

Fill in this information to identify the case:

55

Debtor 1 FRESH ACQUISITIONS, ET AL.Debtor 2  
(Spouse, if filing)

United States Bankruptcy Court for the: Northern District of Texas

Case number 21-30721-SGJ

RECEIVED

AUG 30 2021

BMC GROUP

## Official Form 410

## Proof of Claim

12/15

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?	Kenneth J. Cummins, Trustee, 10th Amendment & Complete Restatement of William H. Griffith Trust 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?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
3. Where should notices and payments to the creditor be sent?  Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	<b>Where should notices to the creditor be sent?</b>  Michael Shane, Gordon Davis Johnson & Shane Name P.O. BOX 1322 Number Street El Paso TX 79947 City State ZIP Code Contact phone (915) 545-1133 Contact email mshane@eplawyers.com	<b>Where should payments to the creditor be sent? (if different)</b>  Name Number Street City State ZIP Code Contact phone Contact email
Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____		
4. Does this claim amend one already filed?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on ____ / ____ / ____ MM / DD / YYYY	
5. Do you know if anyone else has filed a proof of claim for this claim?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____	

FRESH POC



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**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? \$ 430,755.55 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.  
Standard Lease Agreement - Breach of Contract

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: \$ 430,755.55 (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: \$ 430,755.55  
Annual Interest Rate (when case was filed) 8.00 %  
☒ 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. \$ 430,755.55

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 all that apply:

Amount entitled to priority

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

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

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

☐ Up to \$2,775\* 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 \$12,475\*) 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.

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

\* Amounts are subject to adjustment on 4/01/16 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 08/25/2021  
MM/DD/YYYY

Signature

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

Name Kenneth J. Cummins  
First name Middle name Last name

Title Trustee

Company Fiduciary Services Limited  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address 5120 Campus Drive, Suite 100  
Number Street

Newport Beach CA 92660  
City State ZIP Code

Contact phone 949-833-8565 Email kcummins@kjc-fasi.com

7J : ; 4.F 3

Proof of Claim Calculations

IN RE: Fresh Acquisitions  
Bankruptcy Case No. 21-30721-sgj11  
Bankruptcy File Date: 4/20/2021

1-Nov-19	Date of Default	385,470.67	Total Debt Owed thru 4-20-2021	385,470.67	Total Debt Owed
20-Apr-21	Bkcy File Date	8.00%	Interest Rate (per Lease 18.4)	45,284.88	Interest to BK Date
536	Days of Interest	30837.6536	Annual Interest Rate	430,755.55	Subtotal
			Divided by 365 days	\$0.00	Fees
		84.48672219	Daily Interest Rate (Pre Judgment)	\$0.00	Costs
			Multiplied by Days of Interest		
		45284.88309	Interest to Bkcy File Date		
				430,755.55	Proof of Claim Amount

**Register Report for HOMETOWN RENT**  
**WILLIAM H. GRIFFITH TRUST**  
DTD. 11/7/89 - TENTH AMENDMENT  
DTD 1/26/17

<u>Date</u>	<u>Check No.</u>	<u>Description</u>	<u>Decrease</u>	<u>Increase</u>
			Beginning Balance:	\$ 0.00
11/01/2019		1st INSTALLMENT 2019 - 20 SECURED REAL PROPERTY TAXES - 398-162-09 - 17TH STREET		40,019.29
03/01/2020		RENT FOR MARCH 2020 - DEFERRED UNTIL JANUARY 1, 2021		16,000.00
04/01/2020		RENT FOR APRIL 2020 - DEFERRED UNTIL JANUARY 1, 2021		16,000.00
04/10/2020		2nd INSTALLMENT 2019 - 20 SECURED REAL PROPERTY TAXES - 398-162-09 - 17TH STREET		40,019.29
05/01/2020		RENT FOR MAY 2020 - DEFERRED UNTIL JANUARY 1, 2021		16,000.00
06/01/2020		RENT FOR JUNE 2020 - DEFERRED UNTIL JANUARY 1, 2021		16,000.00
07/01/2020		RENT FOR JULY 2020 - DEFERRED UNTIL JANUARY 1, 2021		16,000.00
08/01/2020		RENT FOR AUGUST 2018 - PAST DUE		16,000.00
09/01/2020		RENT FOR SEPTEMBER 2018 - PAST DUE		16,000.00
10/01/2020		RENT FOR OCTOBER 2018 - PAST DUE		16,000.00
11/01/2020		RENT FOR NOVEMBER 2018 - PAST DUE		16,000.00

**Register Report for HOMETOWN RENT**

**WILLIAM H. GRIFFITH TRUST**  
 DTD. 11/7/89 - TENTH AMENDMENT  
 DTD 1/26/17

<u>Date</u>	<u>Check No.</u>	<u>Description</u>	<u>Decrease</u>	<u>Increase</u>
11/01/2020		1st INSTALLMENT 2020 - 21 SECURED REAL PROPERTY TAXES - 398-162-09 - 17TH STREET		40,716.09
12/01/2020		RENT FOR DECEMBER 2018 - PAST DUE		16,000.00
01/01/2021		RENT FOR JANUARY 2021 - PAST DUE		16,000.00
02/01/2021		RENT FOR FEBRUARY 2021 - PAST DUE		16,000.00
03/01/2021		RENT FOR MARCH 2021 - PAST DUE		16,000.00
03/15/2021		2nd INSTALLMENT - 2021 - 21 SECURED REAL PROPERTY TAXES - 398-162-09 - 17TH STREET		40,716.00
04/01/2021		RENT FOR APRIL 2021 - PAST DUE		16,000.00
05/01/2021		RENT FOR MAY 2021 - PAST DUE		16,000.00
06/01/2021		RENT FOR JUNE 2021 - PAST DUE		16,000.00
07/01/2021		RENT FOR JULY 2021 - PAST DUE		16,000.00
08/01/2021		RENT FOR AUGUST 2021 - PAST DUE		16,000.00
<b>Ending Balance:</b>			<b>\$</b>	<b>449,470.67</b>

7J: ;4;F 5

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**STANDARD LEASE AGREEMENT**

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**BETWEEN**

**WILLIAM H. GRIFFITH, TRUSTEE**

**LANDLORD**

**AND**

**COUNTRY HARVEST BUFFET RESTAURANTS, INC.**

**TENANT**

**pertaining to certain space in**

**Santa Ana, California**

**Dated as of \_\_\_\_\_, 1993**

**COPY**

STANDARD LEASE

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## STANDARD LEASE AGREEMENT

This STANDARD LEASE AGREEMENT (the "Lease"), is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 1993, by and between William H. Griffith as sole trustee under the William H. Griffith Revocable Trust u/a dated 11/7/89 ("Landlord") and COUNTRY HARVEST BUFFET RESTAURANTS, INC., a Delaware corporation ("Tenant").

### 1. Fundamental Lease Terms; Exhibits.

**1.1 Fundamental Lease Terms.** The following definitions constitute certain terms of this Lease (the "Fundamental Lease Terms") which are set forth in this Section 1.1 for ease of reference. Each subsequent reference in this Lease to any of the Fundamental Lease Terms shall incorporate such definitions as if the same were fully and completely stated therein. As used in this Lease, the Fundamental Lease Terms shall have the following meanings, respectively:

**1.1.1 "Premises" and "Building":** The "Premises" are described in Exhibit A and consist of an approximately ~~2.4~~<sup>1.63</sup> acre parcel with a building (the "Building") in which Tenant shall occupy a portion of approximately 17,000 square feet of leasable floor area. Tenant shall reduce the size of the floor area in the Building leased by Tenant to not less than 11,000 square feet. The Premises are located at 1008 - 17th Street in the City of Santa Ana, County of Orange, State of California.

**1.1.2 "Term":** Ten (10) full Lease Years, plus any Partial Lease Year at the beginning of the Term.

**1.1.3 "Construction Commencement Date":** January 1994.

**1.1.4 "Delivery Date":** January 1, 1994. (Early entry permitted for measurement and site planning.)

**1.1.5 "Rent":**

Lease Years 1-5 (plus any partial Lease Year at the beginning of the Term): \$177,060 per annum payable in equal monthly installments of \$14,755.

Lease Years 6-10: Lesser of then existing Rent multiplied by (a) 100% plus change in CPI over previous 5 years, or (b) 115%.

**1.1.6 "Renewal Period":** Three 5-year options, at Rents of:

Lease Yrs. 11-15: Lesser of then existing Rent multiplied by (a) 100% plus change in CPI over previous 5 years, or (b) 115%;

Lease Yrs. 16-20: Lesser of then existing Rent multiplied by (a) 100% plus change in CPI over previous 5 years, or (b) 115%;

Lease Yrs. 21-25: Then existing Rent multiplied by 100% plus change in CPI over previous 5 years.

**1.1.7 "Construction Allowance":** Three hundred thousand dollars (\$300,000).

**1.1.8 "Broker":** CB Commercial Real Estate Group, Inc.

**1.1.9 "Guaranty":** A guaranty to be provided by Heller Financial, Inc. for a period of ten years or until Tenant has a net worth of \$15,000,000 whichever first occurs in the form attached as Exhibit B.

**1.2 Exhibits.** The following Exhibits are attached hereto and made a part hereof:

- 1.2.1 Exhibit A - Premises.
- 1.2.2 Exhibit B - Guaranty.
- 1.2.3 Exhibit C - Confirmation (Memorandum) of Lease.
- 1.2.4 Exhibit D - Tenant's Signs.
- 1.2.5 Exhibit E - Schedule of Liens, Restrictions, Etc.
- 1.2.6 Exhibit F - Non-Disturbance and Attornment Agreement.

1.3 **Definitions.** Capitalized terms other than Fundamental Lease Terms shall have the respective meanings, when used in this Lease, given to such terms in the definition thereof contained herein.

1.4 **Lease Contingencies.** Tenant's obligations under this Lease shall be contingent upon: Tenant's securing all permits necessary to remodel and fixture the Premises for a Country Harvest Buffet restaurant in accordance with all applicable codes and governmental requirements applicable to a restaurant containing in excess of 300 seats, including, but not limited to, all necessary building, signage and parking permits, certificates of zoning clearance, and service connections for any and all utility services in capacities sufficient to allow Tenant to use the Premises for its intended purposes. If either contingency cannot be satisfied within ninety (90) days after execution of this Lease, Tenant shall have the right upon fifteen (15) days' prior written notice to cancel this Lease and each party shall be released from any further obligation to the other. During the permit process described in the preceding sentence Landlord shall provide to Tenant, at its request, an update of the environmental report described in Section 22.1.5 showing any changes in environmental conditions since the date of the report. Tenant shall use its best efforts to obtain such permits and service connections. As additional contingencies Landlord shall provide to Tenant for its approval not later than December 17, 1993: (i) a copy of the parking plan for the Premises conditionally approved by the City of Santa Ana Planning Department; (ii) a title report for the Premises which reflects all liens, encumbrances and other exceptions of record against the Premises together with copies of such exceptions; (iii) a copy of a reciprocal parking agreement with an adjoining property owner to have the effect of supplying a minimum total of one hundred fifty (150) parking spaces for the Premises; and (iv) executed nondisturbance agreements from Lenders pursuant to Article 23 of this Lease. If Tenant fails to approve the items specified in the preceding sentence, Tenant shall have the right upon written notice to cancel this Lease.

2. **Lease to Tenant.**

2.1 **Lease to Tenant.** Landlord hereby demises and leases to Tenant effective upon mutual execution of this Lease, and Tenant hereby leases from Landlord, the Premises, together with all rights, privileges, benefits, rights-of-way and easements now or hereafter appurtenant or belonging thereto, whether arising under any private or public grant or authority, including, without limitation, the direct right of ingress to and egress from the Premises.

2.2 **Parking.** As part of the consideration for this Lease Tenant and Tenant's employees and customers shall have the first and prior right to park on the Premises at no charge.

3. **Term; Commencement Date.**

3.1 **Term of Lease.** The Term hereby granted shall be for the number of Lease Years and Partial Lease Year(s) set forth in Section 1.1.2. The Term shall commence (the "Commencement Date") upon Tenant's receipt of all building permits for all of Tenant's Work and all required licenses to operate its restaurant. If Tenant fails to obtain necessary building and signage permits and other licenses within ninety (90) days after execution of this Lease, Tenant may at its option terminate this Lease and any monetary deposits paid to Landlord shall be returned to Tenant. Upon request, the parties shall execute a supplemental memorandum or confirmation instrument (in the form attached as Exhibit B) setting forth the Commencement Date and the termination date of the Term.

4. **Rent.**

4.1 **Payment of Rent.** Except as otherwise set forth herein, and except for the first one hundred twenty (120) days following the Commencement Date or thirty (30) days after Tenant opens for business whichever is earlier (during which period no Rent shall be payable), Tenant shall, during the Term, pay Landlord Rent at the rate specified in Section 1.1.5. Rent shall be paid in equal monthly installments in advance on the first day of each and every calendar month during the Term. Rent payable by Tenant hereunder for any fractional month at the beginning or end of the Term shall be prorated on a daily basis (based on a 30-day month). All rentals and other payments to be made by Tenant to Landlord hereunder shall be paid at the place designated in writing from time to time by Landlord. If under the terms of this Lease, the amount of Rent payable hereunder is subject to increase at a specified time, and if Rent is abated for any reason pursuant to the terms hereof prior to the effective date of such increase, then in such event, the effective date of such increase shall be delayed by the same number of days as the number of days during which Rent was so abated, but nothing herein shall be deemed to extend the Term.

