Tenant**”).

RECITALS:

WHEREAS, Landlord and Tenant are current parties to that certain lease dated June 15, 1993 (as amended, collectively referred to herein with all amendments and agreements regarding that certain Lease as the “**Lease**”) by which Landlord is leasing to Tenant certain premises described therein (the “**Demised Premises**”) identified by Tenant as Store #138 with a street address at 4401 Transit Road, Buffalo, NY 14221;

WHEREAS, Tenant has requested a deferral in the payment of rent and other monetary obligations due under the Lease in connection with the extraordinary measures being taken in response to the Covid-19 outbreak (“**Covid-19 Outbreak**”) and Landlord has agreed to a deferral of such rent and other monetary obligations; and

WHEREAS, the parties desire to amend the Lease in the manner hereinafter set forth.

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

AGREEMENT:

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

2. Deferral of Rent

The rent deferral granted in this Amendment is \$43,000.00 (“**Deferred Rent**”) which the Base Rent owed under the Lease from March 1, 2020 through July 31, 2020 as follows:

	Base Rent
March, 2020	\$8,600
April, 2020	\$8,600
May, 2020	\$8,600
June, 2020	\$8,600
July, 2020	\$8,600

Tenant and Landlord hereby agree that such Deferred Rent shall be paid to Landlord in twelve (12)

equal monthly installments in an amount of \$3,583.33 each commencing January 1, 2021 and due on the 1st of each month thereafter. Additionally, reimbursement for any unpaid water usage will be due when billed.

3. Payment of CAM. It is agreed by both parties that CAM owed from March 2020 to June 2020 in an amount of \$12,800.00 shall be paid by Tenant with five (5) business days upon full execution of this Amendment by both parties. CAM payment for July, 2020 shall be due on July 1, 2020.

4. Entire Agreement; Ratification; Successors This Amendment contains all of the agreements and understandings of the parties hereto with respect to the matters contained herein, and no prior agreement, arrangement or understanding pertaining to any such matters shall be effective for any purpose. No prior or contemporaneous oral or written understandings or representations other than as set forth in this Amendment shall be enforceable against either party. Nothing in this Amendment shall be deemed to waive or modify any of the provisions of the Lease, except as expressly stated herein. The Lease shall remain unmodified and, as hereby amended, is ratified and confirmed. The provisions of this Amendment shall bind and inure to the benefit of the heirs, representatives, successors and assigns of the parties hereto

5. Authority Each signatory of this Amendment represents hereby that he or she has the authority to execute and deliver the same on behalf of the party hereto for which such signatory is acting.


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

7. Counterparts and Electronic Signatures This Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument. The parties agree to accept a digital image (including but not limited to an image in the form of a PDF or other e-signature) of this document, if applicable, reflecting the execution of one or both of the parties, as a true and correct original

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

“LANDLORD”

Benchmark-Clarence Associates, LLC,
a New York limited liability company



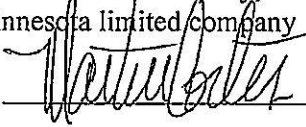
By: _____

Name: Steven J. Longo

Title: Vice President

“TENANT”

OCB Restaurant Company, LLC, Inc.,
a Minnesota limited company

By: 

Name: Martin Cortes

Title: Chief Financial Officer

Attachment 11 - Benchmark - OCB - Exhibit J to Rider.PDF

Description -

Exhibit “J”

OCB Restaurant Company, LLC

June 28, 2018

Via FedEx Overnight and email

7726 0747 0485

Benchmark-Clarence Associates, LLC
c/o Benchmark Management Corporation
Attention: Kevin Zugger and Deborah Slisz
4053 Maple Road Suite 200
Amherst, NY 14226
dslisz@benchmarkgrp.com
KZugger@benchmarkgrp.com

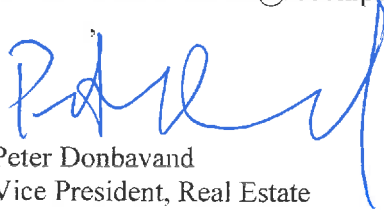
Re: Renewal Notice

Reference is made to that certain lease Agreement dated June 15, 1993, (as amended and modified collectively, the "Lease"), by and between Benchmark- Clarence Associates, LLC as Landlord, and OCB Restaurant Company, LLC,, as Tenant for the property located at 4401 Transit Road, Buffalo, NY 14221(the "Lease Premises").

Dear Deborah Slisz and Kevin Zugger:

This shall serve as Tenant's written notice to Landlord of Tenant's election to exercise its third option to extend, hereby renewing and extending the Term of the Lease for an additional five (5) year period (commencing January 1, 2019 and expiring December 31, 2023). All other terms and conditions of the Lease shall remain in full force and effect.

