Case 21-30725-sgj11 Claim 2-2 Filed 12/10/21 Desc Main Document Page 1 of 107

Fill in this information to identify the case:
Debtor 1
Debtor 2(Spouse, if filing)
United States Bankruptcy Court for the: District of
Case number

Official Form 410

Proof of Claim

04/16

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.

F	Part 1: Identify the Claim							
1.	Who is the current creditor?	Name of the current creditor (the person or entity to be paid for this claim) Other names the creditor used with the debtor						
2.	Has this claim been acquired from someone else?	□ No □ Yes. From whom?						
3.	Where should notices and payments to the creditor be sent?	Where should notices to the creditor be sent?	Where should paymedifferent)	ents to the creditor be	sent? (if			
	Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	Name	Name					
	, , ,	Number Street	Number Street					
		City State ZIP Code	City	State	ZIP Code			
		Contact phone	Contact phone		-			
		Contact email	Contact email		-			
		Uniform claim identifier for electronic payments in chapter 13 (if you us	se one):	· —				
4.	Does this claim amend one already filed?	☐ No ☐ Yes. Claim number on court claims registry (if known)		Filed on	/ YYYY			
5.	Do you know if anyone else has filed a proof of claim for this claim?	☐ No ☐ Yes. Who made the earlier filing?						

charges required by Bankruptcy Rule 3001(o)(2)(A). 8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or 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. 9. Is all or part of the claim secured? No	No Pe No Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor:	
Ves. Attach statement itemizing interest, fees, expenses, charges required by Bankruptcy Rule 3001(c)(2)(A). Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or 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. Solid Solid		
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. No	☐ Yes. Attach statement itemizing interest, fees, expenses, or	r other
Secured? Yes. The claim is secured by a lien on property. Nature of property:	Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).	redit card.
Attach redacted copies of documents, if any, that show evidence of perfection of a security intexample, a mortgage, lien, certificate of title, financing statement, or other document that show been filed or recorded.) Value of property: Amount of the claim that is secured: Amount of the claim that is unsecured: Amount necessary to cure any default as of the date of the petition: Annual Interest Rate (when case was filed) Annual Interest Rate (when case was filed) Variable 10. Is this claim based on a lease? Yes. Amount necessary to cure any default as of the date of the petition. **Interest** Annual Interest** Amount necessary to cure any default as of the date of the petition. **Interest** No right of setoff?	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 Product Attachment (Official Form 410-A) with this Proof of Claim. Motor vehicle	of of Claim
Amount of the claim that is secured: \$	Attach redacted copies of documents, if any, that show evidence of perfection of a security inte example, a mortgage, lien, certificate of title, financing statement, or other document that show	
Amount of the claim that is secured: \$	Value of property: \$	
Amount necessary to cure any default as of the date of the petition: Annual Interest Rate (when case was filed)% Fixed Variable 10. Is this claim based on a lease? Yes. Amount necessary to cure any default as of the date of the petition. \$		
Annual Interest Rate (when case was filed)% Fixed Variable Variable Variable Io. Is this claim based on a lease? Yes. Amount necessary to cure any default as of the date of the petition. \$	Amount of the claim that is unsecured: \$(The sum of the secured ar amounts should match the	
Fixed Variable Variable Variable Io. Is this claim based on a lease? Yes. Amount necessary to cure any default as of the date of the petition. \$	Amount necessary to cure any default as of the date of the petition: \$	
lease? Yes. Amount necessary to cure any default as of the date of the petition. \$	☐ Fixed	
lease? ☐ Yes. Amount necessary to cure any default as of the date of the petition. \$	a D _{No}	
right of setoff?		
right of setoff?	oa 🔲 No	
Yes. Identify the property:	☐ Yes. Identify the property:	

12. Is all or part of the claim	□ No						
entitled to priority under 11 U.S.C. § 507(a)?	☐ Yes. Check	one:					Amount entitled to priority
A claim may be partly priority and partly	Domesti 11 U.S.0	Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).					
nonpriority. For example, in some categories, the law limits the amount entitled to priority.	Up to \$2 persona	2,850* of depo I, family, or he	osits toward pur ousehold use. 1	rchase, lease, or rent 11 U.S.C. § 507(a)(7)	al of property or	services for	\$
	bankrup		filed or the deb	o to \$12,850*) earned otor's business ends,			\$
	☐ Taxes o	r penalties ov	ved to governm	ental units. 11 U.S.C	. § 507(a)(8).		\$
	☐ Contribu	itions to an ei	mployee benefi	t plan. 11 U.S.C. § 50)7(a)(5).		\$
	_			.C. § 507(a)() that a			\$
	* Amounts a	re subject to ac	djustment on 4/01	/19 and every 3 years a	fter that for cases	begun on or afte	er the date of adjustment.
Part 3: Sign Below							
The person completing	Check the appro	priate box:					
this proof of claim must sign and date it.	☐ I am the cre	ditor.					
FRBP 9011(b).	☐ I am the creditor's attorney or authorized agent.						
If you file this claim	☐ I am the trus	stee, or the d	ebtor, or their a	uthorized agent. Ban	kruptcy Rule 30	04.	
electronically, FRBP 5005(a)(2) authorizes courts	☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.						
to establish local rules specifying what a signature							
is.	I understand that an authorized signature on this <i>Proof of Claim</i> 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.						
A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5	I have examined the information in this <i>Proof of Claim</i> and have a reasonable belief that the information is true and correct.						
years, or both. 18 U.S.C. §§ 152, 157, and 3571.	I declare under penalty of perjury that the foregoing is true and correct.						
3371.	Executed on date	e	/ YYYY				
	Signature						
	Print the name of	of the persoi	n who is comp	leting and signing t	his claim:		
	Name	First name		Middle name		Last name	
	Title						
	Company	Identify the c	corporate servicer	as the company if the a	uthorized agent is	a servicer.	
	Address	Number	Street				
		City			State	ZIP Code	
	Contact phone				Email		

EXHIBIT TO PROOF OF CLAIM FOR SLO PROMENADE DE, LLC ("Claimant")

- 1. This exhibit supplements and is hereby incorporated by reference as part of the accompanying proof of claim for SLO Promenade DE, LLC, a Texas limited partnership (the "Proof of Claim").
- 2. Tahoe Joe's, Inc., a Delaware corporation ("Debtor") entered into a Lease Agreement with SLO Promenade DE, LLC, on or about March 30, 2000 (the "Lease") for the lease of certain real estate located at 485 Madonna Road, San Luis Obispo, California ("Leased Premises"). A true and correct copy of the Lease is attached to the Proof of Claim.
- 3. The Debtor was indebted to Claimant in the amount of \$122,562.96 on the date it filed this bankruptcy case.
- 4. The Debtor rejected the Lease by order of this Court dated November 29, 2021 and recorded as document number 547 in case number 21-30721. As a result of the rejection of the Lease, Claimant has a contingent rejection damages claim in an amount not less than \$160,991.31 which includes i) rent, ii) estimated CAM charges, iii) estimated taxes, and iv) estimated insurance through the five months remaining on the Lease at the time of rejection.
- 5. Claimant also holds a contingent, unliquidated claim for all other amounts allowed by law, or by the Lease. The filing of the Proof of Claim is not, and shall not be deemed to be a waiver of any such claim.
- 6. Claimant reserves to the fullest extent allowed by law, the right to amend, supplement, or modify the Proof of Claim.
- 7. The filing of the Proof of Claim is not, and shall not be deemed to be an election of remedies by Claimant.

TENANT ESTOPPEL

To:

SLO Promenade L.P.; JM Wilson Promenade Properties, LLC; Merrill Promenade Properties, LLC; and Erskine Promenade Properties, LLC

(as owners in common, collectively, "Buyer")

c/o Investec Commercial, Inc. 200 East Carrillo Street, Suite 200 Santa Barbara, CA 93101 Attn: Mr. Kenneth P. Slaught

and

MBK Southern California Ltd. ("Landlord") 1801 Century Park East, Suit 1040 Los Angeles, California 90067 Attention: Mr. Andrew M. Trachman

and

Bear, Stearns Funding, Inc., ("Lender")
its successors and/or assigns
383 Madison Avenue
New York, NY 10179
Attn: Mr. J. Christopher Hoeffel

Aun. Wh. 3. Christopher Hoerich

Re: Tahoe Joe's, Inc., a Delaware corporation ("Tenant")
485 Madonna Road, Suite 2 of Pad 5 (the "Premises")
located in SLO Promenade (formerly "Central Coast Mall")

Ladies and Gentlemen:

The undersigned is the Tenant under that certain ground lease for the Premises dated as of March 30, 2000, as amended, modified and/or supplemented by that certain First Amendment to Lease dated December 21, 2000, that certain Nondisclosure Agreement dated March 30, 2000, that certain Memorandum of Ground Lease dated March 30, 2000, that certain Guaranty of Lease by Buffets, Inc. dated March 24, 2000, that certain Letter dated November 15, 2000 relating to billboard signage, that certain Commencement Verification dated February 16, 2001, and that certain Subordination, Nondisturbance and Attornment Agreement dated April 12, 2000, a true and correct copy of which, together with any amendments, modifications or supplements thereto, are attached hereto (collectively, the "Lease") covering approximately 7,143 square feet in that certain shopping center commonly known as SLO Promenade, City of San Luis Obispo, County of San Luis Obispo, State of California (the "Property"); made with MBK Southern California Ltd., a California limited partnership, as the Landlord. The undersigned hereby certifies, at the date hereof, as follows:

- 1. The Lease sets forth the entire agreement between Tenant and Landlord with respect to the leasing of the Premises and there are no other agreements, written or oral, which affect Tenant's occupancy of the Property.
- 2. The Lease has been duly authorized, executed and delivered by Tenant, is in full force and effect, and is binding on the undersigned, and has not been modified, changed, altered or amended except as expressly described above.
- 3. Tenant is in possession of and occupies those Premises for purposes permitted under the Lease. To Tenant's knowledge, Tenant has all governmental permits, licenses, and consents required for the activities and operations being conducted or to be conducted by it in or around the Premises.
 - 4. The rent commencement date under the Lease was January 15, 2001.
- 5. The term of the Lease is for approximately fifteen (15) years, which shall expire on December 31, 2016, subject to the terms of the Lease. Tenant has no: (i) rights to renew or extend the term of the Lease or any expansion rights under the Lease, except as follows: four (4) options to extend for a period of five (5) years each; (ii) any option or preferential right to purchase all or any part of the Property or all or any part of the building of which the Premises are a part; or (iii) right, title or interest with respect to the Property other than as Tenant under the Lease.
 - 6. Tenant has deposited with Landlord the sum of \$0.00