4.2 **Security Deposit or Prepaid Rent.** There will be no security deposit due on execution of this Lease. Rent for the first two months of the Term for which rent is payable in the amount of \$29,510 shall be paid upon Tenant's receipt of a fully executed copy of this Lease and Tenant's receipt and approval of the four items to be provided by Landlord under Section 1.4.

5. **Lease Year.** For the purposes hereof, the term "Lease Year" shall mean a period of twelve (12) consecutive calendar months commencing on January 1 and ending on December 31. The term "Partial Lease Year," as used herein, shall mean the period from the Commencement Date to the beginning of the first full Lease Year in the Term, if such Commencement Date is on a day other than January 1; and any other period beginning on the first day of any Lease Year and ending, by reason of the termination of this Lease, prior to the end of such Lease Year. The Lease Year is expected to begin on or about January 1, 1994.

6. **Construction.**

6.1 **Tenant's Work.** Tenant shall commence construction work and the installation of fixtures and equipment promptly upon receipt of necessary permits. The cost of Tenant's improvements, fixtures, and equipments shall be approximately \$1,100,000 paid in cash by Tenant.

6.2 **Permits.** Tenant shall, at its sole cost and expense, obtain all building permits and other permits and approvals required in connection with the completion of Tenant's Work.

6.3 **Construction Allowance.** Tenant shall be entitled to payment of the Construction Allowance as follows:

(a) The first installment of \$200,000 shall be due and payable thirty (30) days after all of the following conditions have been satisfied: (i) Tenant has filed a notice of completion for Tenant's construction lien-free, as evidenced by Landlord receiving from Tenant copies of releases from Tenant's contractors, subcontractors and material suppliers; and (ii) Tenant's opening for business in the Premises;

(b) The second installment of \$100,000 shall be due and payable twelve (12) months after payment of the first installment is due from Landlord.

Pursuant to Article 19, in the event Landlord fails to pay the Construction Allowance when due, Tenant may deduct the unpaid amounts from rent otherwise due, and the Construction Allowance shall accrue interest at the interest rate of eight percent (8%) per annum until paid.

7. **Maintenance and Repairs.**

7.1 **Landlord's Maintenance and Repairs.**

7.1.1 Landlord shall be responsible for all repairs necessitated by the willful acts or negligence of Landlord, its agents, employees, representatives or contractors, or by the breach of this Lease by Landlord.

7.1.2 Landlord hereby agrees to indemnify and hold Tenant harmless against all claims, damages or causes of action for damages, and related expenses, including attorneys' fees, arising out of or brought on account of, injury to any person or persons or property, or loss of life, resulting from any failure on the part of Landlord to make repairs for which Landlord is responsible hereunder.

7.1.3 Tenant may, in the event of an emergency, immediately make any repairs required of Landlord hereunder to the extent reasonably necessary to secure the Premises without notice to Landlord. Landlord shall reimburse Tenant upon written demand for the cost of such repairs, and if not paid within thirty (30) days after receipt by Landlord of a statement therefor, Tenant may deduct such cost from subsequent installments of Rent and other charges hereunder.

7.2 **Governmental Regulations.** Tenant covenants that those parts of the Premises for which Tenant is responsible hereunder shall be so maintained at all times so as to comply with and conform to the laws, ordinances, orders and regulations of applicable governmental authorities, including those relating to public health, sanitation and safety and that Tenant will promptly make any changes or alterations necessary in order that the Premises conform to such laws, ordinances, orders and regulations then in force and effect; provided, however, that Tenant shall not be responsible for costs associated with cleanup or remedial actions at the Premises due to the presence of toxic or hazardous waste, substances or materials (other than costs due to a breach by Tenant of Section 7.4 of this Lease), and Landlord hereby indemnifies Tenant regarding any such costs.

7.3 **Tenant's Maintenance and Repairs.** Upon acceptance of the Premises and completion of improvements by Tenant, Tenant shall keep the Premises and the heating, ventilating and air conditioning system serving the Premises in good condition and repair, excepting all repairs which are the responsibility of Landlord herein as provided and excepting reasonable wear and tear. Tenant shall be responsible for maintenance of the parking lot, landscaping and lighting at the Premises.

7.4 **Hazardous or Toxic Materials.** Tenant shall not use the Premises as a site for the use, storage and/or disposal of toxic or hazardous waste, substances or materials in contravention of any federal, state or local law or regulation with respect to the use, storage and/or disposal of toxic or hazardous waste, substances or materials; provided that Tenant may use and store cooking and cleaning supplies commonly used in operation of a restaurant.

## 8. **Insurance.**

8.1 **Tenant's Insurance.** During the Term, Tenant shall, at its sole cost and expense, provide and maintain or cause to be provided and maintained with respect to the Premises, commercial general liability insurance insuring Landlord and Tenant against any and all claims for damages to person or property or loss of life or of property occurring upon, in or about the Premises, with limits of not less than One Million Dollars (\$1,000,000.00) in respect of bodily injury or death to any one person and not less than One Million Dollars (\$1,000,000.00) in respect of bodily injury or death arising from any one accident or occurrence, and not less than Two Hundred Fifty Thousand Dollars (\$250,000.00) for property damage, with such deductibles as Tenant may customarily carry in the conduct of its business.

### 8.2 **Landlord's Insurance.**

8.2.1 During the Term, Tenant shall provide and maintain or cause to be provided and maintained "All Risk" form of insurance with respect to the Building, and for Tenant's trade fixtures, furnishings and inventory. Tenant covenants and agrees that said insurance shall be in an amount equal to not less than ninety percent (90%) of the full replacement value of such improvements, and shall name Tenant and Landlord as insureds as their interest may appear. Landlord shall maintain commercial general liability insurance on an occurrence basis with a minimum single limit of not less than Two Million (\$2,000,000.00) Dollars insuring Landlord and Tenant against all claims, demands, or actions for personal injury or death, or damage to property, made by or on behalf of any person, firm or corporation arising from any tortious act or negligence of Landlord or any of Landlord's agents, employees, licensees or contractors.

8.3 **Insurance Company; Self-Insurance.** All insurance provided for in this Section 8 shall be effected under standard form policies issued by insurers of recognized responsibility authorized to do business in the state in which the Premises are located; provided, however, that Tenant may self-insure for up to ten percent of (10%) of any of the amounts herein stated so long as

such self-insurance does not exceed ten (10%) percent of Tenant's net worth as computed in accordance with generally accepted accounting principles consistently applied by Tenant.

**8.4 Certificates of Insurance.** Prior to the commencement of the Term, Tenant and Landlord shall furnish each other with certificates of insurance evidencing the insurance coverage requires herein. All such certificates shall contain a provision that the insurance carrier shall not cancel or modify the insurance coverage without endeavoring to give ten (10) days' prior written notice thereof to both Landlord and Tenant. Current certificates of insurance shall be delivered to Landlord or Tenant, as the case may be, at least thirty (30) days prior to the expiration of any policy.

**8.5 Blanket Coverage.** Notwithstanding anything to the contrary hereinabove contained, Landlord or Tenant may, at its option, include any of the insurance coverage hereinabove set forth in general or blanket policies of insurance provided that the coverage afforded will not be reduced or diminished by reason of the use of such general or blanket policies and so long as the carrier is admitted in the State of California.

**9. Real Estate Taxes.**

**9.1 Real Estate Taxes.** Landlord shall timely and fully pay all real estate taxes levied against the Premises. As used herein, the term "real estate taxes" shall mean all real estate taxes, assessments, and other governmental levies and charges, general and special, ordinary and extraordinary, foreseen as well as unforeseen, which are assessed, levied, imposed or become a lien upon the Premises; provided, that if any such real estate tax is payable at the option of the taxpayer in installments, real estate taxes for each Lease Year or Partial Lease Year for purposes of this Lease shall be deemed to include only the installments which would have become due in such Lease Year or Partial Lease Year if Landlord had elected to have the tax bonded or paid in installments. Tenant shall pay to Landlord, with respect to each Partial Lease Year, its pro rata share of the real estate taxes and all real estate taxes for each full Lease Year.

**9.2 Abatement.** The real estate taxes for any Lease Year or Partial Lease Year shall mean such amounts as shall be finally determined after deducting abatements, refunds or rebates, if any (less the reasonable cost and expense of obtaining the same), to be payable for such period. For any Partial Lease Year, the amount of real estate taxes shall be prorated on a per diem basis.

**9.3 Notice Concerning Taxes.** Landlord agrees to notify Tenant of any increase in real estate taxes within thirty (30) days after receipt of the tax bill or other evidence of such increase.

**9.4 Method of Payment.** Landlord shall provide Tenant with a copy of the tax bill setting forth the total real estate taxes payable with respect to the Premises for such Lease Year or Partial Lease Year. Tenant shall pay such amount to Landlord within thirty (30) days after receipt of such bill but not earlier than ten (10) days before it is due. If Tenant has timely paid such tax amounts to Landlord, Tenant shall not be responsible for any interest or penalty charges in any event as a result of Landlord's failure to pay real estate taxes or installments thereof when due. If a discount of said tax bill(s) is available by prompt payment, Tenant's payment share of real estate taxes shall be based upon the discounted amount, regardless of whether in fact such prompt payment is made.

**9.5 Estimated Payments.** If Landlord shall be required by its mortgage lender to escrow or otherwise pre-pay annual real estate taxes, Landlord may so notify Tenant and Tenant shall make equal monthly payments to Landlord on account of such real estate taxes in such amounts as shall be reasonably estimated by Landlord. In the event of an underpayment or overpayment, as the case may be, of real estate taxes for any Lease Year, Tenant, in the case of an underpayment, and Landlord, in the case of an overpayment, shall pay to the other the amount so underpaid or overpaid promptly following delivery of Landlord's tax bill pursuant to Section 9.4 hereof. Landlord estimates that the initial payments under this Article 9 will be \$1,595 per month (\$19,140 per annum).

**10. Utilities.** Tenant shall be solely responsible for and promptly pay all charges for trash removal, heat, water, gas, electricity or any other utility used or consumed in the Premises.

**11. Damage and Destruction.**

**11.1 Landlord to Rebuild.** Subject to Tenant's and Landlord's option to terminate this Lease as hereinafter set forth, if during the Term or any renewal thereof, the Premises or any other part of the Building is damaged or rendered untenable, either in whole or in part, by fire, the elements or other casualty, Landlord shall promptly rebuild, repair or restore all affected

improvements to substantially the value, condition and character thereof existing prior to said destruction.

**11.2 Tenant's Right to Terminate.**

**11.2.1** If, as a result of any such damage or destruction to the Building, and if (a) such damage or destruction shall not be repaired within a period of one hundred eighty (180) days following the date of such damage or destruction, or (b) such damage or destruction cannot reasonably be repaired within one hundred twenty (120) days following the date of such damage or destruction, then Tenant shall have the right to terminate this Lease by written notice to Landlord within sixty (60) days after such one hundred twenty (120) day period in the case of subsection (a) or within sixty (60) days after such casualty in the case of subsection (b).

**11.2.2** In the event that the Building is damaged or destroyed to the extent of twenty (20%) percent or more of the replacement cost thereof during the last two (2) years of the Term, this Lease may be terminated at Tenant's option upon written notice to Landlord within sixty (60) days of such casualty.

**11.3 Landlord's Right to Terminate.** In the event the Premises are damaged or destroyed to the extent of twenty percent (20%) or more of the replacement cost thereof during the last two (2) years of the Term, this Lease may be terminated at Landlord's option upon written notice to Tenant within sixty (60) days of such casualty.

**11.4 Rental Abatement.** During any period during which the Premises are untenantable, in whole or in part, the Rent and other charges payable hereunder shall be abated in proportion to the floor area of the Premises rendered untenantable. If by reason of damage or destruction to the Building, the Premises are rendered substantially unusable for Tenant's business by reason of diminished access, the payment of Rent and all other charges payable hereunder shall abate until accessibility is restored.

**12. Eminent Domain.**

**12.1 Taking of the Premises.** If the whole of the Premises, or any portion thereof which in Tenant's judgment renders the balance unsuitable for the continuation of Tenant's business due to a substantial impact upon Tenant's ability to conduct business in the normal course, shall be taken in condemnation proceedings, by right of eminent domain or by sale in lieu of such taking, this Lease shall end when possession shall be taken by the condemning authority.

**12.2 Reconstruction.** If this Lease shall not be canceled pursuant to Section 12.1, the Lease shall remain in full force and effect with respect to the remainder of the Premises; and

**12.2.1** Landlord, at its sole cost and expense, shall repair, alter and restore the Premises and the Buildings substantially their former condition so as to constitute complete, integrated and economically sound structure, subject to such changes or additions as Tenant may elect to make; and

**12.2.2** Rent and all other charges hereunder shall be reduced from and after the date of the taking in the same proportion that the gross leasable floor area of the Premises after such taking shall bear to such area immediately before the taking. In the event that any portion of the parking area shall be taken in whole or in part, the Rent and all other charges shall be equitably adjusted between the parties, considering the reduction in size of the parking area along with all other considerations relevant to Tenant's operations at the Premises. The value of the parking area for apportionment purposes shall be ten percent (10%) of the net rental amount. Any rent and other charges paid in advance at former rates shall be appropriately adjusted. During the period beginning with such taking and ending on the date of the completion of the repairs, alterations and restoration of the Premises Rent and other charges payable hereunder shall be abated for the period and to the extent that the Premises shall be unusable for Tenant's business.

**12.3 Condemnation Award.** Except as otherwise herein provided, the entire compensation award for any taking shall belong to Landlord. Tenant shall be entitled to claim, prove and receive in any proceedings such award as may be allowed for the taking of Tenant's property located in the Premises, interruption of business, moving expenses and other damages available under applicable law.