If you should have any questions, please feel free to call Marisol Fernandez-Rizo (210) 403-3725 ext. 292 or via e-mail at mfrizo@foodmps.com.



Peter Donbavand
Vice President, Real Estate
and Business Development

Although not required as a condition to effectuate Tenant's exercise of the extension option, we would appreciate you signing below to acknowledge your receipt of this renewal notice for our records.
Benchmark- Clarence Associates, LLC; Benchmark Management Corporation.

By: Steven J. Longo

Date: 7/3/18

Title: Steven J. Longo
Vice President

120 Chula Vista, Hollywood Park, Texas 78232
(210 403-3725 Fax (210 403-3580

Attachment 12 - Benchmark - OCB - Exhibit K to Rider.PDF

Description -

Exhibit “K”

OCB Restaurant Company, LLC

April 8, 2021

Sent Via FEDEX #7733 8824 9751

Email: mhager@benchmarkgrp.com

Email dslisz@benchmarkgrp.com

BENCHMARK-CLARENCE ASSOCIATES, LLC

Michelle P. Hager

Tenant Operations Assistant

4053 Maple Rd, Suite 200

Amherst, NY 14226

RE: Old Country Buffet #0138 – Buffalo, NY
Location Address: 4401 Transit Road (the “Premises”)

Dear Landlord,

This letter is to notify Landlord that Tenant has ceased operations and closed its restaurant located at the Premises. Effective as of the date of this letter, Tenant hereby surrenders possession of the Premises.

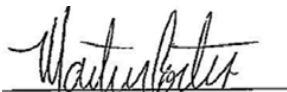
We would like to request your assistance on granting vendors access to remove leased equipment. Please advise who would be the contact for coordinating requested access.

Tenant owns certain personal property at the Premises (the “Personal Property”) that was not removed. Any Personal Property owned by Tenant and remaining in the Premises is hereby abandoned.

Please note that Tenant is cancelling utility services, insurance and security services related to the Premises effective immediately.

The lockbox code is 3339. The alarm code is 5247. Any additional keys remain within the Premises and Tenant does not intend to re-enter the Premises. The delivery of the keys is not a condition to the surrender.

Regards,



Martin Cortes

Chief Financial Officer

cc: Deborah Slisz - email

Attachment 13 - Benchmark - OCB - Exhibit L to Rider.PDF

Description -

Exhibit “L”



CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed April 22, 2021

United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:	§	Chapter 11
FRESH ACQUISITIONS, LLC, <i>et al.</i> , ¹	§	Case No. 21-30721 (SGJ)
Debtors.	§	(Jointly Administered)
	§	Re: Docket No. 9

**ORDER (I) AUTHORIZING THE REJECTION OF
CERTAIN LEASES, (II) AUTHORIZING THE ABANDONMENT
OF CERTAIN PROPERTY, AND (III) GRANTING RELATED RELIEF**

Upon the motion (the "Motion")² of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for entry of an order (this "Order"), (a) authorizing the rejection of certain Leases set forth on Exhibit 1 hereto, (b) authorizing the abandonment of any *de minimis*

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtor's taxpayer identification number are as follows: Alamo Fresh Payroll, LLC (1590); Fresh Acquisitions, LLC (2795); Alamo Ovation, LLC (9002); Buffets LLC (2294); Hometown Buffet, Inc. (3002); Tahoe Joe's Inc. (7129); OCB Restaurant Company, LLC (7607); OCB Purchasing, Co. (7610); Ryan's Restaurant Group, LLC (7895); Fire Mountain Restaurants, LLC (8003); Food Management Partners, Inc. (7374); FMP SA Management Group, LLC (3031); FMP-Fresh Payroll, LLC (8962); FMP-Ovation Payroll, LLC (1728); and Alamo Buffets Payroll, LLC (0998). The Debtors' principal offices are located at 2338 N. Loop 1604 W., Suite 350, San Antonio TX, 78248, United States.

² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

equipment, furniture, and other personal property, and (c) granting related relief; all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.
2. The Leases set forth on Exhibit 1 hereto are rejected effective as of the later of (i) the Petition Date, and (ii) the date the Debtors relinquish control of the applicable leased premises by notifying the affected Landlord in writing of the Debtors' irrevocable surrender of the premises and (a) have turned over the store keys, key codes, or security codes, if any, to the Landlord or (b) have notified the Landlord in writing that the store keys, key codes, or security codes, if any, are not available and that the Landlord may re-key the leased premises, including by service of this Order.
3. The Debtors are authorized to abandon property, if any, that may be located at the premises and all such property is deemed abandoned (the "Abandoned Property"), effective as of

the Petition Date; *provided, however*, that the Debtors are not authorized to abandon, and must remove, any hazardous (as such term is defined in federal, state, or local law, rule, regulation, or ordinance) materials at the leased premises subject to this Order. The applicable counterparty to each Lease may use or dispose of such Abandoned Property without notice or liability to the Debtors or any third parties. The automatic stay, to the extent applicable, is modified to allow for such utilization or disposition.