- 7. No rents or charges have been paid in advance.
- 8. The current base monthly rental is Seven Thousand Eighty-three and 33/100 Dollars (\$7,083.33).
- 9. To Tenant's knowledge, Tenant is not the subject of any pending bankruptcy, insolvency, debtor's relief, reorganization, receivership, or similar proceedings, nor the subject of a ruling with respect to any of the foregoing.
- 10. Tenant has made no agreement with Landlord or any agent, representative or employee of Landlord concerning free rent, partial rent, rebate of rental payments or any other similar rent concession unless the same is set forth in the Lease. Landlord and Tenant are reviewing certain additional rent charges and Tenant's proportionate share related thereto. Until such time as the parties have resolved the same, Tenant is unable to verify any shortages or overages relating thereto. Tenant is not exercising any credit against any rent or other charge or rent concession under the Lease; provided, however, Tenant may have said rights as set forth in the Lease.
- 11. To Tenant's knowledge, all insurance required of Tenant under the Lease has been provided by Tenant and all premiums have been paid.
 - 12. The interest of Tenant in the Lease has not been assigned, sublet or encumbered.
- 13. To the best of undersigned's knowledge, there are no uncured defaults by Landlord or Tenant under the Lease and the undersigned knows of no events or conditions which with the passage of time or notice or both, would constitute a default by Landlord or Tenant under the Lease or any of the related agreements described above. Pursuant to the Lease, Landlord is required to provide Tenant with executed non-disturbance agreements from any and all future mortgagees, holders of deeds of trust, and any other parties holding an interest in the Shopping Center or Premises, within thirty (30) days after the date said parties obtain such an interest. Failure to do so will constitute a Landlord default under the Lease. To the best of undersigned's knowledge, there are no unpaid construction allowances or incentive payments outstanding under the Lease payable by Landlord to Tenant. To Tenant's knowledge, Tenant has no defenses, offsets, claims or credits against the enforcement of the Lease by the Landlord.
- 14. The undersigned represents that the improvements and space required to be furnished according to the Lease have been duly delivered by Landlord and accepted by Tenant and the Premises are in good condition and repair as of the date of this Certificate.
- 15. To Tenant's knowledge, Tenant has not begun any action, or given or received any notice, for the purpose of termination of the Lease.
 - 16. It is understood that you are relying on the statements contained in this Certificate.
- 17. This Estoppel Certificate does not cover facts or conditions not within the Tenant's actual knowledge at the time of execution.

Dated as of June 7, 2002.

"Tenant"

TAHOE JOE'S, INC., a Delaware corporation

Name: Damon S. Fraser

Title: Secretary



VIA FEDERAL EXPRESS November 15, 2000

RECEIVED

Mr. David Fansler Tahoe Joes, Inc. 2718 W. Shaw Avenue Fresno, CA 93711

Re:

Billboard Sign SLO Promenade

San Luis Obispo, California

Dear David:

This letter shall serve to formalize our previous agreement regarding your participation in the billboard sign. Tahoe Joes, Inc. shall be required to pay the sum of \$321.88 monthly. This rate shall be in effect for the months November 2000 through October 2001 for participation by eight (8) tenants as indicated in the enclosed photograph of the billboard. As discussed in my letter dated August 25, 2000, the cost of the billboard will increase by three percent (3%) annually, every November.

We have also enclosed an invoice for November 2000 billing and appreciate your prompt payment. Please note that all payments regarding the billboard shall be directed to:

> MBK Southern California Ltd. Attention: Mr. Bob Grandstaff 175 Technology Drive Irvine, California 92618

Kindly indicate your agreement with the terms of this letter by causing it to be executed below and returning a copy to my attention. Should you have any questions, please do not hesitate to contact me. Thank you for your assistance in this matter.

truly yours.

Sary D. Scott Vice President

Enclosures

cc:

Mr. Bob Grandstaff

Mr. Andrew Trachman

Agreed and Accepted:

Tahod Joes, Inc

Bv:

Name:

Its:

Date:

MEMORANDUM OF GROUND LEASE

THIS MEMORANDUM OF GROUND LEASE, is made and entered into as of this <u>John</u> day of March, 2000, by and between MBK SOUTHERN CALIFORNIA LTD., a California limited partnership ("Landlord"), and Tahoe Joe's, Inc., a Delaware corporation ("Tenant").

RECITALS

WHEREAS, Landlord and Tenant entered into that certain Ground Lease dated March 2000 (the "Lease"), relating to certain leased land (the "Premises") which is a part of the shopping center development known as SLO Promenade (f/k/a "Central Coast Mall") (the "Shopping Center"), situated on certain real property in the City of San Luis Obispo, County of San Luis Obispo, California, which Shopping Center is legally described on Exhibit A attached hereto; and

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

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

- 1. Landlord and Tenant are parties to the Lease to demise and let the Premises, upon the terms and conditions more particularly set forth in the Lease.
- 2. The term of the Lease shall be for an initial term of fifteen (15) full Lease Years and any Partial Lease Year (as such terms are defined in the Lease), commencing pursuant to the terms of the Lease (the "Commencement Date"), and anticipated to expire on December 31, 2015.
- 3. Subject to the terms and conditions more particularly set forth in the Lease, Tenant has the option to extend the term of the Lease for four (4) additional periods of five (5) years each, such periods to commence at the expiration of the initial term or preceding extended term of the Lease, as the case may be.
- 4. Subject to the terms and conditions more particularly set forth in the Lease, and except for certain excluded tenants specified in the Lease, Tenant shall have the exclusive right to operate a full-service or self-service restaurant selling primarily steaks or steak products (with the exclusion of hamburgers), ribs and prime rib in the Shopping Center. Landlord covenants and agrees not to lease any space in, or ground lease or sell any parcel or portion of the Shopping Center to any other tenant or person whose primary business conducted in any space that is occupied by it (or any tenant or subtenant of it) at the Shopping Center is for the operation of a full-service or self-service restaurant selling primarily steaks or steak products (with the exclusion of hamburgers), ribs and prime rib, nor shall Landlord hereafter permit with respect to the Shopping Center, or consent with respect to the Project, to the operation of a full-service or self-service restaurant selling primarily steaks or steak products (with the exclusion of hamburgers), ribs and prime rib, other than at the Premises. Tenant's Exclusive Use commitment will be binding on Landlord, its successors and assigns, and any tenants of Landlord or its successors of the Shopping Center.
- 5. Reference is made to the Lease for a full statement of the terms and conditions of the Lease, all of which are hereby incorporated by reference.



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

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

Witness:

LANDLORD:

MBK SOUTHERN CALIFORNIA LTD., a California limited partnership

By:

MBK SOUTHERN CALIFORNIA, INC., a California corporation, sole general partner

Its:

Witness:

TENANT:

TAHOE JOE'S, INC., a Delaware corporation

By:

Print: H. THOMAS MITCHELL

Its: Ohairman

Its:

By: Print:

Its:

CFO

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of <u>California</u>	
County of Orange	
On <u>3-30-00</u> before me	e, Michelle M. Farina, Notary Public, Name and Title of Officer (e.g., "Jane Doe, Notary Public)
Personally appeared Michael H. Name(s) of Sign	ner(s)
MICHELLE M. FARINA Commission # 1220717 Notary Public - California Orange County My Comm. Expires May 22, 2003	o me on the basis of satisfactory evidence to be the person(£) whose name(£) (s/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(jes), and that by his/her/their signature(s) on instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the document.
	WITNESS my hand and official seal.
	My chelle M. Laura
Description of Attached Document	
Title or Type of DocumentMemorand	um of Ground Lease
	_
Title or Type of Document:Memorand	Number of Pages: 2
Title or Type of Document:	Number of Pages: 2
Title or Type of Document:	Number of Pages: 2
Title or Type of Document:	Number of Pages: 2

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of MN	
County of <u>Dakota</u>	
On March 24 7000 before me	Name and Title of Officer (e.g., "Jane Doe, Notary Public)
Personally appeared H. Thomas Mitch	
personally known to me - OR - proved to JULIE SAUSER NOTARY PUBLIC - MINNESOTA My Commission Expires 1-31-2006	o 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 instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the document.
£	WITNESS my hand and official seal.
·	Juli Sand
OPT	Signature of Notary Public
Title or Type of Document:	_
Document Date:	
Signer(s) Other Than Named Above:	
Capacity(ies) Claimed by Signer(s)	
Signer's Name: H. Thomas Mitchell	Signer's Name: Clark C. Grant
Individual Corporate Officer Title(s): Partner — Limited General Attorney-in-Fact Trustee Guardian or Conservator Other: Top of thumb here	Individual Corporate Officer Title(s): Partner - Limited General Attorney-in-Fact Trustee Guardian or Conservator Of SIGNER Top of thumb here
Signer Is Representing:	Signer Is Representing:



California All-Purpose	CERTIFICATE OF ACKNOWLEDGME	NT
------------------------	-----------------------------	----

State of CAL, FORNIA
County of Los ANGELES

On April 4, 2000 before me, ROSLYN 1 KRAMIR NOVAM PUBLC

Name, title e.g., John Doe, Notary Public

personally appeared ANDY M TRACH MAN

Name(s) of Signers(s)

 \square Personally known to me <u>OR</u>

Proved 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 instrument.



Witness my hand and official seal.

Signature of Notary

Print Notary's Name, County in which Commissioned and Commission Expiration Date

Seal



Exhibit A

SLO-934115A NP

ALTA Extended Owners Commitment Form 1344-A (1982)

PARCEL 1:

Lots 1, 2, 7 and 9 of Tract No. 1268, in the City of San Luis Obispo, in the County of San Luis Obispo, State of California, according to map filed for record August 27, 1986 in Book 13, Page 46 of Maps, in the office of the County Recorder of said County.

PARCEL 2:

A portion of Lot 10 of Tract No 1268, in the City of San Luis Obispo, in the County of San Luis Obispo, State of California, according to map recorded August 27, 1986 in Book 13, Page 46 of Maps, in the office of the County Recorder of said County, described as follows:

Beginning at the Northerly most corner of Lot 3;

Thence along the Northwesterly line of said Lot 10 as shown on said map, North 50° 10' 16" E, 290.70 feet to a point on the Southwesterly corner of Lot 1 as shown on said map;

Thence along the Southwesterly line of Lots 1 and 2, as shown on said map, South 46° 04' 00" East, 227.94 feet to the Southerly most corner of said Lot 2;

Thence along the Southeasterly line of said Lot 2, North 43° 56' 00" East, 127.00 feet to the Northeasterly line of said Lot 10;

Thence along said Northeasterly line of Lot 10, South 46° 04' 00". East, 37.07 feet to the most Northerly corner of Lot 9 as shown on said map;

Thence along the Northwesterly line of said Lot 9, South 43° 56' 00" West, 229.00 feet;

Thence South 46° 04' 00" East, 45.00 feet;

Thence South 43° 56' 00" West, 235.00 feet to the Westerly most corner of said Lot 9;

Thence along Southwesterly line of said Lot 9, South 46° 04' 00" East, 437.00 feet to the Southerly most corner of said Lot 9;

Page 1



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SLO-934115A NP

ALTA Extended Owners Commitment Form 1344-A (1982)

Thence along the Southeasterly line of said Lot 9, North 43° 56' 00" East, 193.00 feet to the Westerly most corner of Lot 7 as shown on said map;

Thence along the Southwesterly line of said Lot 7, South 46° 04' 00" East 591.04 feet to the Easterly most corner of said Lot 10;

Thence South 43° 56' 00" West, 130.00 feet;

Thence North 46 04' 00" West, 88.69 feet;

Thence South 43° 56' 00" West, 173.73 feet to the Southerly most corner of said Lot 10;

Thence South 44° 21' 51" West, 32.00 feet, to a point on the Southwesterly line of Dalidio Raod;

Thence North 45° 38' 09" West, along said Southwesterly line of Dalidio Road, 1030.72 feet:

Thence North 44° 21' 51" East, 32.00 feet, to the Southerly most corner of Lot 4, as shown on said map;

Thence along the Southeasterly line of said Lot 4 and continuing along the Northeasterly prolongation thereof, North 50° 10' 16" East, 122.92 feet;

Thence North 39° 49' 44" West, 265.18 feet to the point of beginning.