13. **Use.** Tenant shall have the right to use the Premises for the purpose of conducting thereon the business of a restaurant which may, at the option of Tenant and subject to applicable laws and governmental regulations, serve alcoholic beverages for on-site consumption, and for the provisions of off-site catering and on-site banquet services. Tenant shall not use or permit the Premises to be used for any other purpose without the prior written consent of Landlord.

14. **Assignment by Tenant.**

14.1 **Assignment.** Landlord hereby agrees that Tenant may assign this Lease in writing to any other party, with the prior written consent of Landlord, which consent shall not be unreasonably withheld, delayed or conditioned, provided that:

14.1.1 Any such assignee or sublessee shall, in writing, assume and agree to keep observe and perform all of the agreements, conditions, covenants and terms of this Lease on the part of Tenant to be kept, observed and performed, and shall be and become liable for the nonperformance thereof accruing from said date; and

14.1.2 No further or additional assignment of this Lease or sublease shall be made except upon compliance with and subject to the provisions of this Article 14.

Landlord will not take action to terminate this Lease because of an unapproved transfer or take other action against Tenant without first giving Tenant a written statement specifying the particular reasons why the proposed transfer and transferee were not reasonably acceptable to Landlord and any steps required to be taken by Tenant (if applicable) to obtain Landlord's consent, and at least 15 days for Tenant to comply with such requirements or take other appropriate action with respect to Landlord's refusal to grant consent.

The giving of consent in one instance shall not preclude the need for Tenant to obtain Landlord's consent to further transfers. No changes in the rent or economic terms of this Lease will be required of Tenant as a condition of Landlord's consent.

14.2 **Permitted Assignments.** Tenant may assign this Lease, without Landlord's approval, to a parent corporation, any subsidiary, any affiliate, any partnership where Tenant or any affiliate is the managing or a general partner, or in connection with a merger or consolidation of Tenant, or in connection with the sale or transfer of all or substantially all of Tenant's leases for stores located in the geographic area in which the Premises are situated and which are operated under the same trade name as the Premises. The term "affiliate" as used herein shall mean any entity in which Tenant and/or its principal shareholder holds thirty (30%) percent or more of the ownership interests.

14.3 **Release of Liability.** No assignment shall relieve Tenant from liability hereunder, unless the assignee has a net worth on the date of assignment equal to or in excess of Ten Million Dollars (\$10,000,000.00) as computed in accordance with generally accepted accounting principles consistently applied. In such event, Tenant shall be released of all liability hereunder accruing after the date of assignment and Landlord shall execute such instruments as Tenant may reasonably request to evidence such release of liability.

15. **Mechanic's Liens.**

Notice is hereby given that Landlord shall not be liable for any work or materials furnished to Tenant on credit and that no mechanic's or other lien for any such work or materials shall attach to or affect Landlord's interest in the Premises based on any work or material supplied to Tenant or any claiming through Tenant. In the event a lien is filed and enforcement thereof against the Premises is commenced, Tenant shall promptly take such action (by bonding or otherwise) as will remove or satisfy any such lien or reasonably assure Landlord that its interest in the Premises is not jeopardized. Landlord may post an Owner's Notice of Non-Responsibility on the Premises at the beginning of the construction work by Tenant.

16. **Alterations; Improvements.**

16.1 **Right to Alter.** Except as otherwise herein provided, Tenant shall not make any alterations and improvements to the Premises without the written consent of Landlord. Notwithstanding the foregoing, Tenant shall be permitted, without Landlord's consent, to make nonstructural alterations and/or additions to the Premises. All alterations or improvements hereunder shall comply with all applicable zoning ordinances, building regulations, relevant statutes, ordinances

and requirements of all federal, state and municipal departments, and local Board of Fire Underwriters, and any other body or bodies exercising a similar function.

**16.2 Tenant's Cost.** Any alterations or improvements made under this Article 16 shall be made at the Tenant's sole cost and expense, and Tenant shall be entitled to any and all salvage. Landlord shall cooperate with Tenant in obtaining any necessary governmental permits or approvals or otherwise in making said alterations and improvements; provided, however, such cooperation shall be without cost or expense to Landlord. Notwithstanding the foregoing, Tenant shall not be required to make any structural repair or replacements or any alterations caused by, or needed to correct any defects in, the initial design or construction of the structural components of the building or Premises (except for any such components included within Tenant's Work.

**17. Signs.**

**17.1 Tenant's Signs.** Tenant shall at its expense have the right to use the existing signage on the Premises and to install and maintain one or two or more signs (including at least two signs with individual backlit letters not less than thirty-six (36) inches in height) substantially as shown in Exhibit F and otherwise in conformity with applicable law affixed anywhere to the exterior of the Premises, as well as professionally prepared standard window banners. Tenant shall obtain and pay for all permits and licenses related to such signs or required in connection therewith. Tenant's installations and removals of such signs shall be made in such manner as to avoid injury, defacement and structural overloading of the Premises or the building of which the Premises are a part. Notwithstanding the foregoing, Tenant shall obtain any required governmental permits prior to installing or using signs.

**17.2 Restrictions on Landlord.** During the Term, Landlord shall not install any structure, sign or landscaping or take any other action which will materially obstruct or interfere with the visibility or legibility of Tenant's signs.

**18. Default by Tenant; Remedies of Landlord.**

**18.1 Events of Default.** Each of the following shall be deemed an event of default by Tenant and a breach of this Lease:

**18.1.1** Default in the payment of the rent reserved for a period ten (10) days after written notice from Landlord of such default.

**18.1.2** Default in the performance of any other covenant or condition of this Lease on the part of the Tenant to be performed for a period of thirty (30) days after written notice from Landlord of such default; provided, however, that for purposes of this Section 18.1.2, no work required to be performed or acts to be done or conditions to be modified shall be deemed to exist if steps shall have been commenced by Tenant diligently after notice to rectify the same and shall be prosecuted to completion with reasonable diligence, subject, however, to unavoidable delays.

**18.1.3** The making by Tenant of any general assignment for the benefit of creditors; the filing by or against Tenant of a petition to have Tenant adjudged a bankrupt or of a petition for reorganization or arrangement under any federal or state bankruptcy law; the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease; or the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease.

**18.1.4** The purpose of the notice requirements set forth in this Article is to extend the notice requirements of the unlawful detainer statutes of California.

**18.2 Landlord's Remedies.** Upon the occurrence of any event of default by Tenant hereunder, Landlord may, at its option and without any further notice or demand, in addition to any other rights and remedies given hereunder or by law, do any of the following:

**18.2.1** Landlord shall have the right at any time thereafter to give notice of termination to Tenant, and on the date specified in such notice (which shall not be less than ten (10) days after the giving of such notice) this Lease shall terminate and come to an end as fully and completely as if such date were the day herein definitely fixed for the expiration of this Lease, and Tenant shall remain liable as hereinafter set forth. In the event of any such termination of this Lease, Landlord may then or at any time thereafter, re-enter the Premises by summary proceedings or otherwise and remove therefrom all persons and property and again repossess and enjoy the Premises,

without prejudice to any other remedies that Landlord may have by reason of Tenant's default or of such termination.

**18.2.2** Landlord shall have the right, without terminating this Lease, to re-enter the Premises by summary proceedings or otherwise and remove all persons and property, and Tenant shall remain liable as hereinafter set forth. It is agreed that the commencement and prosecution of any action by Landlord in unlawful detainer, ejectment or otherwise, or any execution of any judgment or decree obtained in any action to recover possession of the Premises shall not be construed as an election to terminate this Lease unless Landlord shall give written notice to Tenant of such intention.

**18.3 Damages.** In the event of any re-entry or termination under Section 18.2, Tenant shall also pay Landlord, as liquidated damages for the failure of Tenant to observe and perform the covenants herein contained, for each month of the period which would otherwise have constituted the balance of the Term any deficiency between (a) the sum of the Rent reserved herein, and (b) the net amount, if any, of the rents collected on account of the lease of the Premises for each month of the period which would otherwise have constituted the balance of the Term. In computing such liquidated damages there shall be added to said deficiency such expenses as Landlord may incur in connection with reletting, such as court costs, attorneys' fees and disbursements, brokerage commissions and the costs of putting and keeping the Premises in good order. Any such liquidated damages shall be paid in monthly installments by Tenant on the rent day specified in this Lease and any suit brought to collect the amount of the deficiency for any month shall not prejudice in any way the rights of Landlord to collect the deficiency for any subsequent month by a similar proceeding.

**18.4 Interest on Late Payment.** In the event that Tenant fails to pay any rent or other charges hereunder when due and such failure continues for ten (10) days after notice thereof from Landlord to Tenant, then such unpaid amounts shall bear interest from the date due until payment thereof at the interest rate of eight percent (8%) per annum.

**19. Default by Landlord; Remedies of Tenant.**

If Landlord fails to perform any of its obligations under this Lease and such failure continues for more than thirty (30) days (unless a shorter period is set forth in this Lease) after delivery of Tenant's notice specifying the nature thereof, or if the failure is of a nature to require more than thirty (30) days to cure and continues beyond the time reasonably necessary to cure with the exercise of due diligence, such failure shall be deemed a default and Tenant may at its option incur and deduct from rent the expense necessary to perform said obligation of Landlord or pursue any other right or remedy available under law for Landlord's default. If Tenant shall incur any expense, including reasonable attorneys' fees, in instituting, prosecuting or defending any action or proceedings instituted by reason of any default by Landlord, Landlord shall reimburse the Tenant for the amount of such expense. Nothing in this Article 19 shall constitute a defense to an unlawful detainer action, except for any failure by Landlord to pay the Construction Allowance when due.

**20. Surrender of Premises and Removal of Property.**

**20.1 Surrender.** On or before the last day of the Term, Tenant shall surrender the Premises to Landlord in good condition and repair except for reasonable wear and tear, repairs which are Landlord's obligation hereunder and damage by casualty or the elements. On or before said day, Tenant shall remove all its personal property and trade fixtures from the Premises, and repair all damage incurred in the removal of the same.

**20.2 Waiver of Distraint.** Landlord hereby waives, releases and relinquishes any and all liens upon and rights of distraint, levy, attachment or recourse to (whether arising by virtue of statute, common law or otherwise) the trade fixtures, furnishings, signs, equipment, machinery, cash registers, point of sales terminals, inventory and personal property in the Premises. Although the foregoing waiver, release and relinquishment shall be self-operative without the necessity for any further instrument or document, Landlord hereby agrees to furnish Tenant or any vendor or other supplier under any conditional sale, chattel mortgage or other security arrangement, any consignor, any holder of reserved title or any holder of a security interest, upon written request from time to time, waivers of Landlord's liens upon and right to distraint, levy, attachment or recourse with respect thereto and exempting the same from distraint, levy, attachment or recourse.

**21. Quiet Enjoyment.**

Landlord covenants that Tenant shall during the Term quietly hold, occupy and enjoy the Premises without hindrance, ejection or molestation by Landlord or any other person, subject to the terms of this Lease.

**22. Landlord's Warranties and Representations.**

**22.1 Warranties and Representations.** Landlord warrants and represents to Tenant that as of the date hereof:

**22.1.1** Landlord is the owner of a fee simple estate in the Premises and has the right and power to enter into this Lease and to perform same and by this instrument conveys a good leasehold interest to Tenant in accordance with the terms, conditions and provisions hereof.

**22.1.2** There are no claims of other parties, encumbrances, mortgages or other liens, restrictions, reservations or defects in Landlord's title which could interfere with or impair or result in any interference with or impairment of Tenant's use, occupancy and enjoyment of the Premises or with Tenant's rights hereunder, except as specified on Exhibit D.

**22.1.3** There are no zoning, easements or other restrictions of any nature preventing or restricting use of the Premises for the conduct of a general mercantile business or use of the common areas for their intended purposes, including parking. Not less than one hundred fifty (150) parking spaces are available on adjoining property under a reciprocal easement between Landlord and the owner of said property. Not less than eighteen (18) parking spaces are available along the south boundary of the Premises.

**22.1.4** Throughout the Term or any extension thereof, Landlord will not lease or permit the use of any portion of the Building for the operation of any adult bookstore, adult movie theater, bar, tavern, restaurant, massage parlor or other similar enterprise whose business is the sale, rental or promotion of sexually explicit material, acts or entertainment.

**22.1.5** The Premises have not been used in the past, are not used in the present, and shall not be used in the future as a site for the use, storage and/or disposal of toxic or hazardous waste, substances or materials in contravention of any federal, state or local law or regulation with respect to the use, storage and/or disposal of toxic or hazardous waste, substances or materials. There is no asbestos or other toxic or hazardous building material incorporated in the Building. Landlord has provided copies of all environmental assessments and reports regarding the Premises including a report prepared by Eckland Consultants, Inc., dated May 19, 1993.

**22.1.6** Landlord, for itself, its successors and assigns warrants that during the Term or any Renewal Period, no existing points of ingress to and egress from the Premises shall be closed or otherwise impaired due to causes within Landlord's reasonable control unless Landlord provides comparable, alternative access. The parties agree that in the event of such closure or impairment that the dollar value of such damages would be difficult to ascertain and that Tenant may seek injunctive relief in addition to any other remedy it might have available at law or equity. This covenant shall run with the land.

**22.2 Tenant's Remedies for Breach.** In the event that Landlord breaches any of the foregoing warranties and representations, Landlord shall indemnify and hold harmless Tenant from and against any loss and expense, including attorneys' fees and consequential damages, incurred by Tenant as a result thereof and terminate this Lease upon notice to Landlord and be released of and from all further liability hereunder.