4. Nothing in this Order authorizes the Debtors to lease, sell, or otherwise transfer to any other party, the personal identifying information (which means information which alone or in conjunction with other information identifies an individual, including but not limited to an individual's first name (or initial) and last name, physical address, electronic address, telephone number, social security number, date of birth, government-issued identification number, account number and credit or debit card number (“PII”) of any customers unless such sale or transfer or lease is permitted by the Debtors' privacy policy and state or federal privacy and/or identity theft prevention laws and rules. The Debtors shall remove or cause to be removed any PII in any of the Debtors' hardware, software, computers or cash registers or similar equipment which are to be abandoned pursuant to the Motion (if any) so as to render the PII unreadable or undecipherable.

5. Approval of this Order will not prevent the Debtors from seeking to assume or reject an executory contract and/or unexpired lease, other than the Leases set forth in **Exhibit 1** hereto, by separate motion or pursuant to a chapter 11 plan.

6. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

7. The Debtors' reserve the right to assert that any provisions in any executory contract or unexpired lease that expressly or effectively restrict, prohibit, condition, or limit the assignment or effectiveness of the Contract or Lease are unenforceable anti-assignment or *ipso facto* clauses.

8. All rights and defenses of the Debtors are preserved, including all rights and defenses of the Debtors with respect to a claim for damages arising as a result of an executory contract or Lease rejection, including any right to assert an offset, recoupment, counterclaim, or deduction. In addition, nothing in this Order or the Motion shall limit the Debtors' ability, or the ability of any counterparty to any of the Leases, to subsequently assert that any particular executory contract or Lease is terminated and is no longer an executory contract or unexpired lease, respectively.

9. Notwithstanding the relief granted in this Order, any payment made by the Debtors pursuant to the authority granted herein shall be subject to and in compliance with the Approved Budget, the Court's *Interim Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Granting Adequate Protection, (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing, and (VI) Granting Related Relief*, and any final order entered by the Court in connection therewith.

10. Notwithstanding the relief granted in this Order and any actions taken pursuant to such relief, nothing in this Order shall be deemed: (a) an admission as to the amount of, basis for, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Order or the Motion or

a finding that any particular claim is an administrative expense claim or other priority claim; (e) a request or authorization to assume, adopt, or reject any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; (g) a waiver or limitation of the Debtors' or any other party in interest's rights under the Bankruptcy Code or any other applicable law; or (h) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens.

11. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b).

12. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

13. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

14. The Debtors are authorized to take all reasonable actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

15. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

END OF ORDER

Submitted by:

Jason S. Brookner
Texas Bar No. 24033684
Aaron M. Kaufman
Texas Bar No. 24060067
Amber M. Carson
Texas Bar No. 24075610