PARCEL 3:

A portion of Lot 3 of Tract No. 1268, in the City of San Luis Obispo, in the County of San Luis Obispo, State of California, according to a map recorded August 27, 1986 in Book 13, Page 46 of Maps, in the office of the County Recorder of said County, described as follows:

Beginning at the Southerly most corner of said Lot 3;

Thence along the Southeasterly line of said Lot 3, North 50°10'16" East, 73.13 feet;



AST AMERICA

SLO-934115A NP

ALTA Extended Owners Commitment Form 1344-A (1982)

Thence North 39'49'44" West, 5.00 feet;

Thence parallel to the Southeasterly line of said Lot 3 and 5.00 feet distant therefrom, North 50°10'16" East, 73.04 feet to a point on the Northeasterly line of said Lot 3;

Thence along said line, North 39°49'44" West, 150.18 feet to the Northerly most corner of said Lot 3:

Thence along the Northwesterly line of said Lot 3, South 50° 10' 16" West, 139.81 feet to the beginning of a tangent curve having a radius of 20.00 feet;

Thence southwesterly along said curve an arc length of 33.44 feeet through a central angle of 95° 48' 25" to a point on the Southwesterly line of said Lot 3;

Thence along the Southwesterly line of Lot 3, South 45° 38' 09" East, 133.84 feet to the point of beginning.

PARCEL 4:

Lot 4 and a portion of Lot 3 and Lot 10 of Tract No. 1268, in the City of San Luis Obispo, in the County of San Luis Obispo, State of California, according to a map recorded August 27, 1986 in Book 13, Page 46 of Maps, in the office of the County Recorder of said County, described as follows:

Beginning at the Southerly most corner of said Lot 4;

Thence along the Southeasterly line thereof and continuing along the Northeasterly prolongation thereof North 50°10'16" East, 122.92 feet;

Thence parallel to the Northeasterly line of said lot and 12.00 feet distant therefrom North 39°49'44" West, 115.00 feet to a point on the Northeasterly line of said Lot 3;

Thence parallel to the Southeasterly line of said Lot 3 and 5.00 feet distant therefrom South 50°10'16" West, 73.04 feet;

Thence South 39°49'44" East, 5.00 feet to the Southeasterly line of said Lot 3;



AST AMERICA.

SLO-934115A NP

ALTA Extended Owners Commitment Form 1344-A (1982)

Thence along the Southeasterly line thereof South 50°10'16" West, 73.13 feet to the Southerly most corner of said Lot 3, as shown on said map;

Thence along the Southwesterly line of said Lot 4, South 45° 38' 09" East, 5.57 feet to the beginning of a tangent curve having a radius of 190.00 feet;

Thence continuing along said Southwesterly line of said Lot 4 to the left, an arc length of 33.16 feet through a central angle of 10° 00' 00";

Thence continuing along said Southwesterly line of Lot 4, South 55° 38' 09" East, 52.48 feet;

Thence South 45° 38' 09" East, 21.54 feet to the point of beginning.

NON-DISCLOSURE AGREEMENT

THIS NON-DISCLOSURE AGREEMENT is made and entered into this day of March, 2000 by and between TAHOE JOE'S, INC., a Delaware corporation ("Tenant"), and MBK SOUTHERN CALIFORNIA LTD., a California limited partnership ("Landlord").

WHEREAS, the purpose of this Agreement is to set forth terms and conditions under which Tenant and/or Landlord may disclose to each other certain information that is confidential and proprietary to such party for the purpose of furthering the business relationship between Tenant and Landlord. For purposes of this Agreement, the "disclosing party" shall refer to that party, either Tenant or Landlord, which discloses confidential and proprietary information to the other party, which other party shall be referred to as the "non-disclosing party."

NOW THEREFORE, Tenant and Landlord hereby agree as follows:

- I. <u>Confidential Information</u>. "Confidential Information" of Tenant or Landlord means any information which is not made generally available to others by such party. Confidential Information may be oral or written, or recorded on electronic or other storage media. Confidential Information may include (but is not limited to) sales and profitability information, methods, processes, procedures, techniques, recipes, formulas, floorplans, designs, drawings, blueprints, computer programs, know-how, specifications, new product and service ideas, product development plans, marketing plans, strategies, and identities of other suppliers, vendors or contractors with which Tenant or Landlord deals. However, Confidential Information shall not include information which the non-disclosing party can demonstrate by means of prior written records or other clear and convincing circumstances (a) was or becomes generally available to the public other than as a result of a disclosure by such non-disclosing party or by its directors, officers, employees, agents, contractors, subcontractors, representatives, or lenders (collectively, the "Representatives"), or (b) was or becomes known to such non-disclosing party on a non-confidential basis from a source other than the disclosing party, provided that such source (and if applicable, its sources) is not bound by a confidentiality agreement with the disclosing party.
- II. <u>Confidentiality</u>. Tenant and Landlord agree, at all times during and after the existence of the commercial relationship between Tenant and Landlord, to protect and hold the Confidential Information of the other party strictly secret and confidential, to use such Confidential Information only for the purpose(s) for which it is disclosed, and not to directly or indirectly disclose, publish, reproduce or use (or cause or permit the disclosure, publication, reproduction or use of) such Confidential Information for any other purpose. The non-disclosing party will disclose the Confidential Information only to such of non-disclosing party's Representatives, mortgagees and ground lessors on an as-need-to-know basis in order to carry out the activities and purposes for which such Confidential Information was disclosed by the disclosing party.
- III. Return of Confidential Information. At such time as the non-disclosing party no longer needs to retain such Confidential Information to carry out the purposes and activities for which it was disclosed, the non-disclosing party shall, as well as instruct its Representative to, promptly return to the disclosing party or, if so instructed by the same, destroy all tangible material containing or reflecting such Confidential Information, and will not retain any copies, extracts, summaries or other reproductions in whole or in part of such tangible material, and such return/destruction shall be certified in writing to the disclosing party.



- IV. <u>Successors and Assigns</u>. This Agreement shall be binding upon the parties hereto, their respective Representatives, and their heirs, successors and assigns. Each party shall take reasonable precautions to ensure that its Representatives comply with the provisions of this Agreement, and shall indemnify and hold harmless the disclosing party against any breaches hereof by the non-disclosing party and its Representatives. Each party agrees to identify, upon request, all persons to whom any Confidential Information may have been disclosed.
- V. <u>Severability: Remedies</u>. If any provision or application of this Agreement is held unlawful or unenforceable in any respect, such illegality or unenforceability shall not affect other provisions or applications which can be given effect, and this Agreement shall be construed as if the unlawful or unenforceable provision or application had not been contained herein. Each party acknowledges that the disclosing party may not have an adequate remedy at law in the event of any unauthorized use or disclosure of Confidential Information by the non-disclosing party or its Representatives, and that the disclosing party shall therefore be entitled, in addition to any other remedies that may be available, to injunctive and/or other equitable relief to prevent or remedy any such unauthorized use or disclosure.
- VI. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands as of the day and year first above written.

LANDLORD:

MBK SOUTHERN CALIFORNIA LTD., a California limited partnership,

By MBK Southern California, Inc. a California corporation, its sole general partner

> By: Print:

Its:

By:

Print:

Michael H. Voss

Its: <u>Chairmar</u>

TENANT:

TAHOE JOE'S, INC., a Delaware corporation.

By: ____

Print: H. Thomas Mitchell

Its:

Secretary

By:

Clark C. Grant

Print: Its:

Chief Financial Officer



02/10/2006 FRI 14:16 FAX 651 365 2868 Buffet Inc

Case 21-30725-sgj11

EXHIBIT D COMMENCEMENT VERIFICATION

This Commencement Verification is made and entered into this 1/2 day of February, 2001, by and between MBK Southern California Ltd., a California limited partnership ("Landlord") and Tahoe Joe's. Inc., a Delaware corporation ("Tenant").

WITNESSETH:

WHEREAS, Landlord and Tenant entered that certain Lease dated March 30, 2000, under which Landlord ground leased to Tenant a pad in "SLO Promenade" (f/k/a "Central Coast Mall"); and

WHEREAS, the exact Lease Commencement Date was not specified in the Lease, but now has been determined.

NOW THEREFORE, in consideration of the Lease and the mutual covenants contained therein, Landlord and Tenant hereby agree as follows

- 1. Landlord and Tenant hereby clarify said Lease by establishing the Lease Commencement Date as January 15, 2001.
- 2. Except for stipulating the aforesaid date, this Commencement Verification does not amend, modify, change, alter, amplify, interpret or supersede any of the terms and provisions of the Lease, which shall in all things control.

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

"LANDLORD"

"TENANT"

MBK SOUTHERN CALIFORNIA LTD., a California limited partnership,

TAHOE JOE'S. INC. a Delaware corporation

MBK Southern California, Inc., By: a California corporation. its sole general partner

Its: Secretary

GUARANTY OF LEASE

(California)

The undersigned, BUFFETS INC., a Minnesota corporation ("Guarantor"), as a material inducement to and in consideration of MBK SOUTHERN CALIFORNIA LTD., a California limited partnership ("Landlord") entering into a written lease (the "Lease") with TAHOE JOE'S, INC., a Delaware corporation ("Tenant"), of even date herewith, for the lease of that certain real property located in the Central Cost Mall, San Luis Obispo, California, as more fully described in the Lease (the "Premises"), hereby jointly, severally and unconditionally guarantee and promise to and for the benefit of Landlord and its successors and assigns the full payment and performance of each and all of the terms, covenants and conditions of the Lease by Tenant, all as more specifically set forth hereinafter, and do hereby further jointly and severally agree as follows:

ARTICLE 1. GUARANTOR'S DUTIES

- Section 1.01 <u>Guaranty of Tenant's Performance</u>. Guarantor hereby unconditionally guaranties to Landlord the full and complete performance of each and all of the terms, covenants and conditions of the Lease as required to be performed by Tenant, including, but not limited to, the payment of all rent, property taxes, insurance premiums, and any and all other charges or sums, or any portion thereof, to accrue or become due from Tenant to Landlord pursuant to the terms of the Lease (collectively the "<u>Obligations</u>"). Guarantor understands and agrees that this Guaranty is unconditional and continuing and is a guaranty of payment and performance and not of collection.
- Section 1.02 <u>Tenant's Failure to Perform</u>. In the event that Tenant shall fail to pay rent, property taxes, insurance premiums, or any other sums or charges, or any portion thereof, accrued or due pursuant to the terms of the Lease, then, upon written notice to Guarantor by Landlord as herein provided, Guarantor shall pay to Landlord, or Landlord's designated agent, any and all such amounts as may be due and owing from Tenant to Landlord by reason of Tenant's failure to perform.
- Section 1.03 Other Provisions. In the event that Tenant shall fail to perform any covenant, term or condition of the Lease as required to be performed by Tenant, other than as provided for in Section 1.02 above, then upon written notice to Guarantor by Landlord, as provided herein, Guarantor shall commence and complete performance of such condition, covenant or term within five (5) business days after the date of Landlord's notice to Guarantor of such failure by Tenant to so perform, and in the event such performance by Guarantor cannot be completed within said five (5) business days, Guarantor shall commence performance within said time and diligently pursue completion thereof within a reasonable time thereafter.
- Section 1.04 <u>Interest and Additional Damages</u>. In addition to the obligations of Guarantor set forth in Sections 1.02 and 1.03 above, Guarantor agrees to pay to Landlord any and all reasonable and necessary incidental damages and expenses incurred by Landlord as a direct and proximate result of Tenant's failure to perform. Guarantor further agrees to pay to Landlord interest on any and all sums due and owing Landlord, by reason of Tenant's failure to pay same, at the Default Rate set forth in the Lease.
- Section 1.05 <u>Review of Documents</u>. Guarantor hereby acknowledges that it has copies of and is fully familiar with each and every document executed and delivered to Landlord by Tenant including, without limitation, the Lease.