**23. Subordination.**

**23.1 Existing Encumbrance.** As an additional contingency to Tenant's obligations hereunder, Landlord shall obtain from the holder ("Lender") of any mortgage, deed of trust or other instrument encumbering the Premises (collectively, "Mortgage") which is in existence before the execution of this Lease, a nondisturbance and attornment agreement in form and content acceptable to Tenant which provides, at a minimum, that:

**23.1.1** The agreement, by its terms, shall be binding on the successors and assigns of Lender, including a purchaser or transferee at foreclosure sale or by deed or other transfer in lieu of foreclosure (collectively, "Transferee");

**23.1.2** Tenant shall not be named in any foreclosure proceedings unless applicable law requires that Tenant be named;

**23.1.3** Upon the foreclosure of the Mortgage, whether by public or private sale or by deed or other transfer in lieu of foreclosure, or upon Lender or Transferee obtaining the right to possession of the Premises by any other means, Lender or Transferee shall recognize this Lease;

**23.1.4** Tenant's possession of the Premises and Tenant's rights and privileges under the Lease, or any extensions or renewals thereof which may be effected in accordance with any option therefor in the Lease, shall not be disturbed, diminished, or interfered with by Secured Party; and Secured Party will not join Tenant as a party defendant in any action or proceeding for the purpose of terminating Tenant's interest under the Lease, so long as Tenant is not in default in the performance of its obligations under this Lease beyond any applicable cure period;

**23.1.5** Tenant shall attorn to Lender to Transferee, and except for the default of a prior landlord (including Landlord hereunder) for which Lender or Transferee is not liable under the express terms of the nondisturbance and attornment agreement, this Lease shall be binding on Lender or Transferee with the same effects of Lender or Transferee and Tenant were the original Landlord and Tenant under this Lease; and

**23.1.6** Tenant shall not be required to waive any of its rights under this Lease, including any right to offset against rents in the event of Landlord's default, provided that Tenant has given notice of such default to Lender.

**23.2 Future Encumbrance.** Tenant agrees to subordinate this Lease to the lien of any Mortgage (as defined in Section 23.1), provided that the Lender (as defined in Section 23.1) executes a subordination, nondisturbance, and attornment agreement substantially in the form and content of Exhibit H hereto or such other form and content as is acceptable to Tenant in its reasonable discretion.

**24. Renewal Options.**

Landlord hereby grants to Tenant the right, privilege and option to extend this Lease for the First Renewal Period, upon the same terms and conditions as herein contained, upon notice in writing to Landlord of Tenant's intention to exercise said option, given at least ninety (90) days prior to the expiration of the initial term hereof. If Tenant shall have exercised said option to extend this Lease for the First Renewal Period, Landlord does hereby grant to Tenant the right, privilege and option to further extend this Lease for the Second Renewal Period, upon the same terms and conditions as herein contained, upon notice in writing to Landlord of Tenant's intention to exercise said option, given at least ninety (90) days prior to the expiration of the First Renewal Period.

**24.1 First Renewal Period Rent.** For the First Renewal Period if Tenant has notified Landlord of its election to renew this Lease as provided in this Article 24, the Rent shall be the lesser of the amount specified in Section 1.1.6.

**24.2 Second Renewal Period Rent.** For the Second Renewal Period if Tenant has notified Landlord of its election to renew this Lease as provided in this Article 24, the Rent shall be the lesser of the amounts specified in Section 1.1.6.

**24.3 Third Renewal Period Rent.** For the Third Renewal Period, if Tenant has notified Landlord of its election to renew this Lease as provided in this Article 24, the Rent shall be the amount specified in Section 1.1.6.

**24.4 The Index.** As used herein the CPI to be used shall be the All Urban Consumer (C.P.I.-U), U.S. City Average, All Items Index (base year/1982-1984=100) as published by the United States Bureau of Labor Statistics. In the event said index is discontinued, then the most comprehensive official index then in use and most nearly answering the foregoing description of the index is to be used. If it is calculated from a base different from the base period 1982-1984=100, figures used for calculating the adjustment shall first be converted under a formula supplied by the Bureau. If the described Index shall no longer be published and no similar index or computation shall

be used in order to obtain substantially the same result as would be obtained if the index had not been discontinued or revised, the parties shall use an agreed-upon index or the matter shall be submitted to binding arbitration in accordance with the rules of the American Arbitration Association then in effect.

**25. Notices.**

Any notice, request or demand permitted or required to be given by the terms and provisions of this Lease, or by any law or governmental regulation, either by Landlord to Tenant or by Tenant to Landlord, shall be in writing and shall be sent by United States certified mail, return receipt requested, or by overnight delivery service, addressed to Landlord or Tenant, as the case may be, at the following addresses:

If to Landlord: **William H. Griffith**  
~~1371 Miller Street~~ *20431 Via Trovador*  
**Anaheim, CA 92806** *Yorba Linda, CA 92687*

If to Tenant: **COUNTRY HARVEST BUFFET RESTAURANTS, INC.**  
c/o IKT Management Company  
915 118th Avenue, SE, Suite 390  
Bellevue, WA 98005  
Attention: L. Wayne Drury

With copies to: **Stoel Rives Boley Jones & Grey**  
36th Floor, One Union Square  
600 University Street  
Seattle, WA 98107-3197  
Attention: Nancy Miller

All such notices, requests and demands shall be deemed given upon receipt or upon refusal of the addressee to receive same as evidenced on the return receipt. Either party may, by notice as aforesaid, designate different addressees or addresses for notices, requests or demands to it.

**26. Law Applicable and Construction of Lease.**

**26.1 Governing Law.** The validity, performance and enforcement of this Lease shall be governed by the laws of the State in which the Premises are located.

**26.2 Invalid Provisions.** The invalidity and unenforceability of any provision of this Lease shall not affect or impair any other provision.

**26.3 Interlineation.** Whenever in this Lease any printed portion has been stricken out, whether or not any relative provision has been added, this Lease shall be construed as if the material so stricken was never included herein and no inference shall be drawn from the material so stricken out which would be inconsistent in any way with the construction or interpretation which would be appropriate if such material were never contained herein.

**27. Short Form Lease.**

This Lease shall not be recorded. Landlord and Tenant will, at the request of either, enter into a short form memorandum of lease, in recordable form.

**28. Miscellaneous.**

**28.1 Operation of Business; Closing of Store.** No provision of this Lease will be construed as an express or implied covenant to operate. It is expressly understood that, notwithstanding anything to the contrary contained herein, Tenant may close the Premises when in Tenant's judgment the operation of the Premises as provided herein cannot be economically justified or when the operation of the Premises would expose Tenant's employees to any condition or event which threatens the health or safety of such employees; provided, however, that any such closing shall not relieve Tenant from any of its obligations hereunder. In the event that Tenant closes the Premises under this Section 28.1 and fails to reopen the Premises within one hundred and eighty (180) days thereafter except for remodeling, Landlord may terminate this Lease upon thirty (30) days' notice to Tenant, in which event Tenant shall be released from all further liability hereunder.

**28.2 No Continuing Waiver.** No waiver of any default hereunder shall be implied from any omission by either party to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver, and then only for the time and to the extent therein stated. No delay or omission by either party hereto to exercise any right or power accruing upon any non-compliance or default by the other party with respect to any of the terms hereof, or otherwise accruing hereunder, shall impair any such right or power or be construed to be waiver thereof. One or more waivers of any breach of any covenant, term or condition of this Lease shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. The consent or approval by a party to or of any act by the other party requiring the former party's consent or approval shall not be deemed to waive or render unnecessary such former party's consent or approval to or of any subsequent similar acts by the other party.

**28.3 Holding Over.** If Tenant shall remain in possession of the Premises after expiration of the Term or any Renewal Period, such occupancy shall be a tenancy from month to month at one hundred fifty percent (150%) of the then effective Rent and otherwise subject to all the terms and provisions hereof.

**28.4 Entire Agreement.** This Lease, the Exhibits and Riders, if any, attached hereto include the entire agreement of the parties concerning this Lease. No change, amendment or addition to this Lease shall be effective unless in writing and signed by the parties.

**28.5 Captions.** The captions of this Lease and any table of contents or index which may be added hereto are for convenience and reference only and shall not be deemed or construed to define, limit or describe the scope or intent of this Lease or affect its interpretation or construction.

**28.6 Binding Effect.** The covenants and conditions contained in this Lease shall apply to, inure to the benefit of, and be binding upon the parties hereto and their respective successors and assigns, except as expressly otherwise hereinabove provided.

**28.7 Reasonable Consent.** If the consent, approval or permission of either party is required or desired by the other party hereunder, such party agrees that it shall not unreasonably or arbitrarily withhold or delay such consent, approval or permission. In the event that either party fails to respond to any request for consent, approval or permission within fifteen (15) days (or such longer or shorter period as is herein specified) after receipt of such request, then said consent, approval or permission shall be conclusively deemed to have been granted and the other party may proceed without further action, approval or permission. In the event that any such consent, approval or permission is specifically withheld, the withholding party shall set forth in writing its reasons for such withholding, which reasons must be reasonable under the circumstances presented.

**28.8 Broker Commission.** Each party represents and warrants to the other party that it has not caused or incurred any claims for brokerage commissions or finders fees in connection with this Lease except as to any broker listed in Section 1.1.8, and each party agrees to indemnify the other party and hold it harmless from any and all liabilities arising from any breach of the foregoing; such agreement shall survive the termination of the Lease. Landlord shall be solely responsible for the payment of any fees or commissions to any broker listed in Section 1.1.8.

**28.9 Unavoidable Delays.** In the event that either party shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of extraordinary events such as acts of God, strikes, lockouts, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, war or other reason of a similar nature not the fault of such party, then performance of any such act shall be extended for a period equivalent to the period of such delay, as long as written notice of the occurrence of such is promptly given to the other party. The foregoing shall not operate to excuse the prompt payment of any rents reserved hereunder or any other amounts payable hereunder by Tenant or Landlord, nor shall it apply to Landlord's covenant of quiet enjoyment or Landlord's obligation to pay for the construction of the Premises nor Landlord's obligation to join in the execution of permits and licenses necessary for the conduct of Tenant's business in the Premises. Lack of money will not be deemed to be a cause beyond either party's control.

**28.10 Submission of Lease.** The submission by Tenant to Landlord of this Lease shall have no binding force or effect, shall not constitute an option for the leasing of the Premises, nor confer any rights or impose any obligations upon either party until the execution thereof by both Landlord and Tenant and the delivery of an executed original copy thereof to Tenant.

**28.11 Time of the Essence.** Time is of the essence of all conditions of this Lease in which time is an element.

**28.12 Relationship of Parties.** Landlord does not, in any way or for any purpose, become a partner of Tenant in the conduct of its business, or otherwise, or joint venturer or a member of a joint enterprise with Tenant.

**28.13 Partial Invalidity.** Any provision of this Lease which shall prove to be invalid, void, or illegal shall in no way affect, impair or invalidate any other provision hereof and such other provision shall remain in full force and effect.

**28.14 Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive but shall, whenever possible, be cumulative with all other remedies at law or in equity.

**28.15 Attorneys' Fees.** In the event of any action or proceeding by either party against the other under this Lease, the prevailing party shall be entitled to recover for the fees of its attorneys in such action or proceeding, including costs of appeal, if any, in such amount as the court may adjudge reasonable as attorneys' fees.

**28.16 Sale of Premises by Landlord.** In the event of any sale of the Premises by Landlord, Landlord shall be and is hereby entirely freed and relieved of all liability under any and all of its covenants and obligations contained in or derived from this Lease arising out of any act, occurrence or omission occurring after the consummation of such sale; and the purchaser, at such sale or any subsequent sale of the Premises shall be deemed, without any further agreement between the parties or their successors in interest or between the parties and any such purchaser, to have assumed and agreed to carry out any and all of the covenants and obligations of the Landlord under this Lease. Landlord shall deliver to Tenant, twenty (20) days' advance notice of any anticipated conveyance of Landlord's interest in the Premises are located; provided, however, if Tenant previously was required to complete, sign, and deliver an Estoppel Certificate in connection with such anticipated conveyance, then Landlord shall not be obligated to deliver such notice prior to such conveyance (but in such event Landlord or the transferee will promptly notify Tenant after such conveyance); and further provided that Tenant shall not be liable for any increase in real property taxes that result from changes in ownership of the Premises in excess of ten percent (10%) over the taxes paid prior to such sale.

**28.17 Estoppel Certificates.** Upon fifteen (15) days' prior notice of the request, either party will execute, acknowledge and deliver to the other party a certificate stating (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect as modified, and setting forth such modifications), (b) the dates to which rent and other sums payable hereunder have been paid, and (c) either that to the knowledge of the party no default exists under this Lease or specifying each such default exists under this Lease or specifying each such default of which the party has knowledge. Any such certificate may be relied upon as to the facts stated therein by any actual or prospective mortgagee or purchaser of the Premises from Landlord or any actual or prospective sublessee or assignee of Tenant's interest in this Lease in connection with one of the transactions permitted or approved under this Lease. A party shall not be obligated, except as provided herein, to update any certificate once delivered.

**28.18 Authority.** If Landlord or Tenant is a corporation, each individual executing this Lease on behalf of said corporation represents and warrants that he is duly authorized to execute and deliver this Lease on behalf of said corporation, in accordance with the bylaws of said corporation, and that this Lease is binding upon said corporation.