GRAY REED

1601 Elm Street, Suite 4600
Dallas, Texas 75201

Telephone: (214) 954-4135

Facsimile: (214) 953-1332

Email: jbrookner@grayreed.com
akaufman@grayreed.com
acarson@grayreed.com

**PROPOSED COUNSEL TO THE
DEBTORS AND DEBTORS IN POSSESSION**

Exhibit 1

Rejected Leases

Store	Address	City	State	Zip	Tenant/Debtor	Landlord	Landlord Contact Info
2118	2305 SHORTER AVE SW	ROME	GA	30165	Fire Mountain Restaurants, LLC	COLE BU PORTFOLIO II, LLC	VEREIT 2325 E. Camelback Road, 9th Floor Phoenix, AZ 85016 Carrie Davis cdavis@vereit.com
2357	243 STEVEN B TANGER BLVD	COMMERCE	GA	30529	Fire Mountain Restaurants, LLC	COLE BU PORTFOLIO II, LLC	VEREIT 2325 E. Camelback Road, 9th Floor Phoenix, AZ 85016 Carrie Davis cdavis@vereit.com
2370	1000 BREVARD RD	ASHEVILLE	NC	28806	Fire Mountain Restaurants, LLC	COLE BU PORTFOLIO II, LLC	VEREIT 2325 E. Camelback Road, 9th Floor Phoenix, AZ 85016 Carrie Davis cdavis@vereit.com
2138	1314 N MAIN STREET	SUMMERVILLE	SC	29483	Fire Mountain Restaurants, LLC	LOUIS J DIMUZIO	Louis J. DiMuzio 196 Canterng Hills Lane Summerville, SC 29483 ldimuzio@dixon-hughes.com
2262	3607 HWY 17 S	NORTH MYRTLE BEACH	SC	29582	Fire Mountain Restaurants, LLC	PAT DESANTIS	P.O. Box 3377 Fresno, CA 93650 Pat DeSantis desantispat@hotmail.com
2419	2330 MEMORIAL DRIVE	WAYCROSS	GA	31501	Fire Mountain Restaurants, LLC	REALTY INCOME CORPORATION	11995 El Camino Real San Diego, CA 92130
2185	4051 RYAN STREET	LAKE CHARLES	LA	70605	Fire Mountain Restaurants, LLC	SPIRIT REALTY CAPITAL, INC.	2727 North Harwood St., #300 Dallas, TX 75201 Hunter Faught hfaught@spiritrealty.com
2261	1920 MEL BROWNING STREET	BOWLING GREEN	KY	42104	Fire Mountain Restaurants, LLC	SPIRIT REALTY CAPITAL, INC.	2727 North Harwood St., #300 Dallas, TX 75201 Hunter Faught hfaught@spiritrealty.com
2406	232 FRONTAGE ROAD	PICAYUNE	MS	39466	Fire Mountain Restaurants, LLC	SPIRIT REALTY CAPITAL, INC.	2727 North Harwood St., #300 Dallas, TX 75201 Hunter Faught hfaught@spiritrealty.com

Store	Address	City	State	Zip	Tenant/Debtor	Landlord	Landlord Contact Info
234	6465 Samuell Blvd.	Dallas	TX	75228	Fresh Acquisitions, LLC	ICA Properties	ICA Properties, Inc Callie Norris - Sales Manager ICA Properties, Inc. 700 N. Grant Suite #600 Odessa, TX 79761 cnorris@nwoi.net Tom Glasman - Vice President Email: tomg@nwoi.net Judy Spenser - Property Manager Email: jspenser@nwoi.net
102	4101 East 42nd Street	Odessa	TX	79762	Fresh Acquisitions, LLC	MCM Properties, LTD	MCM Properties, Ltd. Music City Mall 4101 E. 42nd Street Odessa, TX 79762 Roy Allen, President Michelle Davis, Leasing Email: mdavis@musiccitymall.net
302	1300 Mockingbird Lane	Sulphur Springs	TX	78245	Fresh Acquisitions, LLC	Michael Trammel	Michael & Sandra Trammel 10230 Pinetree Dr. San Diego, CA 92131 Email: tropicalrac@hotmail.com
204	901 W Expressway	McAllen	TX	78501	Fresh Acquisitions, LLC	National Retail Properties	National Retail Properties, LP 450 South Orange Ave. #900 Orlando, FL 32801 Ninibet Balladin Email: ninibet.balladin@nnreit.com Sr. Lease Compliance Admin.
311	1201 S. Interstate Drive	Moore	OK	73160	Fresh Acquisitions, LLC	National Retail Properties	National Retail Properties, LP 450 South Orange Ave. #900 Orlando, FL 32801 Ninibet Balladin Email: ninibet.balladin@nnreit.com Sr. Lease Compliance Admin.
312	5707 Rogers Avenue	Fort Smith	AR	72903	Fresh Acquisitions, LLC	Rogers Avenue Properties, LLC	Rogers Avenue Properties, LLC 109 North 6th Street Fort Smith, AR 72901 Bennie B. Westphal 479-783-0028 Fax Becky Helms Wayne Phillips Ext 206