ARTICLE 2. GUARANTY

- Section 2.01 Nature of Guaranty. The liability of Guarantor hereunder is independent of the obligation of Tenant and a separate action or separate actions may be brought and prosecuted against Guarantor whether or not any action is brought or prosecuted against Tenant or whether Tenant is joined in any such action or actions. The liability of Guarantor hereunder is independent of and not in consideration of or contingent upon the liability of any other person under any similar instrument and the release of, or cancellation by, any signer of a similar instrument shall not act to release or otherwise affect the liability of Guarantor hereunder.
- Section 2.02 <u>Guarantor's Waivers</u>. Except as specifically provided for in this Guaranty, Guarantor hereby waives:
 - (a) any and all notices, presentments, notice of nonpayment or nonperformance;
 - (b) all defenses by reason of any disability of Tenant, or based on the termination of Tenant's liability from any cause, or on any statute of limitations respecting obligations accruing under the Lease or this Guaranty including Section 359.5 of the California Code of Civil Procedure;



- (c) any and all rights it may have now or in the future to require or demand that Landlord pursue any right or remedy Landlord may have against Tenant or any other third party;
- (d) any and all rights it may have to enforce any remedies available to the Landlord now or in the future, against Tenant;
- (e) any and all right to participate in any security held by Landlord now or in the future;
- (f) the right to require Landlord to (i) proceed against Tenant, (ii) proceed against or exhaust any security which Landlord now holds or may hold in the future from Tenant, (iii) pursue any other right or remedy available to Landlord, or (iv) have the property of Tenant first applied to the discharge of the Obligations; and
- (g) any defense arising as a result of Guarantor's election of the application of Section 1111(b)(2) of the Bankruptcy Code or based on any borrowing or grant of a security interest under Section 364 of the Bankruptcy Code; and
- (h) the provisions of Sections 2809, 2810, 2819, 2845, 2849, 2850, 2855 and 3433 of the California Civil Code.

Notwithstanding any modification, discharge or extension of the indebtedness or any amendment, modification, stay or cure of Landlord's rights which may occur in any bankruptcy or reorganization case or proceeding concerning Tenant whether permanent or temporary, and whether assented to by Landlord, Guarantor hereby agrees that it shall be obligated hereunder to pay and perform the Obligations in accordance with the terms of the Lease and the terms of this Guaranty. Guarantor understands and acknowledges that by virtue of this Guaranty, Guarantor has specifically assumed any and all risks of a bankruptcy or reorganization case or proceeding with respect to Tenant.

ARTICLE 3. <u>ALTERATION. MODIFICATION OR ASSIGNMENT</u>

- Section 3.01 <u>Effect of Extension. Modification. or Alteration of Lease</u>. Guarantor understands and agrees that the obligations of Guarantor under this Guaranty shall in no way be affected by any extension, modification or alteration of the Lease, including, but not limited to, Tenant entering into any sublease thereunder, or Tenant's obligation under the Lease and each of its provisions, and any such extension, modification or alteration of the Lease, including Tenant entering into any sublease thereunder, shall in no way release or discharge Guarantor from any obligations accruing under this Guaranty. The term "Lease" shall include all amendments, modifications, alterations and extensions of the Lease.
- Section 3.02 <u>Assignment</u>. Guarantor understands and agrees that any assignment of the Lease, or any rights or obligations accruing thereunder, shall in no way affect Guarantor's obligations under this Guaranty until such time as Tenant hereunder is released in accordance with the provisions of the Lease.
- Section 3.03 <u>Delay in Enforcement</u>. Guarantor understands and agrees that any failure or delay of Landlord to enforce any of its rights under the Lease or this Guaranty shall in no way affect Guarantor's obligations under this Guaranty.

ARTICLE 4. MISCELLANEOUS

- Section 4.01 <u>Notices</u>. Any and all notices required under this Guaranty shall be in writing and may be personally served or sent by mail and, if sent by mail, shall be deemed to have been received when two (2) business days have elapsed from the date of deposit in the mail, registered, with postage prepaid to the party who is designated to receive such notice at the address set forth after their respective signatures on this Guaranty or such other address as shall have been specified by said party upon written notice from time to time.
- Section 4.02 <u>Severability.</u> In case any provision of this Guaranty shall be invalid, illegal or unenforceable, such provisions shall be severable from the rest of this Guaranty and the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
- Section 4.03 <u>Applicable Law.</u> This Guaranty and the rights and obligations of the parties hereto shall be governed by and construed and enforced in accordance with the laws of the State of California.
- Section 4.04 <u>Assignability</u>. This Guaranty may be assigned in whole or in part by Landlord upon written notice to Guarantor.

Section 4.05 <u>Successors and Assigns</u>. This Guaranty shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto.

Section 4.06 <u>Attorneys' Fees</u>. Guarantor hereby agrees to be responsible for and to pay all costs and expenses, including, without limitation, reasonable attorneys' fees and expenses incurred by Landlord in connection with the collection of all sums guarantied hereunder and the defense or enforcement of any of Landlord's rights hereunder, whether or not suit is filed, and whether such collection be from Tenant or from Guarantor.

Section 4.07 <u>Release.</u> Guarantor shall be released of its obligations hereunder on and after the date that Tenant's obligations under the Lease terminate pursuant to those provisions of the Lease granting Tenant termination rights, including as the result of a permitted assignment under the Lease wherein Tenant is released from further performance. Guarantor shall not be released as a result of Tenant's bankruptcy or liquidation.

Section 4.08 Governing Law. This Guaranty shall be construed and enforced in accordance with the laws of the State of California.

IN WITNESS WHEREOF, this Guaranty has been executed as of the 34^{+h} day of March, 2000.

"GUARANTOR"

BUFFETS, INC., a Minnesota corporation

By: ______ Print: Roe H. Hatlen

Its: Chief Executive Officer

Address: 1460 Buffet Way Eagan, MN 55121

ACKNOWLEDGED AND AGREED AS OF March 27, 2000

LANDLORD:

MBK SOUTHERN CALIFORNIA LTD., a California limited partnership,

By:

MBK Southern California, Inc. a California corporation, its sole general partner

Print:

Its: _

Address:

1801 Century Park East, Suite 1040 Los Angeles, CA 90067

GROUND LEASE

For Real Property In

SLO PROMENADE

(f/k/a "CENTRAL COAST MALL")

By and Between

MBK SOUTHERN CALIFORNIA LTD.,

a California limited partnership

Landlord

and

TAHOE JOE'S, INC. a Delaware corporation,

Tenant



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GUARANTY



GROUND LEASE FOR SLO PROMENADE (f/k/a "CENTRAL COAST MALL")

This summary of the basic lease provisions (the "Basic Lease Provisions") of the attached Ground Lease (the "Lease") is entered into by and between Landlord and Tenant as of March ________, 2000, for the purpose of convenience in discussing the terms and conditions of the Lease, and is hereby made a part of the Lease. In the event of any conflict, inconsistency or ambiguity between the Basic Lease Provisions and the attached Lease, the Basic Lease Provisions shall govern.

BASIC LEASE PROVISIONS

- 1. "Landlord" means MBK Southern California Ltd., a California limited partnership.
- 2. "Tenant" means Tahoe Joe's, Inc., a Delaware corporation.
- 3. "<u>Tenant's Trade Name</u>" means "Tahoe Joe's Famous Steakhouse" except in instances more fully set forth in Section 8.A. of the Lease.
- 4. "Project" means the Shopping Center (as defined below), owned by Landlord, as well as those adjacent properties improved with a hotel and a Gottschalks store, owned by third parties (collectively, the "Adjacent Property"). The property improved with a hotel shall be referred to as the "Hotel Property," and the property improved with a Gottschalks store shall be referred to herein as the "Gottschalks Property."
- 5. "Shopping Center" means that certain real property owned by Landlord, being developed as a shopping center, located on the east side of Dalidio Drive, south of Madonna Road, in the City of San Luis Obispo, County of San Luis Obispo, State of California, as more particularly depicted on the site plan attached to the Lease as Exhibit A and incorporated herein by this reference, and described by the Legal Description attached to the Lease as Exhibit J and incorporated herein by this reference, which was formerly known as "Central Coast Mall," but has been renamed "SLO Promenade."
- 6. "Premises" means that certain space comprised of approximately 7,143 square feet of gross leasable area within the building to be constructed in the Shopping Center and that portion of said building for the use of the Premises, which Premises are crosshatched on the site plan attached to the Lease as Exhibit A.
- 7. "Term" means the First Partial Lease Year beginning on the Lease Commencement Date (defined in Section 3.A of the Lease) and ending on December 31st of the same year, plus fifteen (15) full Lease Years thereafter. (See Section 3.A of the Lease).
- 8. "Target Date" means April 1, 2000.
- 9. "Minimum Annual Rent" or "Minimum Rent" means the Minimum Annual Rent set forth in the Rent Schedule attached to the Lease as Exhibit E and incorporated herein by this reference.
- 10. [Intentionally Deleted.]
- 11. "Security Deposit" means: None.
- 12. "Landlord's Construction Representative" means Andrew Trachman or such other representative as may be designated by Landlord from time to time.
- 13. "<u>Tenant's Construction Representative</u>" means Dave Fansler, or such other representative as may be designated by Tenant from time to time.
- 14. "Permitted Use" means operation of a restaurant which may, at the option of Tenant and subject to applicable laws and government regulation, serve alcohol, as more fully set forth in Section 8.A. of the Lease, subject to such use restrictions as set forth in the Lease and the attached exhibits thereto, and for no other use or purpose.