**28.19 Proration of Rent.** If this Lease starts or ends during a rental period, the rent (including common area charges, taxes and other additional rent obligations) shall be prorated as of such date. Upon termination other than for default, prepaid rent shall be refunded.



IN WITNESS WHEREOF, the parties have hereunto set their hands on the day and year first aforesaid.

Consult your attorney:

This Lease has been prepared for submission to your attorney for his/her approval.

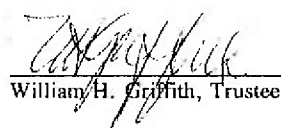
LANDLORD:

TENANT:

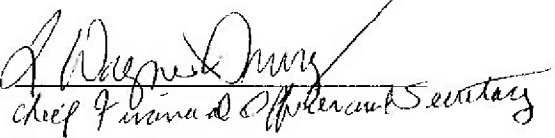
WILLIAM H. GRIFFITH REVOCABLE  
TRUST U/A DATED 11/7/89

COUNTRY HARVEST BUFFET  
RESTAURANTS, INC., a Delaware corporation

By:

  
William H. Griffith, Trustee

By:

  
Chief Financial Officer and Secretary

Date:

11-16-93  
(Landlord)

By:

Date:

12/14/93  
(Tenant)

STATE OF CALIFORNIA )  
 )ss.  
COUNTY OF Orange )

CAPACITY CLAIMED BY SIGNER

On Nov. 16, 1993, before me, JOANNE ILG, notary for the State of California, personally appeared William H. Griffith, personally known to me (~~or provided to me on the basis of satisfactory evidence~~ to be) the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the within instrument.

☐ Individual  
☐ Corporate  
☐ Officer(s) \_\_\_\_\_  
Title(s) \_\_\_\_\_

☐ Partner(s) ☐ Limited  
☐ General

☐ Attorney-in-Fact  
☐ Guardian/Conservator  
☒ Other: Trustee

WITNESS my hand and official seal.

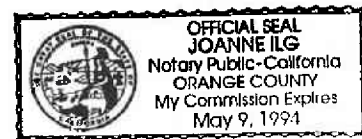
SIGNER IS REPRESENTING:

Name of Person(s) or Entity(ies)  
William H. Griffith Revocable Trust  
u/a dated November 7, 1989

Joanne Ilg  
Signature of Notary

Name (Print): JOANNE ILG

NOTARY PUBLIC in and for the State  
of California, residing at Fullerton, CA.  
My appointment expires: 5-9-94



Attention Notary: Although the information requested below is OPTIONAL, it could prevent fraudulent attachments of this certificate to an unauthorized document.

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED AT RIGHT:	Title or Type of Document Number of Pages Date of Document Signer(s) Other Than Named Above	<u>Standard Lease Agreement</u> <u>45</u> <u>11-16-93</u> <u>Country Harvest Buffet Restaur-</u> <u>ants, Inc.</u>
--	--	--

STATE OF WASHINGTON )  
 )ss.  
COUNTY OF KING )

CAPACITY CLAIMED BY SIGNER

On \_\_\_\_\_, 1993, before me, \_\_\_\_\_,  
\_\_\_\_\_, notary for the State of  
Washington, personally appeared L. Wayne Drury,  
personally known to me (or provided to me on the  
basis of satisfactory evidence to be) the person(s)  
whose name(s) is/are subscribed to the within instru-  
ment and acknowledged to me that he/she/they exe-  
cuted the same in his/her/their authorized capaci-  
ty(ies), and that by his/her/their signature(s) on the  
instrument the person(s), or the entity upon behalf of  
which the person(s) acted, executed the within instru-  
ment.

\_\_\_\_ Individual \_\_\_\_\_  
☒ Corporate Vice President  
Officer(s) \_\_\_\_\_  
Title(s) \_\_\_\_\_

\_\_\_\_ Partner(s) \_\_\_\_\_ Limited  
\_\_\_\_ General

\_\_\_\_ Attorney-in-Fact  
\_\_\_\_ Guardian/Conservator  
\_\_\_\_ Other: Trustee

WITNESS my hand and official seal.

SIGNER IS REPRESENTING:

Name of Person(s) or Entity(ies)  
Country Harvest Buffet Restaurants,  
Inc., a Delaware Corporation

\_\_\_\_\_  
Signature of Notary

Name (Print): \_\_\_\_\_

NOTARY PUBLIC in and for the State  
of \_\_\_\_\_, residing at \_\_\_\_\_  
My appointment expires: \_\_\_\_\_

Attention Notary: Although the information requested below is OPTIONAL, it could prevent fraudulent attachment of this certificate to an unauthorized document.

THIS CERTIFICATE  
MUST BE ATTACHED  
TO THE DOCUMENT  
DESCRIBED AT RIGHT:

Title or Type of Document \_\_\_\_\_

Number of Pages \_\_\_\_\_ Date of Document \_\_\_\_\_

Signer(s) Other Than Named Above \_\_\_\_\_

**EXHIBIT A**

**PREMISES**

The real property in the City of Santa Ana, County of Orange, State of California, described as:

Blk. 21 E. 160 Ft., Santa Ana East Lot

The East 160.00 feet of Block 21 of the Town of Santa Ana East in the City of Santa Ana, County of Orange, State of California, as shown on a map recorded in Book 10, Page 43 and 44 of miscellaneous records, in the office of the County Recorder of Los Angeles County, California.

(Property Address: 1008 E. 17th Street, Santa Ana, California)

**EXHIBIT B**

**GUARANTY OF LEASE**

THIS GUARANTY is made as of this 14 day of December, 1993, by HELLER FINANCIAL, INC., a Delaware corporation having an office at 500 West Monroe, Chicago, Illinois 60661, hereinafter referred to as the "Guarantor."

A. On even date herewith William H. Griffith (herein referred to as "Landlord") has entered into a certain lease agreement (herein referred to as the "Lease") with COUNTRY HARVEST BUFFET RESTAURANTS, INC., a Delaware corporation ("Tenant"), for certain premises in Santa Ana, California, as more particularly described in the Lease.

B. Guarantor desired that Landlord enter into the Lease with Tenant, but Landlord would not have entered into the Lease with Tenant unless the Guarantor had agreed to guaranty the rental obligations of Tenant under the Lease as more fully set forth below.

NOW, THEREFORE, in consideration of Landlord entering into the Lease with Tenant, one dollar in hand paid to Guarantor and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, Guarantor covenants to and agrees with Landlord as follows:

1. Subject to paragraphs 2 and 4 below, Guarantor hereby guarantees the full and punctual payment by Tenant of all minimum rent, percentage rent and Tenant's reimbursement obligations for taxes, insurance premiums, utility billings, ongoing maintenance charges, and management fees, together with all interest and late charges assessed against such sums in accordance with the Lease and all reasonable costs of collecting the same which are or become due under the Lease (all of the foregoing being hereinafter collectively referred to as the "Guaranteed Obligations"). If Tenant or its successors or assigns shall default in the payment of any of the Guaranteed Obligations under the terms of the Lease, Guarantor shall, upon receiving written notice of non-payment, pay to Landlord, or any other person selected by Landlord and designated to Guarantor by Landlord in writing, all such delinquent Guaranteed Obligations.

2. After (a) Tenant or its assignee has attained a net worth of at least Fifteen Million Dollars (\$15,000,000), as determined by an audited financial statement (prepared under generally accepted accounting principles) which is provided to Landlord, or (b) the expiration of ten (10) years from the date hereof, whichever shall first occur, Guarantor shall be automatically released from all obligations under this Guaranty; provided, however, such release shall not impair Guarantor's liability for any accrued and unpaid Guaranteed Obligations as of the date of such release.

3. This is a guaranty of payment and the liability of Guarantor is primary and, at the option of Landlord, may be enforced directly against Guarantor before or after proceeding against Tenant without Landlord first asserting, prosecuting or exhausting any remedy against Tenant. However, Landlord shall at all times attempt to mitigate its damages sought against Guarantor hereunder by taking all reasonable actions to re-lease the property which is the subject of the Lease as soon as feasible after a default under the Lease which results in Tenant's eviction from or abandonment of said property.

4. Subject to paragraphs 1 and 2 above, this Guaranty shall remain and continue in full force and effect as to any renewal or extension of the Lease and as to any assignee of Tenant's interest in the Lease, unless the Lease is assigned with the written consent of Landlord, which consent shall not be unreasonably withheld. Upon such assignment with Landlord's consent, Guarantor shall be released from its obligations hereunder.

5. Guarantor represents that this Guaranty has been executed with the requisite corporate authority and that this instrument is valid and binding upon Guarantor without further action or condition.

6. Neither Guarantor's obligation to make payment in accordance with the terms of this Guaranty nor any remedy for the enforcement thereof shall be impaired, modified, changed, released or limited in any manner whatsoever by any impairment, modification, change, release or

COPY

limitation of the liability of the Tenant or its estate in bankruptcy under any present or future provision of the Bankruptcy Code or other statute relating to Tenant's inability to pay its debts when due.

7. The Guarantor hereby waives notice of acceptance of this Guaranty.

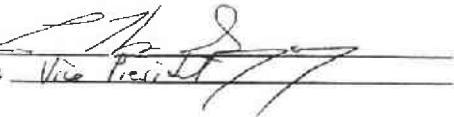
8. This Guaranty and the obligations of the Guarantor hereunder shall be binding upon the Guarantor, its successors and assigns and shall inure to the benefit of and be enforceable by Landlord, its successors, assigns and mortgagees.

IN WITNESS WHEREOF, the Guarantor has caused this Guaranty to be duly executed as of the day and year first above written.

HELLER FINANCIAL, INC.,  
a Delaware corporation

By

Its

A handwritten signature in dark ink, appearing to be "Vice President" followed by a stylized signature, is written over a horizontal line.

**EXHIBIT C**

**CONFIRMATION OF LEASE**

THIS CONFIRMATION OF LEASE, made the \_\_\_\_ day of \_\_\_\_\_, 199\_\_, between William H. Griffith as sole trustee under the William H. Griffith Revocable Trust u/a dated 11/7/89 ("Landlord") and COUNTRY HARVEST BUFFET RESTAURANTS, INC., a Delaware corporation ("Tenant").

**WITNESSETH**

WHEREAS, by Lease dated as of the \_\_\_\_ day of \_\_\_\_\_, 199\_\_, between the parties hereto (the "Lease"), the Landlord leased to Tenant and Tenant leased from Landlord, for the term and upon the terms and conditions therein set forth, certain premises located at 1008 E. 17th Street, Santa Ana, California, and with a legal description attached hereto as Exhibit A and incorporated by reference.

WHEREAS, the Lease provides that the parties shall execute a confirmation of the actual commencement and expiration dates of the Lease, when such dates have been determined.

NOW, THEREFORE, the parties hereto, intending to be legally bound hereby, agree that the term of the Lease commenced on the \_\_\_\_ day of \_\_\_\_\_, 199\_\_, and shall end on the \_\_\_\_ day of \_\_\_\_\_, 199\_\_, at midnight, unless sooner terminated or extended as therein provided.

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

**LANDLORD:**

**WILLIAM H. GRIFFITH REVOCABLE TRUST  
U/A DATED 11/7/89**

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

*William H. Griffith*  
William H. Griffith, Trustee

**TENANT:**

**COUNTRY HARVEST BUFFET RESTAURANTS, INC.,  
a Delaware corporation**

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

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

*Chief Financial Officer*

EXHIBIT C

CONFIRMATION OF LEASE

THIS CONFIRMATION OF LEASE, made <sup>as of</sup> the 15 day of April, 1994, between William H. Griffith as sole trustee under the William H. Griffith Revocable Trust u/a dated 11/7/89 ("Landlord") and COUNTRY HARVEST BUFFET RESTAURANTS, INC., a Delaware corporation ("Tenant").

WITNESSETH

WHEREAS, by Lease dated as of the 14 day of December, 1993, between the parties hereto (the "Lease"), the Landlord leased to Tenant and Tenant leased from Landlord, for the term and upon the terms and conditions therein set forth, certain premises located at 1008 E. 17th Street, Santa Ana, California, and with a legal description attached hereto as Exhibit A and incorporated by reference.

WHEREAS, the Lease provides that the parties shall execute a confirmation of the actual commencement and expiration dates of the Lease, when such dates have been determined.

NOW, THEREFORE, the parties hereto, intending to be legally bound hereby, agree that the term of the Lease commenced on the 15 day of April, 1994, and shall end on the 31 day of December, ~~1993~~ 2004 at midnight, unless sooner terminated or extended as therein provided.

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

LANDLORD:

WILLIAM H. GRIFFITH REVOCABLE TRUST  
U/A DATED 11/7/89

By: [Signature]  
William H. Griffith, Trustee

TENANT:

COUNTRY HARVEST BUFFET RESTAURANTS, INC.,  
a Delaware corporation

By: [Signature]  
Its: Chief Financial Officer

COPY



STATE OF CALIFORNIA )  
 )ss.  
COUNTY OF Orange )

CAPACITY CLAIMED BY SIGNER

On Nov. 16, 1993, before me, JOANNE ILG, notary for the State of California, personally appeared William H. Griffith, personally known to me (or provided to me on the basis of satisfactory evidence to be) the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the within instrument.

\_\_\_ Individual  
\_\_\_ Corporate  
\_\_\_ Officer(s) \_\_\_\_\_  
Title(s)

\_\_\_ Partner(s) \_\_\_ Limited  
\_\_\_ General

\_\_\_ Attorney-in-Fact  
\_\_\_ Guardian/Conservator  
☒ Other: Trustee

WITNESS my hand and official seal.