Store	Address	City	State	Zip	Tenant/Debtor	Landlord	Landlord Contact Info
115	2004 Wyoming NE	Albuquerque	NM	87112	Fresh Acquisitions, LLC	WFC Wyoming NM, LLC	WFC Wyoming NM, LLC c/o Westwood Financial Corp. 1801 Westwood Financial Corp. Pasadena, CA 91199-1615 John Golston Email: jgolston@westfin.com
713	3744 N BLACKSTONE AVE	FRESNO	CA	93726	Hometown Buffet, Inc.	5561 SULTANA, LLC	5561 Sultana, LLC - Manchester North 18321 Ventura Blvd. Suite 980 Tarzana, CA 91356 Fax: (310) 591-8755 VEREIT
811	2513 MAIN STREET	UNION GAP	WA	98903	Hometown Buffet, Inc.	ARCDPPP001	2325 E. Camelback Road, 9th Floor Phoenix, AZ 85016 Debbie Hester - Vice President - Asset Management Dhester@VEREIT.com VEREIT
753	127 WEST VALLEY BOULEVARD	RIALTO	CA	92376	Hometown Buffet, Inc.	ARCDPPP001	2325 E. Camelback Road, 9th Floor Phoenix, AZ 85016 Debbie Hester - Vice President - Asset Management Dhester@VEREIT.com VEREIT
785	1431 SOUTH BRADLEY ROAD	SANTA MARIA	CA	93454	Hometown Buffet, Inc.	ARCDPPP001	2325 E. Camelback Road, 9th Floor Phoenix, AZ 85016 Debbie Hester - Vice President - Asset Management Dhester@VEREIT.com VEREIT
767	6257 ATLANTIC AVENUE	BELL	CA	90201	Hometown Buffet, Inc.	BELL PALM PLAZA L.P.	Charles Dunn Real Estate Services, Inc. 800 West 6th Street, Suite 600 Los Angeles, CA 90017 F (213) 683-1551 Yperez@charlesdunn.com
711	3790 SW HALL BOULEVARD	BEAVERTON	OR	97005	Hometown Buffet, Inc.	BIGGI DEVELOPMENT PARTNERSHIP	Jaime McGraw, Property Manager Biggi Partnerships PO Box 1698 Beaverton, OR 97075 Email jaimemcgraw@stevebiggi.com Phone (503) 646-2030 Fax (503) 526-0539 Mobile (503) 887-5336

Store	Address	City	State	Zip	Tenant/Debtor	Landlord	Landlord Contact Info
745	24990 REDLANDS BOULEVARD	LOMA LINDA	CA	92354	Hometown Buffet, Inc.	BLUE BANNER COMPANY, INC.	P.O. Box 226 Riverside, CA 92502 Blue Banner Company, Inc. 2601 Third street Riverside, Ca. 92502
746	3000 GATEWAY STREET	SPRINGFIELD	OR	97477	Hometown Buffet, Inc.	BRFI GATEWAY LLC	Sara K. Pollard Assistant Property Manager Jones Lang LaSalle Americas, Inc. 3000 Gateway Street Springfield, OR 97477 Email: Sara.Pollard@am.jll.com
704	9635 Chapman Ave.	GARDEN GROVE	CA	92841	Hometown Buffet, Inc.	HGGA PROMENADE, L.P	Mary A. Fouladi Property Manager HUGHES INVESTMENTS 23 Corporate Plaza, Suite 245 Newport Beach, CA 92660
707	1025 WEST ROBINHOOD DRIVE	STOCKTON	CA	95207	Hometown Buffet, Inc.	HPC Stonecreek Investors, LP	Kathryn Hystad Regional Property Manager HIGHPOINT CAPITAL GROUP, LLC 18321 Ventura Boulevard, Suite 980 Tarzana, CA 91356 Email: Kathryn.H@hp-cap.com
813	6821 W CANAL DR	KENNEWICK	WA	99336	Hometown Buffet, Inc.	JBP PROEPRITIES LLC	6721 LAKE WASHINGTON BLVD NE #10 Kirkland, WA 98033 Michael R. Jones - Managing Partner Jonesco@msn.com
743	1318 NORTH AZUSA AVENUE	COVINA	CA	91722	Hometown Buffet, Inc.	KIR COVINA, L.P.	KIMCO REALTY CORPORATION 23 Mauchly, Suite 100-104 Irvine, CA 92618 Ranfie Ancelovici rancelovici@kimcorealty.com 15 Southgate Avenue, Suite 201 Daly City, CA 94015
765	875-877 NORTH WILCOX AVENUE	MONTEBELLO	CA	90640	Hometown Buffet, Inc.	LUCKY MONTEBELLO SHOPPING CENTER	Alan Tun, CPA Real Estate Consultant Lisa Lau & Company, Inc. 217 E. Garvey Ave. Monterey Park, CA 91755 alan.tun@lisaalauco.com