- 15. "Time to Complete Tenant's Work" means one hundred fifty (150) days after the Tender Date (as defined in Section 2 of the Lease).
- 16. "Broker" means Landlord's broker, Terranomics Retail Services, and Tenant's broker, Colliers Tingey International, the fees of which shall be paid as follows: Landlord shall be responsible for the payment of fees only to Terranomics Retail Services (pursuant to a separate agreement between such broker and Landlord), which broker shall in turn be responsible for the payment of fees to Colliers Tingey International (pursuant to a separate agreement between said brokers).
- 17. "Landlord's Address for Notice" means 1801 Century Park East, Suite 1040, Los Angeles, California 90067, Attention: Mr. Andrew Trachman, with a copy to (i) MBK Real Estate Ltd., 175 Technology, Irvine, California 92618, Attention: Michael Voss, Esq.; and (ii)Voss, Cook & Thel LLP, 840 Newport Center Drive, Suite 700, Newport Beach, California 92660, Attention: David A. Lurker, Esq.
- "Tenant's Address for Notice" means 1460 Buffet Way, Eagan, MN 55121, Attn: Real Estate 18. Officer with a copy to 1460 Buffet Way, Eagan, MN 55121, Attn: General Counsel and with another copy to 2718 W. Shaw Avenue, Fresno, CA 93711, Attn: President
- 19. "Lease Year" means that portion of the Lease Term, and any Option Term consisting of the period from January 1 through December 31. Any portion of the Lease Term, and any Option Term which is less than a Lease Year shall be a "Partial Lease Year." The portion of the Lease Term commencing on the Lease Commencement Date and ending on the following December 31st shall be the "First Partial Lease Year."
- 20. "Tenant's Proportionate Share" means the percentage determined pursuant to Section 12.A(4) of the Lease.
- 21. "Guarantor" means Buffets, Inc., a Minnesota corporation.

"LANDLORD"

"TENANT"

MBK SOUTHERN CALIFORNIA LTD., a California limited partnership,

TAHOE JOE'S, INC., a Delaware corporation

By: MBK Southern California, Inc., a California corporation, its sole general partner

By:

Print: Its:

By: Print:

H. Thomas Mitchell

Its:

Secretary

By: Print:

Its:

By: Print:

Its:

Chief Financial Officer



GROUND LEASE

1. PROPERTY LEASED

A. Premises

Subject to the terms and conditions of this Lease, Landlord leases to Tenant and Tenant leases from Landlord the Premises as defined in the Basic Lease Provisions, located in the City of San Luis Obispo (the "<u>City</u>"), County of San Luis Obispo, State of California. The Premises is a part of the Shopping Center, which when completed, will consist of approximately one hundred eighty thousand (180,000) square feet of gross leasable building area exclusive of the Premises.

The Premises shall also include (i) all improvements for the exclusive use of the Premises hereafter erected on the building pad upon which the Premises are located pursuant to Section 3.D. of this Lease or otherwise, and (ii) the following non-exclusive rights, easements and appurtenances in favor of Tenant and its agents, contractors, employees, and invitees: (A) all of Landlord's rights, privileges, easements, and appurtenances in, over and upon adjoining and adjacent public and private land, highways, roads and streets, including, without limitation, the Adjacent Property within the Project, as the same may be reasonably required for access and ingress and egress between the Shopping Center and such adjoining and adjacent land, and (B) the use of and ingress and egress through the Common Areas (as defined in Section 12.A.1. below) and other common areas and facilities of the Project that Landlord has rights and privileges to, including, without limitation, all easements for vehicular and pedestrian ingress, egress and parking, installation, repair, replacement and use of utilities, construction and surface water and storm water drainage, all with respect to the Project, subject to those certain documents related to the Project and recorded in the official records of the San Luis Obispo County Recorder's Office, including, but not limited to that certain Amended and Restated Construction, Operation and Reciprocal Easement Agreement dated July 30, 1999, and recorded as Document No. 1999-055874 in said county recorder's office (the "REA") (collectively, the "CC&Rs"). Landlord represents and warrants with respect to the CC&Rs that they do not and will not conflict with or materially limit Tenant's intended use of the Premises as set forth in Section 8 hereof.

For purposes of this Lease, (i) gross leasable area shall be computed by measuring from the outside face of exterior walls to the outside face of exterior walls and from the center line to center line of demising walls, with no deduction or exclusion in the computation of gross leasable area by reason of interior partitions or other interior construction or equipment, and (ii) the gross leasable area of the Shopping Center shall be the sum of the leasable areas of all leasable or occupiable portions of the Shopping Center, regardless of whether or not actually occupied. In the event Tenant at its election or as required by applicable law utilizes an enclosed garbage area located outside of the building of which the Premises are a part, such area shall not be considered a portion of the leasable area of the Premises and rent shall not be payable thereon.

B. Common Areas

Tenant and its agents, employees, customers and invitees shall have the nonexclusive right in common with Landlord and all others to whom Landlord has or may hereafter grant rights, to use such sidewalks, roadways, and parking facilities and other common areas and facilities (as described more particularly in Section 12 below) that are generally available to all occupants of the Shopping Center as may from time to time exist within the Shopping Center and, to the extent allowed under the CC&R's, with the Adjacent Property.

2. DELIVERY OF POSSESSION

This Lease will be effective upon its execution by the last of the parties to so execute and the delivery to each party of a fully executed original.

Landlord shall give Tenant written notice of Landlord's intent to tender possession of the building pad upon which the Premises are located to Tenant with Landlord's Work (as defined in Section 3.D.1.) substantially completed, all prior occupants, if any, lawfully removed, and all contingencies to the effectiveness of this Lease required to be completed by Landlord prior to the Tender Date (as defined in this Section 2, below) satisfied not less than five (5) business days prior to such tender of possession ("Notice of Tender") and the date Landlord so tenders possession of the building pad upon which the Premises are located to Tenant in such condition shall hereinafter be referred to as the "Tender Date." It is presently estimated that Landlord's Work in the building pad upon which the Premises are located will be completed by the Target Date referenced in Item 8 of the Basic Lease Provisions, but such date is merely a target date, and Tenant agrees to accept Landlord's tender of possession when Landlord's Work in the building pad upon which the Premises are located has been completed; provided, however, Tenant shall not be required to accept possession of such building pad prior to such date further provided, however, in the event Landlord

(B)

has not given Notice of Tender within one hundred twenty (120) days after the Target Date, Tenant may elect to terminate this Lease upon sixty (60) days' prior written notice to Landlord, in which event this Lease shall terminate at the end of such sixty (60) day period unless Landlord gives Tenant the Notice of Tender within such sixty (60) day period. In the event permission is given to Tenant to enter or occupy all or a portion of such building pad prior to the Target Date, such occupancy shall be subject to all of the terms and conditions other than the payment of Minimum Annual Rent and Common Operating Costs. When the Lease Commencement Date has been determined in accordance with Section 3.A. below, the parties shall execute an amendment to this Lease in the form of Exhibit D attached hereto and incorporated herein by this reference, stating the actual Lease Commencement Date and the Expiration Date.

Tenant shall have a period of ninety (90) days (the "Plan and Permit Period"), following the sixty (60) day period as provided in Exhibit C attached hereto for Tenant's preparation and submittal of the Plans to both Landlord and all applicable governmental authorities, to obtain, at Tenant's sole cost and expense, all necessary governmental permits and approvals for the construction of the Improvements and Tenant's Work as set forth in Exhibit C. During such period, Tenant shall expeditiously process such permits and approvals in good faith and with such due diligence as will facilitate the issuance of the permits and approvals prior to the expiration of the Plan and Permit Period. Tenant agrees to make such reasonable modifications to the Plans as may be required by the applicable governmental authorities in a timely manner in order to obtain such permits and approvals prior to the end of the Plan and Permit Period. No later than thirty (30) days prior to the expiration of the Plan and Permit Period, if Tenant has not obtained all such governmental permits and approvals, Tenant shall immediately notify Landlord of the same, whereupon Landlord may, at its sole discretion, but is not obligated to, cooperate with Tenant and assist Tenant in its efforts to acquire such governmental permits and approvals still outstanding, provided that in connection with such cooperation, Landlord shall have no liability or obligation to successfully obtain such governmental permits and approvals for Tenant, and Tenant shall continue in good faith and use due diligence to cooperate with Landlord to pursue the obtainment of such governmental permits and approvals.

In the event, upon the expiration of the Plan and Permit Period, Tenant has not obtained all of such governmental permits and approvals, the Plan and Permit Period shall be extended day by day until the same occurs (but in no event shall such extension be for more than sixty (60) days from the expiration of the Plan and Permit Period (the "Extension Period"), during which time Tenant shall continue in good faith and use due diligence, and cooperate with Landlord if Landlord has chosen to assist Tenant, to pursue the successful obtainment of the remainder of such permits and approvals. Upon the expiration of the Extension Period, if Tenant still has not obtained all of such governmental permits and approvals, then, unless the parties mutually agree otherwise in writing, this Lease shall automatically terminate, whereupon neither party shall have any further rights or obligations under this Lease, except for such matters which expressly survive the termination of this Lease as provided herein.

Provided further, it shall be understood that the Plan and Permit Period shall be extended by one (1) day for each day that Tenant is delayed in obtaining all necessary governmental permits and approvals as a result of Tenant not yet having completed the authorities retrofit requirement as it relates to plumbing fixtures (which requirement Tenant agrees to use commercially reasonable diligence to complete); and further provided that no such extension shall apply as a result of any Tenant caused delays not relating to the retrofit plumbing fixture program.

3. TERM

A. . Initial Term

This Lease shall be for a term of fifteen (15) full Lease Years and the First Partial Lease Year, if any, commencing on the earlier to occur of: (i) one hundred fifty (150) days after the last to occur of: (a) substantial completion of Landlord's Work; (b) subject to Tenant delivering Tenant's Plans to Landlord within the time periods permitted in Exhibit C hereto, the date Landlord approves Tenant's Plans; (c) the occurrence of the Tender Date whereupon Landlord tenders possession of the building plan upon which the Premises are located to Tenant; and (d) the date Tenant obtains all necessary governmental permits and approvals concerning the construction of Tenant's restaurant, or (ii) the date Tenant opens the Premises for business (the "Lease Commencement Date"), and ending fifteen (15) Lease Years after the last day of the First Partial Lease Year of the Term (the "Expiration Date") (the period commencing on the Lease Commencement Date and expiring on the Expiration Date shall be referred to herein as the "Lease Term" or "Term"). It shall be understood that the Lease Commencement Date shall be extended by one (1) day for each day that Tenant is delayed in opening for business to the public as a result of Tenant not being able to obtain its certificate of occupancy for the Premises due to Tenant not yet having completed the authorities retrofit requirement as it relates to plumbing fixtures (which requirement Tenant agrees to use commercially reasonable diligence to complete); provided Tenant shall be deemed to have received a certificate of occupancy of Tenant obtains or is able to obtain a temporary certificate of occupancy by the applicable authority; and further provided that no such extension shall apply as a result of any Tenant caused delays not relating to the retrofit plumbing fixture program. The foregoing one hundred fifty (150) day period shall be extended by one (1) day for each day that Tenant is delayed in performance of Tenant's Work by any "force majeure" event described in Section 32.L. below; provided, that unless the "force majeure" event is a building moratorium, the extension of the Lease Commencement Date pursuant to this sentence will not in any event cause the 150-day period referenced above to be extended for more than a total of sixty (60) days.