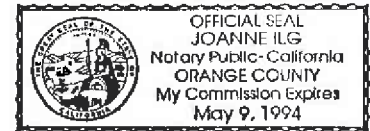
SIGNER IS REPRESENTING:

Name of Person(s) or Entity(ies)  
William H. Griffith Revocable Trust  
u/a dated November 7, 1989

Joanne Ilg  
Signature of Notary

Name (Print): JOANNE ILG

NOTARY PUBLIC in and for the State  
of CALIFORNIA residing at Fullerton, California  
My appointment expires: May 9, 1994



Attention Notary: Although the information requested below is OPTIONAL, it could prevent fraudulent attachment of this certificate to an unauthorized document.

THIS CERTIFICATE  
MUST BE ATTACHED  
TO THE DOCUMENT  
DESCRIBED AT RIGHT:

Title or Type of Document EXHIBIT - 11  
Number of Pages 2 Date of Document CONFIRMATION OF LEASE  
Signer(s) Other Than Named Above Courtney Harvest Buffet  
Restaurants, Inc.

STATE OF WASHINGTON )  
 )ss.  
COUNTY OF KING )

CAPACITY CLAIMED BY SIGNER

On \_\_\_\_\_, 1993, before me, \_\_\_\_\_, notary for the State of Washington, personally appeared L. Wayne Drury, personally known to me (or provided to me on the basis of satisfactory evidence to be) the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the within instrument.

\_\_\_ Individual  
☒ Corporate Vice President  
Officer(s) \_\_\_\_\_  
Title(s) \_\_\_\_\_  
\_\_\_ Partner(s) \_\_\_ Limited  
\_\_\_ General  
\_\_\_ Attorney-in-Fact  
\_\_\_ Guardian/Conservator  
\_\_\_ Other: Trustee

WITNESS my hand and official seal.

SIGNER IS REPRESENTING:  
Name of Person(s) or Entity(ies)  
Country Harvest Buffet Restaurants,  
Inc., a Delaware Corporation

\_\_\_\_\_  
Signature of Notary

Name (Print): \_\_\_\_\_

NOTARY PUBLIC in and for the State  
of \_\_\_\_\_, residing at \_\_\_\_\_  
My appointment expires: \_\_\_\_\_

Attention Notary: Although the information requested below is OPTIONAL, it could prevent fraudulent attachment of this certificate to an unauthorized document.

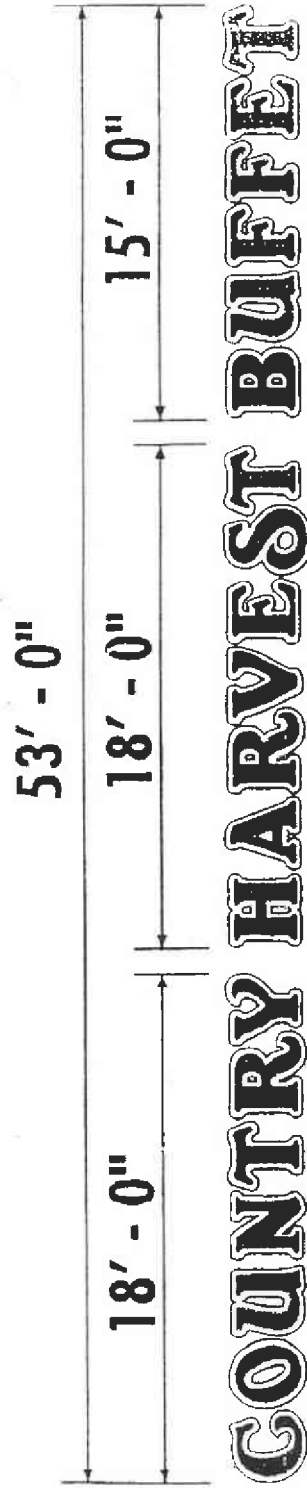
THIS CERTIFICATE      Title or Type of Document \_\_\_\_\_  
MUST BE ATTACHED      Number of Pages \_\_\_\_\_ Date of Document \_\_\_\_\_  
TO THE DOCUMENT      Signer(s) Other Than Named Above \_\_\_\_\_  
DESCRIBED AT RIGHT:

EXHIBIT D

TENANT'S SIGNS

**III 33**

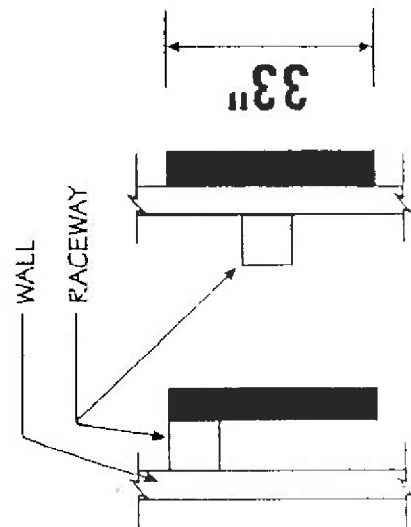
**COUNTRY HARVEST BUFFET**



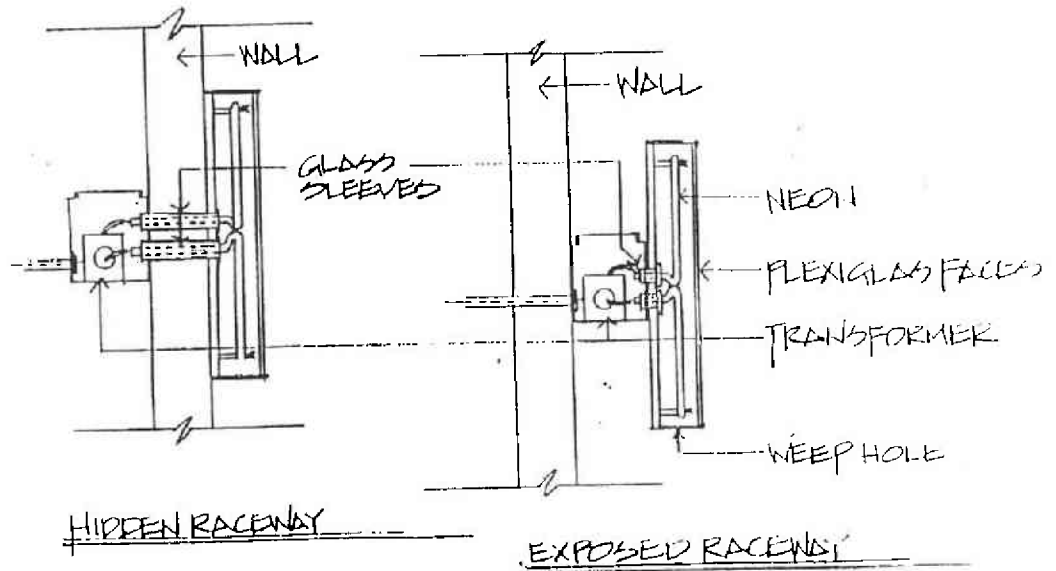
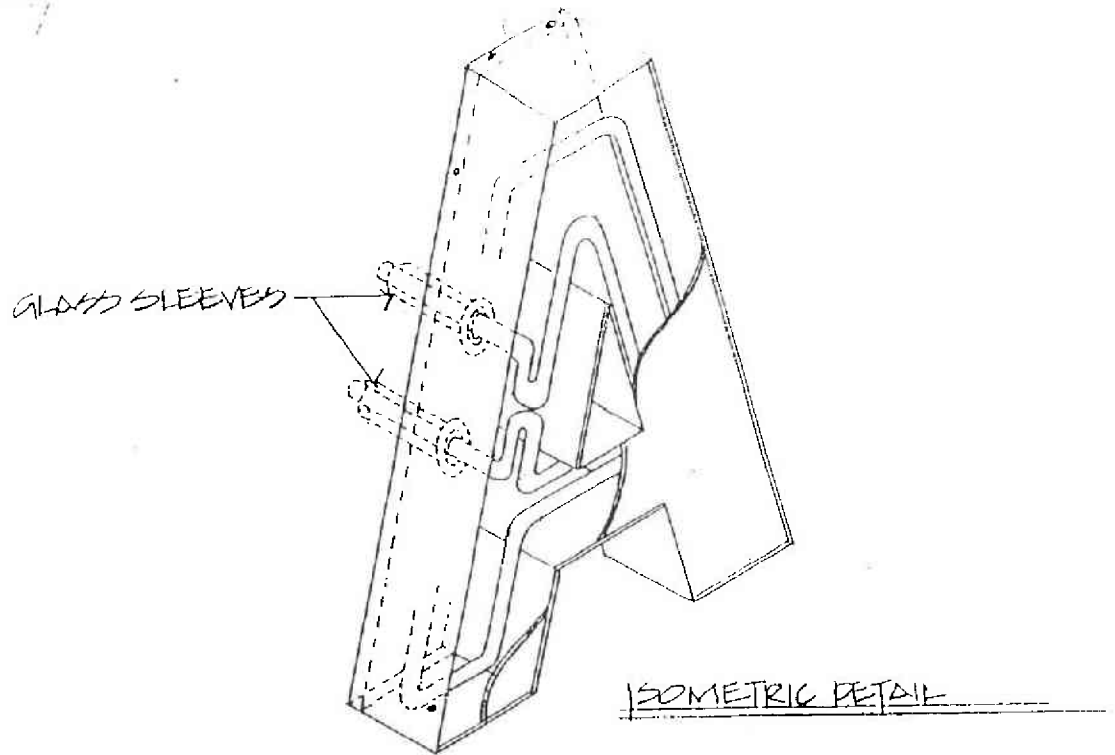
SCALE: 3/16" = 1' - 0"

**SPECIFICATIONS:**

FURNISH & INSTALL ONE SET OF CHANNELVOLUME LETTERS  
 5 1/4" RETURNS TO BE BLUE [ MATCH SCOTCHCAL 230-167 ]  
 FACE TO BE WHITE ACRYLIC W/ RED 230-33 SCOTCHCAL FACE  
 WHITE BORDER AROUND RED FACE TO BE 1 1/2"  
 NEON ILLUMINATION TO BE 4500 WHITE



EXPOSED RACEWAY HIDDEN RACEWAY



## CHANNELUME LETTERS

**FIRST AMENDMENT OF LEASE**

THIS FIRST AMENDMENT TO LEASE ("**First Amendment**") is dated this 17<sup>th</sup> day of February, 2011, and entered into by and between William H. Griffith as sole trustee under the William H. Griffith Revocable Trust u/a dated November 7, 1989 ("**Landlord**") and HomeTown Buffet, Inc., a Minnesota corporation ("**Tenant**").

**RECITALS**

WHEREAS, Landlord and Tenant are the current parties to that certain lease dated December 14, 1993, as modified, amended and/or supplemented (collectively, the "**Lease**"), concerning that certain property located at 1008 – 17<sup>th</sup> Street, Santa Ana, County of Orange, State of California (the "**Premises**"); and

WHEREAS, it is the desire of the parties hereto, to amend 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 as follows:

1. **Improvements**. Tenant will complete substantial physical improvements to remodel the interior and (potentially) repainting of the exterior of the Premises (the "**Improvements**") in calendar year 2011 and Landlord has approved the same.
2. **Term**. Landlord and Tenant acknowledge that the term of the Lease is scheduled to expire December 31, 2014 (the "**Second Renewal Period**"). Landlord acknowledges that Tenant currently has one (1) option to extend the Term of the Lease for a period of five (5) years (the "**Third Renewal Period**").

Tenant hereby exercises its Third Renewal Period and Landlord hereby accepts such exercise, thereby extending the term of the Lease from January 1, 2015 through December 31, 2019. All terms and conditions of the Lease shall remain in full force and effect except that Rent for the Third Renewal Period shall be adjusted pursuant to Paragraph 3 below.

Further, Tenant shall have the right to extend the term of the Lease for one (1) additional five (5) year option under the same terms and conditions as the original Lease (the "**Fourth Renewal Period**"), provided Tenant complies with the notice requirements (written notice given at least ninety (90) days prior to the expiration date) contained in the Lease. If exercised, the Fourth Renewal Period would commence January 1, 2020 and expire December 31, 2024.

3. **Rent**. Notwithstanding anything to the contrary contained in the Lease, the Rent payable under the Lease shall be as follows:

<u>Option Period</u>	<u>Term</u>	<u>Annual Rent</u>
Second Renewal Period	1/1/10 – 12/31/14	\$254,012.16
Third Renewal Period	1/1/15 – 12/31/19	\$284,493.61
Fourth Renewal Period	1/1/20 – 12/31/24	\$ *CPI

\*lesser of then existing Rent multiplied by (a) 100% plus change in CPI over previous 5 years, or (b) 115%

4. **Tenant Improvement Allowance.** Tenant shall be entitled to payment of a tenant improvement allowance of One Hundred Thousand and No/100 Dollars (\$100,000.00), which amount will be paid by Landlord to Tenant within ten (10) days following the execution and delivery of this First Amendment by Landlord and Tenant. Failure by the Landlord to pay the improvement allowance 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 Fixed Minimum Rent, Percentage Rent and/or Additional Rent payments first coming due under this Lease until such delinquency is fully repaid.

5. **Modification.** Except as specifically modified herein, all terms and conditions set forth in the Lease shall remain in full force and effect. Any conflict between the Lease and this First Amendment shall be resolved in favor of this First Amendment. This First Amendment contains the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral or written, with respect to such matters.