Store	Address	City	State	Zip	Tenant/Debtor	Landlord	Landlord Contact Info
796	4700 CANDLEWOOD ST	LAKEWOOD	CA	90712	Hometown Buffet, Inc.	MACERICH LAKEWOOD LP	Macerich 401 Wilshire Blvd. Suite 700 Santa Monica, CA 90401 Darlene David - VP, Senior Real Estate Counsel
705	651 PALOMAR STREET	CHULA VISTA	CA	91911	Hometown Buffet, Inc.	SC PALOMAR RETAIL CENTER AND EC PALOMAR RETAIL CENTER, LLC	SC PALOMAR RETAIL CENTER AND EC PALOMAR RETAIL CENTER, LLC Attn: Brian Crepeau - Sales & Leasing / VP of Management 10721 Treena St., Suite 200, San Diego, CA 92131 Email: Brian@pacificcoastcommercial.com
747	1804 SOUTH MOONEY BOULEVARD	VISALIA	CA	93277	Hometown Buffet, Inc.	VISALIA PROPERTY PARTNERSHIP	Richard W. Labowe, Esq. 1631 W. Beverly Blvd. Second Floor Los Angeles, CA 90026 fax (213) 975-1145 richardwlabowe@gmail.com
806	1008 EAST 17TH STREET	SANTA ANA	CA	92701	Hometown Buffet, Inc.	WILLIAM H. GRIFFITH, TRUSTEE	FIDUCIARY SERVICES LIMITED 5120 Campus Drive, Suite 100 Newport Beach, California 92660 nramirez@kjc-fasi.com Kenneth J. Cummins
794	1325 NEW CHURCHMANS ROAD	NEWARK	DE	19713	OCB Restaurant Company, LLC	ARCDBPPROP001	VEREIT 2325 E. Camelback Road, 9th Floor Phoenix, AZ 85016 Tonia Jones tjones@vereit.com
256	1850 W EMPIRE AVE	BURBANK	CA	91504	OCB Restaurant Company, LLC	ARCDPPPROP001	ARCDPPPROP001 VEREIT 2325 E. Camelback Road, 9th Floor Phoenix, AZ Tonia Jones tjones@vereit.com Debbie Hester - Vice President - Asset Management Dhester@VEREIT.com

Store	Address	City	State	Zip	Tenant/Debtor	Landlord	Landlord Contact Info
138	4401 TRANSIT RD	BUFFALO	NY	14221	OCB Restaurant Company, LLC	BENCHMARK-CLARENCE ASSOCIATES, LLC	Michelle P. Hager Tenant Operations Assistant 4053 Maple Rd, Suite 200 Amherst, NY 14226 F: 716-833-2954
237	821 COUNTY ROUTE 64	ELMIRA	NY	14903	OCB Restaurant Company, LLC	Big Flats Consumer Square	G&I IX Empire Big Flats LLC P.O. Box 5122 White Plains, NY 10602-5122 BROOKE STEVENS SENIOR LEASING REPRESENTATIVE DLC MANAGEMENT CORP. 565 TAXTER ROAD, 4th Floor ELMSFORD, NY 10523 E bstevens@dclmgt.com
73	6560 WEST FULLERTON AVENUE	CHICAGO	IL	60707	OCB Restaurant Company, LLC	BRICKTOWN SQUARE LLC	Amy Cobb Property Manager BONNIE Management Corporation 8430 W. Bryn Mawr, Suite 850 Chicago, IL 60631-3448 Fax: 708.851.0809 Email: amy@bonniemgmt.com
298	1665 COUNTRYSIDE DR	TURLOCK	CA	95380	OCB Restaurant Company, LLC	COUNTRYSIDE PLAZA	Joseph Vieira 227 N. Santa Cruz Ave., Suite B Los Gatos, CA 95030 joe@vieiraco.com
251	10445 INDIANAPOLIS BOULEVARD	HIGHLAND	IN	46322	OCB Restaurant Company, LLC	DDRM HIGHLAND GROVE, LLC	SITE CENTERS 3300 Enterprise Pkwy Beachwood, OH 44122
337	3520 W CARSON ST	TORRANCE	CA	90503	OCB Restaurant Company, LLC	DEL AMO FASHION CENTER OPERATING CO, LLC	SIMON PROPERTY GROUP Attn: Legal/Real Estate 225 West Washington Street Indianapolis, IN 46204
340	1315 GATEWAY BLVD	FAIRFIELD	CA	94533	OCB Restaurant Company, LLC	FAIRFIELD GATEWAY, LP	Courtney Jones Principal Crosspoint Realty Services, Inc. (10/2020) 20211 Patio Drive, Suite 145 Castro Valley, CA 94546