B. Acceptance and Suitability

Tenant acknowledges that neither Landlord, nor any agent, employee or servant of Landlord, has made any representation with respect to the building pad upon which the Premises are located, the Premises, or the Shopping Center, or with respect to the suitability of them to the conduct of Tenant's business, nor has Landlord agreed to undertake any modifications, alterations, or improvements of such building pad, except as specifically provided in this Lease. Landlord warrants the good, sound and workmanlike condition of Landlord's Work for a period of one (1) year after the Lease Commencement Date. Landlord shall make, at Landlord's sole cost and expense, all necessary repairs and replacements thereto required in order to remedy any defects in workmanship, equipment or material therein. Following the expiration of Landlord's warranty, Landlord shall assign to Tenant all warranties that Landlord had received from manufacturers, contractors or others with respect to such building pad or any part thereof.

C. Options to Extend

Landlord hereby grants to Tenant the options (the "Options") to extend the initial Term (the "Initial Term") of the Lease for four (4) additional terms of five (5) years each (the "First Option Term," "Second Option Term," "Third Option Term" and "Fourth Option Term" respectively), upon and subject to the terms and conditions set forth herein. Each Option Term shall be exercised, if at all, by written notice to Landlord on or before the date that is nine (9) months prior to the Expiration Date of the prior Term. In the event Tenant exercises either or all of the Options, each of the terms, covenants and conditions of the Lease shall apply during the applicable Option Term as though the Expiration Date of the Option Term was the date originally set forth herein as the Expiration Date of the prior Term except that the Minimum Annual Rent during the applicable Option Term shall be the amount set forth on Exhibit E hereto. The Option for the Second Option Term cannot be exercised if Tenant does not exercise the Option for the First Option Term in accordance with this Section 3.C. The Option for the Third Option Term cannot be exercised if Tenant does not exercise the Option for the Third Option Term in accordance with this Section 3.C.

Anything contained herein to the contrary notwithstanding, if Tenant is in material default beyond any applicable period to cure such existing default, under any of the terms, covenants or conditions of this Lease either at the time Tenant exercises an Option or any time thereafter prior to the commencement date of the Option Term, Landlord shall have, in addition to all of Landlord's other rights and remedies provided in the Lease, the right to terminate the Option upon notice to Tenant, in which event the Expiration Date of this Lease shall be and remain the Expiration Date of the prior Term.

In order to prevent the inadvertent failure of Tenant to exercise any Option Term provided for in this Lease within the time frames called for herein, it is agreed that Landlord may not terminate this Lease until and unless Landlord notifies Tenant in writing and points out that the option to extend or to further extend, as the case may be, has not been exercised. Tenant's ability to elect the Option Term, in each instance, shall continue for a period of fifteen (15) days after receipt of such notice from Landlord; but if Tenant does not during such period send notice of the exercise to Landlord, Tenant's ability to elect the Option Term shall thereafter terminate. In the event Landlord fails to give Tenant the notice provided for in this paragraph prior to the expiration of the original Term or of any Option Term, as the case may be, and if Tenant shall remain in possession of the Premises after the expiration of the then current Term, then Tenant shall remain in possession as a tenant from month to month as provided in Section 19 below, subject to the provisions of this Lease insofar as the same may be made applicable to a tenant from month to month. If Landlord then gives Tenant such notice and Tenant exercises its option to extend then the effective date of such exercise shall be retroactive to the expiration date of the original Term or the Option Term, whichever is applicable.

D. Tenant Improvements

(1) Landlord's Work

By the Tender Date, Landlord at its sole cost and expense shall cause substantial completion of the work designated as Landlord's obligation in Exhibit C attached hereto and the building pad upon which the Premises are located to be rough-graded in a manner as set forth in Exhibit C; the foregoing referred to as "Landlord's Work." Except with respect to Landlord's Work, Landlord will not be required to perform any construction work with respect to Tenant's initial occupancy of the Premises, all such work being the sole responsibility of Tenant.

The term "Substantial Completion of Landlord's Work" is defined when Landlord's Work (as required to be completed by the date in question) is substantially complete except for such work as (i) Landlord cannot complete until Tenant performs portions of Tenant's Work, or (ii) that can be completed by Landlord without unreasonable interference with Tenant's Work or increasing the



cost of Tenant's Work. As used in this paragraph, the phrase "increasing the cost of Tenant's Work," shall mean a cost which results, due to the actions and/or inactions of Landlord, in a change order to a contract for Tenant resulting in a cost increase to Tenant's Work of ten percent (10%) or more from the original contract amount. Rather than waiting until the date of completion of all of Landlord's Work, Landlord or its agent or architect may notify Tenant of the date of Substantial Completion of Landlord's Work. Not later than seven (7) days after Tenant's receipt of such notice, the parties will do a joint walk-through of the building pad upon which the Premises are located in order to reasonably determine, by mutual agreement and in good faith, whether Substantial Completion of Landlord's Work has occurred and whether the uncompleted items of Landlord's Work can be finished without interference with Tenant's Work. If the parties reach such agreement, then Tenant will be deemed to have accepted such building pad for purposes of the prior paragraph, and Landlord will promptly proceed to cause the uncompleted items to be completed with reasonable diligence and in a manner designed to avoid any interference with Tenant's Work.

Exhibit C defines what Landlord's Work must be completed (or for which there is Substantial Completion of Landlord's Work, in accordance with the conditions and requirements of the preceding paragraph) by the Tender Date or as otherwise specified therein. If any such items are not completed by that date, then Landlord will be in default of this Lease (subject to Section 17.C. below). Tenant shall have the option, but not the obligation, to perform the required action to cure the default and complete Landlord's Work, in which event Landlord shall reimburse Tenant for the reasonable out-of pocket costs of Tenant completing Landlord's Work for Landlord. If Landlord does not reimburse Tenant within ten (10) days after written request therefor, Tenant shall provide Landlord with an additional ten (10) day prior written notice that Tenant will deduct such amount from the rents thereafter to become due under this Lease, together with interest thereon at the annual rate of two percent (2%) over the rate then announced by Chase Manhattan Bank as its base or prime rate from the date such amount was due. No provision of this Section will be construed to require Landlord to deliver, or require Tenant to accept, the building pad upon which the Premises are located as of the date of Substantial Completion of Landlord's Work, rather than the date of completion of Landlord's Work, as the delivery date pursuant to the paragraph above.

If Landlord gives permission for Tenant to enter prior to Substantial Completion of Landlord's Work and Tenant is willing to enter early to commence its work, the parties will, to the extent possible, coordinate such work to avoid interference between Landlord's contractor(s) and Tenant's contractor(s).

(2) Tenant's Work

Tenant agrees to construct, at Tenant's sole expense, but subject to the limitations set forth in Exhibit C, the work described as "Tenant's Work" in Exhibit C attached hereto and incorporated herein by this reference, pursuant to the terms of such Exhibit C. In no event shall the Lease Commencement Date occur until two out of three of the retail stores labeled Major Tenant 'B', Major Tenant 'C' and Major Tenant 'D' (shown on Exhibit A attached hereto and incorporated herein by this reference) have fully opened for business to the public.

4. RENT

A. Basic Rent

(1) Monthly Rental

Commencing on the Lease Commencement Date and subject to the increases set forth on the "Rent Schedule" attached hereto as Exhibit E, Tenant shall pay to Landlord during the Term, Minimum Annual Rent in the amount set forth in Item 9. of the Basic Lease Provisions, which amount shall be payable by Tenant on or before the first day of each month, in advance, at the address specified for Landlord in Item 17. of the Basic Lease Provisions, or such other place as Landlord shall designate in writing, without any prior demand therefor and without any abatement, deduction or setoff whatsoever, except as specifically permitted by law and in this Lease. Payment of the monthly installment of Minimum Annual Rent for the first month or portion of it shall be made upon the Lease Commencement Date. If the Lease Commencement Date should occur on a day other than the first day of a calendar month, or the Term, or applicable Option Term should expire on a day other than the last day of a calendar month, then the rental for such fractional month shall be prorated on a daily basis based upon a thirty (30) day calendar month.

(2) Increases in Minimum Annual Rent

The Minimum Annual Rent payable by Tenant under this Section 4 shall be increased upon the expiration of the fifth (5th) full Lease Year of the Term and upon the expiration of each five (5)

15TH

Lease Years thereafter as set forth on Exhibit E attached hereto and incorporated herein by this reference.

B. Additional Rent.

Tenant shall pay to Landlord, as additional rent ("<u>Additional Rent</u>"), during the Term and any extensions thereof, its allocated share of Taxes (as defined in Section 10 below) and Tenant's Proportionate Share of Common Operating Costs (as defined in Section 12 below). Tenant shall pay all sums required to be paid as Additional Rent directly to Landlord at the place where the Minimum Rent is payable, without deduction or setoff except as provided in this Lease.

C. Proration

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

5. SECURITY DEPOSIT [Intentionally Omitted]

6. INSURANCE

A. Tenant

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

- (i) Property insurance against loss by fire and other hazards covered by the so-called "all-risk" form of policy in an amount equal to the full replacement value of the Premises, Tenant's Work, alterations and improvements made by Tenant to the building pad upon which the Premises are located;
- (ii) Commercial general liability insurance (on an Insurance Services Office form or equivalent) covering all acts of Tenant, its employees, agents, representatives and guests on or about the Premises, in a combined single limit amount of not less than Five Million and No/100 Dollars (\$5,000,000.00), and providing coverage on an "occurrence" rather than a "claims made" basis, which policy shall include, but not be limited to, coverage for Bodily Injury, Property Damage, Personal Liability and Contractual Liability (applying to this Lease);
- (iii) Worker's compensation insurance, with coverage as required by the State of California;
- (iv) Liquor liability insurance with coverage of at least One Million Dollars (\$1,000,000.00), if Tenant elects to serve or sell liquor in the Premises;
- (v) Vehicle liability insurance with respect to any owned vehicles used in connection with the operation of business at the Premises, and hired and non-owned vehicle liability insurance with coverage of at least One Million Dollars (\$1,000,000.00).
- (vi) Such fire and extended coverage or other property/casualty insurance on Tenant's equipment, stock in trade, fixtures, furnishings and other personal property located, leased or stored by Tenant within the Premises, in an amount equal to the full value of such items.

Tenant may self insure with respect to plate glass. Where applicable, Tenant may maintain reasonable deductibles on the insurance required by this Section 6A. Tenant's insurance required in Section 6(a)(ii) shall name Landlord and Landlord's mortgagee as an additional insured to the extent of Tenant's indemnity obligations set forth in Section 7. All of Tenant's insurance shall provide for thirty (30) days written notice to Landlord prior to cancellation, material change or non-renewal. Certificates of all such insurance shall be delivered to Landlord prior to occupancy of the Premises by Tenant and at least thirty (30) days prior to the termination date of any existing policy. If Tenant fails to comply with the requirements of this Section 6.A., Landlord may, but shall not be obligated to, obtain such insurance and keep the same in effect, and Tenant shall pay Landlord the reasonable premiums therefore upon demand.