6. **Binding on Successors and Assigns.** The terms and conditions of this First Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

7. **Counterparts.** This First Amendment may be executed and delivered in counterparts, each of which shall be deemed to be an original, and all such counterparts shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this First Amendment as of the date set forth below:

LANDLORD:

William H. Griffith as sole trustee under the  
William H. Griffith Revocable Trust  
u/a dated November 7, 1989

By: William H. Griffith  
Name: WILLIAM H. GRIFFITH  
Title: OWNER

TENANT:

HOMETOWN BUFFET, INC.,  
a Minnesota corporation

By: [Signature]  
Name: A. Keith Wain  
Title: VP & CFO

**SECOND AMENDMENT OF LEASE**

THIS SECOND AMENDMENT TO LEASE ("**Second Amendment**") is dated this 30<sup>th</sup> day of November, 2011, and entered into by and between William H. Griffith as sole trustee under the William H. Griffith Revocable Trust u/a dated November 7, 1989 ("**Landlord**") and HomeTown Buffet, Inc., a Minnesota corporation ("**Tenant**").

**RECITALS**

WHEREAS, Landlord and Tenant are the current parties to that certain lease dated December 14, 1993, as modified, amended and/or supplemented (collectively, the "**Lease**"), concerning that certain property located at 1008 - 17<sup>th</sup> Street, Santa Ana, County of Orange, State of California (the "**Premises**"); and

WHEREAS, it is the desire of the parties hereto, to amend 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 as follows:

1. **Improvements.** Notwithstanding anything contained in the Lease to the contrary, Tenant will complete substantial physical improvements to remodel the interior and repainting (as shown on Exhibit A attached hereto) of the exterior of the Premises (the "**Improvements**") prior to June 30, 2012 and Landlord has approved the same.
2. **Modification.** Except as specifically modified herein, all terms and conditions set forth in the Lease shall remain in full force and effect. Any conflict between the Lease and this Second Amendment shall be resolved in favor of this Second Amendment. This Second Amendment contains the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral or written, with respect to such matters.
3. **Binding on Successors and Assigns.** The terms and conditions of this Second Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
4. **Counterparts.** This Second Amendment may be executed and delivered in counterparts, each of which shall be deemed to be an original, and all such counterparts shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Second Amendment as of the date set forth below:

LANDLORD:

William H. Griffith as sole trustee under the  
William H. Griffith Revocable Trust  
u/a dated November 7, 1989

By: William H. Griffith Trustee  
Name: WILLIAM H. GRIFFITH  
Title: TRUSTEE

TENANT:

HOMETOWN BUFFET, INC.,  
a Minnesota corporation

By: Paul Holovics  
Name: Paul Holovics  
Title: VP Finance, Treasurer & Assistant Secretary





Hometown  
Buffet

Santa Ana After

Santa Ana California

November 3, 2011

•Buffets, Inc.♦



**AMENDMENT TO LEASE**  
(Store #0806 – Santa Ana, CA)

THIS AMENDMENT TO LEASE (this “**Amendment**”) made and entered into effective as of January 1, 2012 (the “**Effective Date**”), by and between William H. Griffith as sole trustee under the William H. Griffith Revocable Trust u/a dated November 7, 1989 (“**Landlord**”), and HomeTown Buffet, Inc., a Minnesota corporation (“**Tenant**”).

**RECITALS:**

WHEREAS, Landlord and Tenant are the current parties to that certain lease dated as of December 14, 1993 (as modified, amended, transferred and/or supplemented to date, together with any and all exhibits and addenda thereto, collectively, the “**Lease**”) by which Landlord is leasing to Tenant certain premises described therein (the “**Demised Premises**”) identified by Tenant as Store #0806 with a street address at 1008 – 17<sup>th</sup> Street, County of Orange, City of Santa Ana and State of California.

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

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

**AGREEMENT:**

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

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

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

<u>Term</u>	<u>Annual Rent</u>
1/1/12 – 12/31/14	\$195,000.00
1/1/15 – 12/31/19	\$224,250.00
Fourth Renewal Period 1/1/20 – 12/31/24	\$ *CPI

\* “**CPI**” means the lesser of (a) then-prevailing Rent multiplied by 1.10, or (b) then-prevailing Rent multiplied by a factor determined as follows:

$$\text{Factor} = \frac{\text{Recent CPI}}{\text{Base CPI}}$$

where:

“**Base CPI**” means the CPI first officially published after January 1, 2012;

"CPI" means the Consumer Price Index (All Urban Consumers) for Los Angeles-Riverside-Orange County, CA, All Items (1982-84 = 100) published by the Bureau of Labor Statistics, United States Department of Labor.

"Recent CPI" means the CPI last officially published prior to the last day of the current lease term;

If CPI is no longer officially published at the time of rental adjustment, such index will nevertheless be used for adjustment of Rent by the use of conversion tables supplied by the Bureau of Labor Statistics, U.S. Department of Labor. If the applicable CPI is discontinued by the Bureau of Labor Statistics, or any successor thereto, and not replaced by any substantially similar index which is convertible to the CPI, 1982-84 = 100, through the use of conversion tables, then the Factor shall be deemed to be 1.

Any provision in the Lease that sets forth any different amount of Rent for the time periods set forth above is hereby deleted and the rent schedule set forth above is inserted in place thereof.

3. Percentage Rent. In addition to the Rent, as of the Effective Date, Tenant agrees to pay percentage rent ("Percentage Rent") to Landlord in an amount equal to three percent (3%) of the amount (if any) by which Gross Sales (as defined below) for a particular Lease Year exceeds Four Million Two Hundred Thousand and no/100 Dollars (\$4,200,000.00) (the "Breakpoint").

For partial lease years or partial lease months, the calculation of Percentage Rent and the applicable Breakpoint shall be prorated as follows: (a) for a partial lease year - at a rate of one-twelfth of the yearly sum scheduled, and (b) for a partial lease month - at a rate of one-thirtieth of the monthly sum scheduled.

As used in this Lease, "Gross Sales" means the gross amount of sales actually received by Tenant from all orders placed and filled, and all sales and services made or rendered, in or from the Demised 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 cards or certificates until such are redeemed at the Demised Premises; (c) any sale to, or the value of any meals consumed by, employees of Tenant which are provided as a benefit of employment; (d) the value of any complimentary meals provided as a customer service or as part of Tenant's marketing efforts; (e) any refund which is made to any customer; (f) any sales tax or other payment required by governmental law or regulation; (g) receipts from catering or from orders placed at the Demised Premises, but filled elsewhere; (h) bad debts, credit card charge backs and "non-sufficient funds" checks; (i) sales of furniture or equipment not in the ordinary course of business; (j) any charge paid by Tenant as a finance charge for credit card services; or (k) insurance recoveries or other proceeds not directly related to sales or services from the Demised Premises.

Percentage Rent, if any, 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. Such report shall be certified by an authorized employee of Tenant and kept in accordance with Tenant's usual accounting practices. If Landlord requires an audit or examination of Tenant's records of Gross Sales pertaining to the Demised Premises, Tenant will make available to Landlord, at Tenant's corporate or principal accounting office, all of Tenant's books and records necessary to accomplish the audit. Landlord's right to audit or examine such records shall be limited to the current Lease Year and the immediately preceding Lease Year, and such right may be exercised by Landlord only one (1) time in any consecutive twelve (12) month period.

4. Renewal and/or Extension Option(s). Tenant reserves its rights as to any renewal and/or extension option(s) available under the Lease, which option(s) shall remain in full force and effect and be exercisable by Tenant in its sole discretion.

5. Improvements. Notwithstanding anything contained in the Lease to the contrary, Tenant will complete substantial physical improvements to remodel the interior and repainting of the exterior of the Premises (the "Improvements") prior to March 31, 2013 and Landlord has approved the same.

6. Effect of the Amendment. The parties hereto recognize and agree that neither this Amendment, nor any approval hereof by either party, shall (a) constitute an assumption of the Lease unless and until (i) the Lease, as amended and/or modified by this Amendment, has been affirmatively assumed by the Tenant and (ii) such assumption has been approved by a final order of the Bankruptcy Court, or (b) give rise to, result in, or otherwise be deemed to result in, the creation of any postpetition contract, agreement, undertaking or obligation of Tenant or any other Debtor (except to the extent the Lease is hereafter assumed by Tenant as described in subpart (a) of this paragraph). Tenant reserves all rights to assume or reject the Lease, as modified by this Amendment. Landlord agrees that the deadline by which the Debtors may assume or reject the Lease in the Debtors' chapter 11 bankruptcy cases pursuant to section 365 of the Bankruptcy Code is extended through and including the effective date of any chapter 11 plan or plans confirmed in the Debtors' bankruptcy cases. In the event Tenant rejects the Lease under the Bankruptcy Code, Landlord retains the right to file in the Bankruptcy Court (y) an administrative claim for any and all rent reductions taken by Tenant pursuant to this Amendment and (z) a rejection claim on the basis of status quo ante and without giving effect to any such reductions or changes to Tenant's rental obligations to the same extent as if this Amendment had never been executed.

7. Credit for Excess Payments. In the event amounts actually paid by Tenant to Landlord with respect to the Lease after the Effective Date exceed the amounts actually payable under the Lease after giving effect to this Amendment, then Tenant shall be entitled to a credit in the amount of such excess, which credit Tenant may apply in its discretion (and upon notice thereof to Landlord) as an offset against future payment obligations under the Lease. By means of example and not limitation, if, during the period following the Effective Date but prior to the date the Lease is assumed by Tenant pursuant to a final order of the Bankruptcy Court, Tenant pays Rent in an amount that exceeds the applicable amount of Rent set forth in Section 3 of this Amendment, then such excess shall constitute a credit that Tenant may apply in its discretion against future payment obligations under the Lease.

8. Representations and Warranties.

(a) Landlord represents and warrants to Tenant that (i) Landlord is the landlord under the Lease, (ii) Landlord has the full power and authority to execute and deliver this Amendment, (iii) the person(s) executing and delivering this Amendment on behalf of the Landlord has or have been authorized by all required action to so execute and deliver this Amendment and (iv) no other consents or approvals of any entity or person are necessary for the due execution and delivery of this Amendment by or on behalf of Landlord for this Amendment to be binding upon Landlord.

(b) Tenant represents and warrants to Landlord that (i) Tenant is the tenant under the Lease, (ii) Tenant has the full power and authority to execute and deliver this Amendment, (iii) the person(s) executing and delivering this Amendment on behalf of the Tenant has or have been authorized by all required action to so execute and deliver this Amendment, and (iv) no other consents or approvals of any entity or person are necessary for the due execution and delivery of this Amendment by or on behalf of Tenant for this Amendment to be binding upon Tenant, other than Tenant's obligation to obtain approval by the Bankruptcy Court.

9. Consents and Approvals. Notwithstanding anything to the contrary contained herein, the Landlord represents and warrants that it has obtained all necessary lender consent, if any, to enter into this Amendment. Landlord agrees to indemnify, defend and hold Tenant harmless from any and all claims, demands and suits brought against Tenant and arising out of this Amendment, related to Landlord's failure to obtain any lender consent necessary to modify the Lease in accordance with this Amendment.

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

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

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

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

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

LANDLORD:

William H. Griffith as sole trustee under the William H. Griffith Revocable Trust w/a dated November 7, 1989

By: William H. Griffith Trust  
Print: WILLIAM H. GRIFFITH  
Its: OWNER

TENANT:

HOMETOWN BUFFET, INC.,  
a Minnesota corporation

By: Paul Holovnia  
Print: Paul Holovnia  
Its: VP Finance, Treasurer & Assistant Secretary

**FOURTH AMENDMENT TO LEASE**  
(Store #806 – Santa Ana, CA)

THIS FOURTH AMENDMENT TO LEASE (this “**Amendment**”) made and entered into effective as of August 1, 2016 (the “**Effective Date**”), by and between Jean Burns and San Pasqual Fiduciary Trust Company, Co-Trustees of the William H. Griffith Revocable Trust dated November 7, 1989, as amended and restated (“**Landlord**”), and HomeTown Buffet, Inc., a Minnesota corporation (“**Tenant**”).

**RECITALS:**

WHEREAS, Landlord and Tenant are the current parties to that certain lease dated as of December 14, 1993 (as modified, amended, transferred and/or supplemented to date, together with any and all exhibits and addenda thereto, collectively, the “**Lease**”) by which Landlord is leasing to Tenant certain premises described therein (the “**Demised Premises**”) identified by Tenant as Store #806 with a street address at 1008 East 17<sup>th</sup> Street, County of Orange, City of Santa Ana and State of California.

WHEREAS, Tenant and certain of its affiliates (each, a “**Debtor**,” and collectively with Tenant, the “**Company**” or the “**Debtors**”) filed voluntary petitions for relief under chapter 11 of the United States Bankruptcy Code (the “**Code**”) in the United States Bankruptcy Court for the Western District of Texas, San Antonio Division (the “**Bankruptcy Court**”) on March 7, 2016 (the “**Petition Date**”); and

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

**AGREEMENT:**

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

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

2. Modification of Minimum Rent. Notwithstanding any provision of the Lease to the contrary, retroactively Effective on July 1, 2016, the Minimum Rent payable by Tenant to Landlord under the Lease shall be modified to the following amounts for the corresponding time periods:

Time Period	Monthly Minimum Rent
7/1/2016 to 12/31/2018	\$14,000.00
1/1/2019 to 12/31/2019	\$16,000.00
1/1/2020 to 12/31/2024	Fair Market Rent to be agreed by both parties

Any provision in the Lease that sets forth any different amount of Minimum Rent for the time periods set forth above is hereby deleted and the rent schedule set forth above is inserted in place thereof.

3. Renewal and/or Extension Option(s). Tenant reserves its rights as to any renewal and/or extension option(s) available under the Lease, which option(s) shall remain in full force and effect and be exercisable by Tenant in its sole discretion.