Store	Address	City	State	Zip	Tenant/Debtor	Landlord	Landlord Contact Info
16	4902 SOUTH 74TH STREET	GREENFIELD	WI	53220	OCB Restaurant Company, LLC	GREENFIELD, L.P.	Bonnie Management Corp. 8430 W. Bryn Mawr Ave., Suite 850 Chicago, Illinois 60631-3448
299	2900 DEERFIELD DR	JANESVILLE	WI	53546	OCB Restaurant Company, LLC	INLAND COMMERCIAL PROPERTY MANAGEMENT INC.	814 Commerce Drive, Suite 300 Oak Brook, IL 60523 Kevin Forrest Regional Property Manager KForrest@PineTree.com
234	5083 JONESTOWN ROAD	HARRISBURG	PA	17112	OCB Restaurant Company, LLC	KIMCO OF PENNSYLVANIA TRUST	Jennifer L Gordon Tenant Sales Coordinator 1954 Greenspring Drive, Suite 330 Timonium, MD 21093 Jgordon@kimcorealty.com
309	636 LANCASTER DRIVE NE	SALEM	OR	97301	OCB Restaurant Company, LLC	LANCASTER CENTER EAST, LLC	7200 NE 41st Street, Suite #100 Vancouver, OR 98662 Mark Conklin Corporate Controller North Pacific Management CoHo Services 7200 NE 41st Street, Suite #100 Vancouver, WA 98662
259	6625 EAST SOUTHERN AVENUE	MESA	AZ	85206	OCB Restaurant Company, LLC	NED ME AND CONNIE G	TRUSTEE OF NED M AND CONNIE G Michael A Jones 1850 N. Central Avenue, Suite 1150 mjones@allenbarneslaw.com Phoenix, AZ 85004
297	7868 VAN NUYS BOULEVARD	VAN NUYS	CA	91402	OCB Restaurant Company, LLC	NF PLANT ASSOCIATES, LLC	Tim Kushner Director, Commercial Division Decron Properties Corp. 6222 Wilshire Boulevard, Suite 400 Los Angeles, CA 90048
306	10542-A SE WASHINGTON ST	PORTLAND	OR	97216	OCB Restaurant Company, LLC	PLAZA 205 GARP, LLC	GERRITY GROUP, LLC 973 Lomas Santa Fe, Suite A Solana Beach, CA 92075 Deborah Java Assistant Property Manager Gerrity Group 973 Lomas Santa Fe Drive Solana Beach, CA 92075

Store	Address	City	State	Zip	Tenant/Debtor	Landlord	Landlord Contact Info
2483	2151 GALLATIN PIKE NORTH	MADISON	TN	37115	OCB Restaurant Company, LLC	RB RIVERGATE LLC	c/o RD MANAGEMENT LLC 810 7th Avenue New York, NY 10019
149	9620 METRO PKWY W	PHOENIX	AZ	85051	OCB Restaurant Company, LLC	REALM PENNANT RETAIL PARTNERS LLC	NOTICE ADDRESS: REALM PENNANT RETAIL PARTNERS, LLC 320 S. Cedros Avenue, Suite 400 Solana Beach, CA 92075 Gordon Keig - Principal Pennant Development, LLC gordon@pennantdevelopment.com
305	5815 LAKEWOOD TOWNE CENTER BLVD SW	TACOMA	WA	98499	OCB Restaurant Company, LLC	RPAI US MANAGEMENT LLC	2021 Spring Road, Suite 200 Oak Brook, IL 60523 Krystal Peltzer Property Management RPAI US Management LLC 5731 Main Street SW Lakewood, WA 98499 peltzer@rpai.com
269	3617 W SHAW AVENUE	FRESNO	CA	93711	OCB Restaurant Company, LLC	SHAW MARKETPLACE PAK, LLC	MANCO ABBOTT, INC. 1398 W. Herndon Ave., Suite 105 Fresno, CA 93711 Nora Kutnerian norak@mancoabbott.com
339	704 SOUTHLAND MALL	HAYWARD	CA	94545	OCB Restaurant Company, LLC	SOUTHLAND MALL LP	Brookfield Properties Chicago Office 350 N Orleans St. Suite 300, Chicago, IL 60654 pan.liu@brookfieldpropertiesretail.com
263	930 DENNERY RD	SAN DIEGO	CA	92154	OCB Restaurant Company, LLC	YAM AND SUE LEE LIVING TRUST	4043 Mark Terrace San Diego, CA 92117 yamlee224@hotmail.com
2436	4615 BROADWAY ST	MOUNT VERNON	IL	62864	Ryan's Restaurant Group, LLC	REALTY INCOME ILLINOIS PROPERTIES 4, LLC	11995 El Camino Real San Diego, CA 92130
830	3801 PELANDALE AVE BUILDING D	MODESTO	CA	95356	Tahoe Joe's, Inc.	CFT NorthPointe, LLC	CFT NorthPointe, LLC 1767 Germano Way Pleasanton, CA 94566 Tiana C. Jenkins Chief Operating Officer CFT Properties

Attachment 14 - Benchmark - OCB - Exhibit M to Rider.PDF

Description -

Exhibit “M”

BMK Clarence Assoc LLC
4053 Maple Road
Suite 200
Amherst, NY 14226

OPEN ITEM STATEMENT

OCB Restaurant Co, LLC
Attn: Real Estate Store #0138
2338 N. Loop 1604 W. Suite 350
San Antonio, TX 78248

Date: 06-29-2021
Account: OLDCO17880

Amount enclosed: _____

Please enclose this portion with your remittance.