B. Landlord

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Landlord shall, during the Term, and applicable Option Terms hereof, keep or cause to be kept, in full force and effect the following insurance:

- (i) Property insurance against loss by fire and other hazards covered by the so-called "all risk" form of policy covering the Shopping Center (including the portions of the building pad upon which the Premises are located other than Tenant's Work) in an amount equal to the full replacement value thereof. Said insurance shall include "Contingent Liability from the Operation of Building Laws", demolition and increased cost to rebuild coverages. If the Shopping Center includes steam or other equipment excluded from coverage pursuant to a boiler and machinery exclusion, boiler and machinery insurance in commercially reasonable amounts. If the Shopping Center or any part thereof is located in a designated official flood-hazardous area, flood insurance, insuring the Shopping Center to the maximum limit made available with respect to such buildings and improvements under the Federal Flood Disaster Protection Act of 1973, as amended, and the regulations issued thereunder;
- (ii) Commercial general liability insurance (on an Insurance Services Office form or equivalent) covering the Shopping Center, in a combined single limit amount of not less than Five Million and No/100 Dollars (\$5,000,000.00), and providing coverage on an "occurrence" rather than a "claims made" basis, which policy shall include, but not be limited to, coverage for Bodily Injury, Property Damage, Personal Liability, Contractual Liability (relating to this Lease) and Employer Liability, naming Tenant as an additional insured; and
- (iii) Such other insurance as prudent Landlords in comparable shopping centers elect to purchase.

Landlord will provide Tenant with evidence of the insurance required by this Section 6.B. upon written request by Tenant.

C. General.

If any insurance required hereunder ceases to be available, or is available on terms so unacceptable that prudent landlords or tenants, as the case may be, generally do not carry such insurance, then in lieu of such insurance the pertinent party may carry the most comparable insurance which is available and generally carried by prudent parties. All policies of insurance required under this Section 6 may be in the form of blanket or umbrella policies so long as the Shopping Center or the Premises are specifically designated therein, it being understood that the policy limits provided herein apply individually to each of the Premises or Shopping Center, as the case may be. Further, all insurance required hereunder shall be issued by financially responsible insurers. An insurer with a current A.M. Best Company rating of at least A:X shall be conclusively deemed to be acceptable.

7. INDEMNITY

Tenant agrees to indemnify, defend and hold Landlord and Landlord's officers, directors, partners, agents and employees entirely harmless from and against all liabilities, losses, demands, actions, expenses or claims, including attorney's fees and court costs, for injury to or death of any person or for damages to any property arising out of or in any manner connected with (i) the use, occupancy or enjoyment of the Project and Premises by Tenant or Tenant's agents, employees or contractors (the "Tenant's Agents") or any work, activity or other things allowed or suffered by Tenant or Tenant's Agents to be done in or about the Project and Premises, (ii) any breach or default in the performance of any obligation of Tenant under this Lease and (iii) any act or failure to act, whether negligent or otherwise tortious, by Tenant or Tenant's Agents on or about the Premises or Project. Notwithstanding the foregoing, Tenant shall not be liable to the extent that damage or injury is ultimately determined to be caused by the active negligence or willful misconduct of Landlord.

Landlord agrees to indemnify, defend and hold Tenant and Tenant's officers, directors, partners, agents and employees entirely harmless from and against all liabilities, losses, demands, actions, expenses or claims, including reasonable attorney's fees and court costs, for injury to or death of any person or for damages to any property arising out of or in any manner connected with (i) the use, occupancy or enjoyment of the Project and Premises by Landlord or Landlord's agents, employees, invitees or contractors (the "Landlord's Agents") or any work, activity or other things allowed or suffered by Landlord or Landlord's Agents to be done in or about the Project and Premises, (ii) any breach or default in the performance of any obligation of Landlord under this Lease and (iii) any act or failure to act, whether negligent or otherwise tortious, by Landlord or Landlord's Agents on or about the Premises or Project. Notwithstanding the foregoing, Landlord shall not be liable to the extent that damage or injury is ultimately determined to be caused by the active negligence or willful misconduct of Tenant. The provisions of this Section 7 shall survive the termination or expiration of this Lease.



8. USE OF PREMISES

A. Permitted Uses; Exclusive Use

Subject to applicable laws and ordinances, from and after the date Tenant initially opens for business in the Premises, Tenant shall cause business to be conducted at the Premises for the use permitted by this Lease, continuously and uninterruptedly at all times consistent with prudent business practices and the other terms and provisions of this Lease, and will keep the Premises fully staffed with employees and adequately stocked to service and supply the usual and ordinary needs of Tenant's customers.

Tenant shall use the Premises solely for the Permitted Use and under the Trade Name specified in Items 14. and 3., respectively, of the Basic Lease Provisions or any other name used by a majority of Tenant's restaurants in California; except in instances of a permitted assignment or sublease, or upon the written consent of Landlord which consent shall not be unreasonably withheld or unduly delayed. In addition to the rules and regulations attached hereto as Exhibit F and the use restrictions attached hereto as Exhibit L, which exhibits are incorporated herein by this reference, Tenant shall not do or permit anything to be done in or about the Premises which will in any way obstruct the use of the Common Areas of the Shopping Center or allow the Premises to be used for any immoral or unlawful purpose, nor shall Tenant cause, maintain or permit any nuisance in, on or about the Premises. Tenant shall not commit or suffer to be committed any waste in or upon the Premises. (The ordinary operation of a restaurant, including odors, parking load and traffic, for example, however, shall not be deemed a violation of the foregoing.) Tenant will not suffer or permit any person or persons to use the Premises or any part thereof for conducting therein a second-hand store, auction, distress or fire sale or bankruptcy or going-out-of-business sale. Tenant agrees that the Premises shall not be used for the operation of a bowling alley, amusement center of any kind (including, without limitation, pinball and other game parlors), massage parlor, or adult book store.

Tenant shall have the exclusive right to operate a full-service or self-service restaurant selling primarily steaks or steak products (with the exclusion of hamburgers), ribs and prime rib (the "Exclusive Use"). Landlord covenants and agrees not to lease any space in, or ground lease or sell any parcel or portion of the Shopping Center to any other tenant or person whose primary business conducted in any space that is occupied by it (or any tenant or subtenant of it) at the Shopping Center is for the operation of a full-service or self-service restaurant selling primarily steaks or steak products (with the exclusion of hamburgers), ribs and prime rib, nor shall Landlord hereafter permit with respect to the Shopping Center, or consent with respect to the Project, to the operation of a full-service or self-service restaurant selling primarily steaks or steak products (with the exclusion of hamburgers), ribs and prime rib, other than at the Premises; provided, however, that Landlord will not be deemed to be in default of its obligations under this exclusivity commitment in the event the following tenants (the "Excluded Tenants") operate as the Exclusive Use within the space currently leased or occupied by them at the Shopping Center: Gottschalks Inc., Cost Plus, Inc., Staples the Office Superstore, Inc., Wherehouse Entertainment, Inc., WCM California LLC, a limited liability corporation, dba "Applebees Neighborhood Grill & Bar," and Bed Bath and Beyond, Inc. (whose leases do not or may not permit Landlord to deny consent to operation of the Exclusive Use); and further provided that Landlord agrees not to enter into any new Shopping Center leases (or agree to any (i) consent to a change of use to permit a tenant or person to operate as the Exclusive Use, (ii) renewals, or (iii) amendments extending the existing term of such lease, unless Landlord is obligated to do so pursuant to the provisions of such lease) without including a provision (if none exists) which would prevent said tenants or persons from operating as the Exclusive Use at the Shopping Center. Tenant's Exclusive Use commitment will be binding on Landlord, its successors and assigns, and any tenants of Landlord or its successors of the Shopping Center.

If requested by Tenant, Landlord shall provide for the recording of a memorandum of this Lease, in a form substantially similar to Exhibit H attached hereto and incorporated herein by this reference, which will include the exclusive right to operate a full-service or self-service restaurant selling primarily steaks or steak products, ribs and prime rib as granted by this Section 8.A. In the event Landlord fails to enforce the Exclusive Use commitment made to Tenant, Tenant shall have the right to enforce such Exclusive Use commitment upon thirty (30) days prior written notice to Landlord.. During any period of the Term or any Option Term during which there shall be a violation of the Exclusive Use (the "Exclusive Violation Period"), in addition to Tenant's other remedies available at law or in equity, Tenant, at its option exercised by delivering written notice to Landlord, shall be entitled to pay Landlord, in lieu of Minimum Rent and Additional Rent during such Exclusive Violation Period a monthly gross rental for the Premises equal to two percent (2%) of Tenant's Gross Sales (as such term is defined below) during any such Exclusive Violation Period ("Gross Rental") commencing thirty (30) days after Tenant notifies Landlord of such violation unless the violation is cured during such thirty (30) day period. Tenant shall pay any such Gross Rental to Landlord monthly, on or before the fifteenth (15th) day of the month following each calendar month, or part thereof, occurring during an Exclusive Violation Period. Tenant shall deliver to Landlord a monthly statement of Tenant's Gross Sales with respect to any Exclusive Violation Period concurrent with the Gross Rental. The



Gross Sales statement shall be signed by an authorized accounting employee of Tenant to be correct. Any right of setoff, abatement or deduction in favor of Tenant with respect to Minimum Rent and Additional Rent as provided in this Lease shall similarly apply to any Gross Rental payable by Tenant.

As used in this Lease, the term "Gross Sales" means the gross amount received by Tenant from all orders placed and filled, and all sales and services made or rendered, in, at or from the Premises, whether for cash or credit. There shall be no exclusion from Gross Sales except for the following exclusions: (a) Receipts from vending machines, coin-operated amusement devices and pay telephones; (b) Receipts from the sale of gift certificates until such are redeemed at the Premises, whereupon Tenant shall pay to Landlord accordingly the Gross Rental thereon; (c) Any sale to, or the value of any meals consumed by, employees of Tenant which are provided as a benefit of employment, not to exceed three percent (3%) of Gross Sales; (d) The value of any complimentary meals provided as a customer service or as part of Tenant's community marketing efforts, not to exceed two percent (2%) of Gross Sales; (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 Premises, but filled elsewhere; (h) Bad debts and "non-sufficient funds" checks, unless and until such amounts, or portions thereof, are paid to Tenant at a later date whereupon Tenant shall pay to Landlord accordingly the Gross Rental thereon; (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; and (k) Insurance recoveries or other proceeds not directly related to sales or services from the Premises.

For the purpose of ascertaining the amount of reportable sales and revenue and any amounts payable as Gross Rental within any Exclusive Violation Period, Tenant agrees to maintain its records in accordance with Generally Accepted Accounting Principles ("GAAP") and to record each and every sale at the time of the transaction on either a cash register having a sealed, continuous, cash register tape with cumulative totals, which numbers, records, and duplicates each transaction entered into the register on serially prenumbered sales slips or on a technically equivalent basis given current point-of-sale technology.