4. Cure Payment. In exchange for Landlord's release set forth in Section 9 of this Amendment, Tenant agrees to pay Landlord a fee in the amount of \$20,621.40 as the cure payment (the "Cure Payment") within sixty (60) days after the Effective Date of Tenant's Plan of Reorganization if and only if the Lease, as amended and/or modified by this Amendment has been affirmatively assumed by the Tenant and such assumption has been approved by final order of the Bankruptcy Court.

5. Landlord Release of Prepetition Claims. Landlord, on behalf of itself and its officers, managers, members, directors, owners, employees, affiliates, subsidiaries, parents, agents, representatives, successors and assigns (collectively, the "Releasors"), does hereby irrevocably, fully and forever release, acquit and discharge Tenant and its officers, managers, members, directors, shareholders, employees, affiliates, subsidiaries, parents, agents, representatives, attorneys, successors and assigns (collectively, the "Releasees") of and from all and every manner of action and actions, cause and causes of action, complaints, suits, debts, judgments, claims, demands, liabilities, and obligations whatsoever which any one or more of the Releasors ever had on or before the Petition Date against any one or more of the Releasees for, upon or by reason of any matter arising out of or related to the Lease, including without limitation, any claim pertaining to Tenant's failure to pay any amount or perform any other obligation with respect to the Lease.

6. Waiver of California Civil Code Section 1542. With respect to the Released Matters described above, Landlord expressly, knowingly, and voluntarily waive any and all rights and benefits under Section 1542 of the California Civil Code, and any like provision or principal of common law in any foreign jurisdiction. Section 1542 provides

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HIS SETTLEMENT WITH THE DEBTOR.**

Landlord knowingly abandons, releases, waives, and relinquishes all rights and benefits that it may acquire under California Civil Code section 1542 pertaining to the Released Matters. Landlord further acknowledges that this waiver of the provisions of section 1542 was separately bargained for and is an essential and material term of this Amendment.

7. Effect of the Amendment. The parties hereto recognize and agree that neither this Amendment, nor any approval hereof by either party, shall (a) constitute an assumption of the Lease unless and until (i) the Lease, as amended and/or modified by this Amendment, has been affirmatively assumed by the Tenant and (ii) such assumption has been approved by a final order of the Bankruptcy Court, or (b) give rise to, result in, or otherwise be deemed to result in, the creation of any postpetition contract, agreement, undertaking or obligation of Tenant or any other Debtor (except to the extent the Lease is hereafter assumed by Tenant as described in subpart (a) of this paragraph). Tenant reserves all rights to assume or reject the Lease, as modified by this Agreement. Landlord agrees that the deadline by which the Debtors may assume or reject the Lease in the Debtors' chapter 11 bankruptcy cases pursuant to section 365 of the Bankruptcy Code is extended through and including the effective date of any chapter

11 plan or plans confirmed in the Debtors' bankruptcy cases. In the event Tenant rejects the Lease under the Bankruptcy Code, Landlord retains the right to file in the Bankruptcy Court (y) an administrative claim for any and all rent reductions taken by Tenant pursuant to this Amendment and (z) a rejection claim on the basis of status quo ante and without giving effect to any such reductions or changes to Tenant's rental obligations to the same extent as if this Amendment had never been executed.

8. Credit for Excess Payments. In the event amounts actually paid by Tenant to Landlord with respect to the Lease after the Effective Date exceed the amounts actually payable under the Lease after giving effect to this Amendment, then Tenant shall be entitled to a credit in the amount of such excess, which credit Tenant may apply in its discretion (and upon notice thereof to Landlord) as an offset against future payment obligations under the Lease. By means of example and not limitation, if, during the period following the Effective Date but prior to the date the Lease is assumed by Tenant pursuant to a final order of the Bankruptcy Court, Tenant pays Minimum Rent in an amount that exceeds the applicable amount of Minimum Rent set forth in Section 2 of this Amendment, then such excess shall constitute a credit that Tenant may apply in its discretion against future payment obligations under the Lease.

9. Representations and Warranties.

(a) Landlord represents and warrants to Tenant that (i) Landlord is the landlord under the Lease, (ii) Landlord has the full power and authority to execute and deliver this Amendment, (iii) the person(s) executing and delivering this Amendment on behalf of the Landlord has or have been authorized by all required action to so execute and deliver this Amendment and (iv) no other consents or approvals of any entity or person are necessary for the due execution and delivery of this Amendment by or on behalf of Landlord for this Amendment to be binding upon Landlord.

(b) Tenant represents and warrants to Landlord that (i) Tenant is the tenant under the Lease, (ii) Tenant has the full power and authority to execute and deliver this Amendment, (iii) the person(s) executing and delivering this Amendment on behalf of the Tenant has or have been authorized by all required action to so execute and deliver this Amendment, and (iv) no other consents or approvals of any entity or person are necessary for the due execution and delivery of this Amendment by or on behalf of Tenant for this Amendment to be binding upon Tenant, other than Tenant's obligation to obtain approval by the Bankruptcy Court.

10. Consents and Approvals. Notwithstanding anything to the contrary contained herein, the Landlord represents and warrants that it has obtained all necessary lender consent, if any, to enter into this Amendment. Landlord agrees to indemnify, defend and hold Tenant harmless from any and all claims, demands and suits brought against Tenant and arising out of this Amendment, related to Landlord's failure to obtain any lender consent necessary to modify the Lease in accordance with this Amendment.

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

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

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

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

[signature page follows]



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

LANDLORD:

Jean Burns  
as Co-Trustees of the William H. Griffith Revocable  
Trust dated November 7, 1989

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

Print: \_\_\_\_\_

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

San Pasqual Fiduciary Trust Company  
as Co-Trustees of the William H. Griffith Revocable  
Trust dated November 7, 1989

By: *J. Davis*

Print: *Leeann W. Davis*

Its: *President*

TENANT:

HOMETOWN BUFFET, INC.,  
a Minnesota corporation

By: *Peter Dambach*

Print: *Peter Dambach*

Its: *Vice President*

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

LANDLORD:

Jean Burns  
as Co-Trustees of the William H. Griffith Revocable  
Trust dated November 7, 1989

By: Jean Burns

Print: JEAN BURNS

Its: Co-Trustee

San Pasqual Fiduciary Trust Company  
as Co-Trustees of the William H. Griffith Revocable  
Trust dated November 7, 1989

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

Print: \_\_\_\_\_

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

TENANT:

HOMETOWN BUFFET, INC.,  
a Minnesota corporation

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

Print: \_\_\_\_\_

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

FIFTH AMENDMENT TO LEASE  
(Store #0806 - Santa Ana, CA)

THIS FIFTH AMENDMENT TO LEASE (this "Amendment") made and entered into effective as of December 31, 2019 (the "Effective Date"), by and between Kenneth J. Cummins as sole trustee under the William H. Griffith Revocable Trust u/a dated November 7, 1989 ("Landlord"), and HomeTown Buffet, Inc., a Minnesota corporation ("Tenant").

RECITALS:

WHEREAS, Landlord and Tenant are the current parties to that certain lease dated as of December 14, 1993 (as modified, amended, transferred and/or supplemented to date, together with any and all exhibits and addenda thereto, collectively, the "Lease") by which Landlord is leasing to Tenant certain premises described therein (the "Demised Premises") identified by Tenant as Store #0806 with a street address at 1008 – 17th Street, County of Orange, City of Santa Ana and State of California.

WHEREAS, the term of the Lease currently expires on December 31, 2019 and Landlord and Tenant desire to extend the term for an additional five (5) year period at a new rental rate set forth herein.

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

AGREEMENT:

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

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

2. Extended Term. The parties agree that the term of the Lease shall be extended for an additional five (5) years commencing January 1, 2020 and expiring December 31, 2024.

3. Modification of Rent. Notwithstanding any provision of the Lease to the contrary, as of January 1, 2020, the Rent payable by Tenant to Landlord under the Lease shall be one hundred ninety two thousand dollars (\$192,000.00) per year payable in monthly installments of sixteen thousand dollars (\$16,000.00) per month payable on the first (1st) day of each month during the term of this Lease.

4. Representations and Warranties.

(a) Landlord represents and warrants to Tenant that (i) Landlord is the landlord under the Lease, (ii) Landlord has the full power and authority to execute and deliver this

Amendment, (iii) the person(s) executing and delivering this Amendment on behalf of the Landlord has or have been authorized by all required action to so execute and deliver this Amendment and (iv) no other consents or approvals of any entity or person are necessary for the due execution and delivery of this Amendment by or on behalf of Landlord for this Amendment to be binding upon Landlord.

(b) Tenant represents and warrants to Landlord that (i) Tenant is the tenant under the Lease, (ii) Tenant has the full power and authority to execute and deliver this Amendment, (iii) the person(s) executing and delivering this Amendment on behalf of the Tenant has or have been authorized by all required action to so execute and deliver this Amendment, and (iv) no other consents or approvals of any entity or person are necessary for the due execution and delivery of this Amendment by or on behalf of Tenant for this Amendment to be binding upon Tenant.

5. Consents and Approvals. Notwithstanding anything to the contrary contained herein, the Landlord represents and warrants that it has obtained all necessary lender consent, if any, to enter into this Amendment. Landlord agrees to indemnify, defend and hold Tenant harmless from any and all claims, demands and suits brought against Tenant and arising out of this Amendment, related to Landlord's failure to obtain any lender consent necessary to modify the Lease in accordance with this Amendment.

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

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

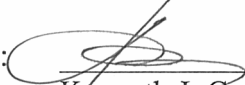
8. Governing Law. This Amendment shall be governed by and construed in accordance with the law of the state identified in the Lease as the governing law thereof, notwithstanding conflicts of law or other principles that would apply the law of a different state.

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

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

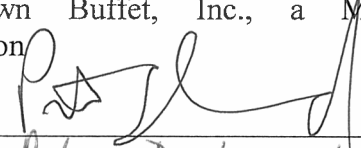
LANDLORD:

William H. Griffith Revocable Trust u/a dated November 7, 1989

By:   
Kenneth J. Cummins, sole trustee

TENANT:

HomeTown Buffet, Inc., a Minnesota corporation

By:   
Name: Peter Donbavand  
Its: Vice President

**SIXTH AMENDMENT TO LEASE**

(Store #HTB 806 – Santa Ana, CA)

THIS SIXTH AMENDMENT TO LEASE (this “**Amendment**”) made and entered into effective as of July 6<sup>th</sup>, 2020 (the “**Effective Date**”), by and between Kenneth J. Cummins as sole trustee under the William H. Griffith Revocable Trust u/a dated November 7, 1989 (“**Landlord**”), and HomeTown Buffet, Inc., a Minnesota corporation (“**Tenant**”).

**RECITALS:**

**WHEREAS**, Landlord and Tenant are current parties to that certain lease dated January 25, 1995, (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 #806 with a street address at 1008-17<sup>th</sup> Street, Santa Ana, California 92701;

**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 \$80,000.00 (“Deferred Rent”) which represents Base Rent, owed under the Lease from March 1, 2020 throughout July 31, 2020 as follows:

	Base Rent
March, 2020	\$16,000.00
April, 2020	\$16,000.00
May, 2020	\$16,000.00
June, 2020	\$16,000.00
July, 2020	\$16,000.00

Tenant and Landlord hereby agree that such Deferred Rent shall be paid to Landlord in twelve (12) equal monthly installments in an amount of \$6,666.67 each commencing January 1, 2021 and due on the 1st of

each month thereafter.

3. 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

4. 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.

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

6. 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”

William H. Griffith Revocable Trust  
u/a dated November 7, 1989

By: 

Name: KENNETH J. CUMMINS

Title: TRUSTEE

“TENANT”

HomeTown Buffet, Inc.,  
a Minnesota corporation

By: 

Name: Martin Cortes

Title: Chief Financial Officer

# Northern District of Texas Claims Register

## [21-30721-sgj11 Fresh Acquisitions, LLC](#)

**Judge:** Stacey G. Jernigan      **Chapter:** 11

**Office:** Dallas      **Last Date to file claims:** 08/30/2021

**Trustee:**      **Last Date to file (Govt):** 11/29/2021

*Creditor:* (19498634)      **Claim No:** 21      *Status:*  
Kenneth J. Cummins, Trustee, for      *Original Filed*      *Filed by:* CR  
William H. Griffith, Sr. Trust      *Date:* 08/26/2021      *Entered by:* Michael Shane  
c/o Michael J. Shane, Attorney      *Original Entered*      *Modified:*  
GORDON DAVIS JOHNSON & SHANE P.C.      *Date:* 08/26/2021  
4695 N. Mesa Street, Suite 100  
El Paso, Texas 79912

Amount claimed: \$430755.55

### *History:*

[Details](#)   [21-1](#)   08/26/2021 Claim #21 filed by Kenneth J. Cummins, Trustee, for, Amount claimed: \$430755.55  
(Shane, Michael)

*Description:* (21-1) Standard Lease Agreement-Breach of Contract

*Remarks:*

## Claims Register Summary

**Case Name:** Fresh Acquisitions, LLC

**Case Number:** 21-30721-sgj11

**Chapter:** 11

**Date Filed:** 04/20/2021

**Total Number Of Claims:** 1

<b>Total Amount Claimed*</b>	\$430755.55
<b>Total Amount Allowed*</b>	

\*Includes general unsecured claims

**The values are reflective of the data entered. Always refer to claim documents for actual amounts.**



	<b>Claimed</b>	<b>Allowed</b>
<b>Secured</b>		
<b>Priority</b>		
<b>Administrative</b>		