Make checks payable to:
BMK Clarence Assoc LLC
4053 Maple Road
Suite 200
Amherst, NY 14226

Statement for:
OCB Restaurant Co, LLC
Attn: Real Estate Store #0138
2338 N. Loop 1604 W. Suite 350
San Antonio, TX 78248

Statement date
06-29-2021

<u>Unit</u>	<u>Due Date</u>	<u>Description</u>	<u>Amount</u>
31175	11-18-2019	Open Credit (CK #22146)	37.56-
31175	12-20-2019	Water Bill 11-8 - 12-6-19	90.65
31175	01-22-2020	Water Bill 10-5 - 1-4-20	1,157.75
31175	02-12-2020	Water Bill 1-4 - 2-12-20	52.56
31175	03-01-2020	CAM Charge-Est	1,550.00
31175	03-01-2020	Rent Charge	8,600.00
31175	03-01-2020	Real Estate Tax Chg-Est	1,650.00
31175	03-12-2020	Water Bill 2-12 - 3-3-20	625.06
31175	04-01-2020	CAM Charge-Est	1,550.00
31175	04-01-2020	Rent Charge	8,600.00
31175	04-01-2020	Real Estate Tax Chg-Est	1,650.00
31175	05-01-2020	CAM Charge-Est	1,550.00
31175	05-01-2020	Rent Charge	8,600.00
31175	05-01-2020	Real Estate Tax Chg-Est	1,650.00
31175	05-19-2020	CAM Reconciliation Payment	4,651.50-
31175	05-19-2020	Management Fee	2,092.28
31175	05-20-2020	Insurance Reconciliation Chrg	3,006.67
31175	05-20-2020	R/E Tax Reconciliation Chg	2,545.19
31175	06-01-2020	CAM Charge-Est	1,550.00
31175	06-01-2020	Rent Charge	8,600.00
31175	06-01-2020	Real Estate Tax Chg-Est	1,650.00

BMK Clarence Assoc LLC
4053 Maple Road
Suite 200
Amherst, NY 14226

OPEN ITEM STATEMENT

OCB Restaurant Co, LLC
Attn: Real Estate Store #0138
2338 N. Loop 1604 W. Suite 350
San Antonio, TX 78248

Date: 06-29-2021
Account: OLDCO17880

Amount enclosed: _____

Please enclose this portion with your remittance.

<u>Unit</u>	<u>Due Date</u>	<u>Description</u>	<u>Amount</u>
31175	07-01-2020	CAM Charge-Est	1,550.00
31175	07-01-2020	Rent Charge	8,600.00
31175	07-01-2020	Real Estate Tax Chg-Est	1,865.00
31175	07-30-2020	Water Bill 3-1 7-1-20	559.88
31175	08-01-2020	CAM Charge-Est	1,550.00
31175	08-01-2020	Rent Charge	8,600.00
31175	08-01-2020	Real Estate Tax Chg-Est	1,865.00
31175	09-01-2020	CAM Charge-Est	1,550.00
31175	09-01-2020	Rent Charge	8,600.00
31175	09-01-2020	Real Estate Tax Chg-Est	1,865.00
31175	10-01-2020	CAM Charge-Est	1,550.00
31175	10-01-2020	Rent Charge	8,600.00
31175	10-01-2020	Real Estate Tax Chg-Est	1,865.00
31175	11-01-2020	CAM Charge-Est	1,550.00
31175	11-01-2020	Rent Charge	8,600.00
31175	11-01-2020	Real Estate Tax Chg-Est	1,865.00
31175	12-01-2020	CAM Charge-Est	1,550.00
31175	12-01-2020	Rent Charge	8,600.00
31175	12-01-2020	Real Estate Tax Chg-Est	1,865.00
31175	01-01-2021	CAM Charge-Est	1,550.00
31175	01-01-2021	Rent Charge	8,600.00
31175	01-01-2021	Real Estate Tax Chg-Est	1,865.00
31175	02-01-2021	CAM Charge-Est	1,550.00
31175	02-01-2021	Rent Charge	8,600.00
31175	02-01-2021	Real Estate Tax Chg-Est	1,865.00
31175	02-09-2021	Water Bill 10-1 - 12-31-20	941.32
31175	03-01-2021	CAM Charge-Est	1,550.00
31175	03-01-2021	Rent Charge	8,600.00
31175	03-01-2021	Real Estate Tax Chg-Est	1,865.00
31175	04-01-2021	CAM Charge-Est	1,550.00
31175	04-01-2021	Rent Charge	8,600.00
31175	04-01-2021	Real Estate Tax Chg-Est	1,865.00

Balance: 173,732.30

Payment due upon receipt.

Please pay by due date to avoid late charges.