Landlord, at any time within two (2) years after receipt from Tenant of any statement of Gross Sales with respect to any Exclusive Violation Period, may cause an audit to be made of all such books and records for the purpose of investigating and verifying the accuracy of any statement of Gross Sales with respect to any such Exclusive Violation Period. Tenant shall make available to Landlord for the audit all such books and records at Tenant's corporate offices. If an audit or examination by Landlord, or Landlord's representative, discloses that Tenant has failed to accurately report and disclose all reportable Gross Sales with respect to any such Exclusive Violation Period, and that the total amount of the under reported Gross Sales with respect to any such Exclusive Violation Period exceeds three percent (3%), or the total amount of the under-reported Gross Sales with respect to any such Exclusive Violation Period results in Tenant owing additional Gross Rental in excess of Five Hundred Dollars (\$500.00), Tenant agrees to reimburse Landlord for all reasonable expenses incurred by Landlord in performing the examination, in addition to all additional Gross Rentals found to be owed by Tenant, if any. Such additional rentals will bear interest at the Default Rate (as defined in Section 26.A.) from the date that said obligation was discovered by audit until paid in full. If an examination by Landlord or Landlord's representative discloses that Tenant has over-reported Gross Sales with respect to any Exclusive Violation Period and that as a result of the over-reporting Tenant has overpaid rentals, Landlord shall give Tenant a refund of the balance of such overpaid rentals and interest at the Default Rate.

B. Operation

Except as otherwise provided below, from and after the date Tenant initially opens for business in the Premises, Tenant shall keep the Premises fully staffed with employees and adequately stocked with merchandise and trade fixtures to service and supply the usual and ordinary requirements of Tenant's customers. Except as otherwise provided below, Tenant shall keep the Premises continuously open for business during at least the following hours: 4:00 p.m. to 9:00 p.m. daily, except Thanksgiving Day, Christmas Eve, Christmas Day, New Years Day, Superbowl Sunday, and Easter Day (during which Tenant may be open at Tenant's option). Tenant shall have Tenant's window displays, exterior signs and any exterior advertising displays permitted under this Lease adequately illuminated continuously during those hours and days that the Premises are required to be open for business to the public.

However, Tenant will not be obligated to open for business: (i) during temporary closures not exceeding one hundred twenty (120) days in connection with a sale, assignment, sublease or other transfer which is permitted under this Lease or otherwise approved by Landlord, where such closure is necessary to consummate the transaction and allow the transferee to re-fixture the Premises for its intended use; (ii) during temporary closures not exceeding seventy-five (75) days in connection with a major remodeling or reconstruction or redevelopment of the Shopping Center or Premises, to the extent it is not reasonably practical to continue to operate the Premises during such major remodeling or reconstruction or redevelopment (during which Tenant may be open for business at its option); (iii) during temporary closures in connection with repair of casualty or alteration after a partial taking by condemnation, during which period



the parties will promptly perform their respective obligations under this Lease with respect to repair of such casualty or alteration after condemnation to permit continuation of business at the Premises; or (iv) during periods of unusually inclement weather in which there is reasonable threat to personal safety (such events are, collectively, "Permitted Closure(s)"). Tenant may extend its hours of operation at its option and in such event, Tenant shall not be responsible for the cost of any excess services during such extended hours; provided, however, in the event Tenant extends such hours of operation beyond 11:00 p.m. or prior to 7:00 a.m. or during the above-listed holiday dates, Tenant shall pay its proportionate share of the reasonable cost of any excess services along with any other tenants or occupants of the Shopping Center operating during such extended hours. During periods of suspended operations in excess of twenty-four (24) hours that are not otherwise permitted by this Section (including following expiration of periods for Permitted Closures), Tenant shall not be deemed in default of this Lease if, at Tenant's election, it pays a temporary surcharge equal to five percent (5%) of the Minimum Rent due during the pendency of the suspended operations in addition to all other amounts due herein. If there are suspended operations in excess of twenty-four (24) hours that are not otherwise permitted by this Section, and if Tenant does not pay such surcharge upon demand, Tenant shall be deemed in default of this Lease and Landlord may exercise any right or remedy for default permitted by this Lease.

In the event Tenant closes its restaurant on the Premises, the following will apply: (i) Tenant will cause the Premises to be secured against vandalism and will continue to maintain the Premises as described in this Lease; and (ii) Tenant will continue to be responsible for paying Minimum Rent, Additional Rent and other charges to Tenant under this Lease and performing the other obligations of Tenant under this Lease. If Tenant fails to occupy and operate the restaurant on the Premises for a continuous period of twelve (12) months or more (including Permitted Closures), Landlord may elect in its discretion, by thirty (30) days' written notice delivered to Tenant (unless Tenant within such thirty (30) day period re-opens and operates its restaurant on the Premises), to exercise its right to recapture the Premises and acquire Tenant's interest in the Building and improvements constructed thereon (the "Leasehold Interests"), in which event the following will apply:

- (i) <u>Notice of Election by Landlord</u> Landlord's notice (the "<u>Notice of Exercise</u>") will constitute a binding contract for Landlord's purchase of such Leasehold Interests at their fair market value, as set forth below;
- (ii) Purchase Price for Tenant's Leasehold Interests the purchase price for the Leasehold Interests will be their fair market value as of the date of exercise by Landlord of its right to purchase. Landlord's notice to Tenant electing to purchase the Leasehold Interests will include a statement of Landlord's determination of such fair market value. Tenant may (but will not be required) to accept Landlord's determination as the final purchase price. If Tenant does not agree with Landlord's determination, then the parties will promptly discuss and attempt to resolve, by good faith negotiations and mutual agreement, the fair market value of the Leasehold Interests. If the parties have not mutually approved such fair market value within twenty (20) days of the date Landlord notifies Tenant that Landlord is exercising its right to purchase, then either party at any time thereafter may require that the disagreement concerning the fair market value be resolved, using the arbitration mechanism in subparagraph (iv) below;
- (iii) <u>Fair Market Value of Leasehold Interests</u> The fair market value of the Leasehold Interests will exclude inventory and items that Tenant is removing (subject to the restrictions set forth in this Lease) in connection with the surrender of the Premises.
- (iv) Arbitration Procedure if Parties do not Mutually Agree on Fair Market Value If arbitration is required, the arbitrator will be an independent (i.e., not affiliated with or having prior contractual dealings with or employment by either party) real estate broker or appraiser, with at least five (5) years experience in real estate in the State of California, that is reasonably acceptable to the parties (or if the parties cannot agree, then either party may petition any court in the County in which the Shopping Center is located to appoint as arbitrator a person having such qualifications);

Each party will submit to each other and to the arbitrator, within ten (10) days after selection of the arbitrator, the party's written statement of the fair market value of the Leasehold Interests (each party's statement is its "Position"). There will be no oral argument or proceeding in front of the arbitrator. The arbitrator will review the parties' statements of Position and such other information as the arbitrator may deem relevant to its decision, may ask questions (if it has any) of the parties in the presence of representatives of both parties, and will render its determination, in writing, to both parties within thirty (30) days after date of his/her appointment as arbitrator. The arbitrator's determination will be limited to the decision as to whether Landlord's Position or Tenant's Position is closer to the fair market value of the Leasehold Interests. The party whose Position was not selected by the arbitrator will pay the costs and fee of the arbitrator and will reimburse the other party for its reasonable, out-of-pocket expenses (including, without limitation, reasonable attorneys' fees) in connection with the arbitration.

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- (v) Tenant's Right to Remove Certain Items Owned by Tenant Tenant may remove from the Premises its signage, food and beverage inventory and trademarked personal property and other items, subject to the restrictions of Section 11(c) below. Tenant may remove its dishes, glassware, pots, pans, and utensils, but if Tenant fails to do so, title to them will automatically pass to Landlord upon closing of the purchase and Landlord may use the same without being required to pay Tenant any amount for such dishes, glassware, pots, pans, or utensils;
- (vi) Closing of Transfer of Leasehold Interests: Surrender: Payment to Tenant The transfer to Landlord will be consummated on a date within forty-five (45) days following the date on which the purchase price for the Leasehold Interests is determined by mutual agreement or within fifteen (15) days if determined by arbitration. At closing, Tenant will assign its Leasehold Interests to Landlord or Landlord's designee or will execute a good and sufficient termination of this Lease, and Tenant will surrender the Premises in a condition as required pursuant to Section 11(c) below. Landlord will pay to Tenant at closing, in cash, the purchase price for the Leasehold Interests. If not paid when due, Tenant will have all rights and remedies in connection with the collection of the payment as is provided in this Lease.
- (vii) <u>Duty of Tenant to Pay Rents to the Closing Date</u> all rents and additional rents accrued and attributable to the time period up to and including the date of closing will be paid to Landlord. Any pre-paid rents or additional rents attributable to any period after the closing will be prorated and refunded to Tenant.
- (viii) Mutual Termination of Obligations neither Tenant nor Landlord will have any further obligation to each other under this Lease from and after the closing date, subject to such obligations which expressly survive the termination of this Lease, and this Lease shall have no further force and effect, in which event both parties will be released from any further duty or obligation to the other party from and after the effective date of termination of this Lease. This paragraph will not be construed to limit any right or remedy for default that Landlord may have under the circumstances referenced in the last sentence of the first paragraph of this Section.

C. Compliance with Laws

Tenant shall not use the Premises in any way (or permit or suffer anything to be done in or about the Premises) which will conflict with any law, statute, ordinance or governmental rule or regulation or any covenant, condition or restriction (whether or not of public record) affecting the Premises, Shopping Center or Project, now in force or which may hereafter be enacted or promulgated, including, but not limited to, the provisions of any city or county zoning codes regulating the use of the Premises. Tenant shall, at Tenant's sole cost and expense, promptly comply with (a) all laws, statutes, ordinances, and governmental rules and regulations, now in force or which may hereafter be in force; (b) all requirements, and other covenants, conditions and restrictions now in force which affect the Premises, Shopping Center or Project, subject to Landlord's representations and warranties as set forth in this Lease; and (c) all requirements (now in force or which may hereafter be in force) of any board of fire underwriters or other similar body now or hereafter constituted relating to or affecting the condition, use or occupancy of the Premises. The judgment of any court of competent jurisdiction or the admission by Tenant in any action against Tenant, whether Landlord be a party thereto or not, that Tenant has violated any law, statute, ordinance, governmental rule or regulation or any requirement, covenant, condition or restriction shall be conclusive of the fact as between Landlord and Tenant. Tenant agrees to fully indemnify Landlord against any liability, claims or damages arising as a result of a breach of the provisions of this Section by Tenant, and against all costs, expenses, fines or other charges arising therefrom, including, without limitation, attorneys fees and related costs incurred by Landlord in connection therewith, which indemnity shall survive the expiration or earlier termination of this Lease.

D. Landlord's Rules and Regulations

Tenant shall, and Tenant agrees to cause Tenant's agents, servants, and employees to observe and comply fully and faithfully with the rules and regulations attached hereto as Exhibit F, the use restrictions attached hereto as Exhibit L, and such rules and regulations which may hereafter be adopted by Landlord for the care, protection, cleanliness, and operation of the Premises and Shopping Center which are consistent with this Lease (collectively, the "Rules"), and any modifications or additions to the Rules adopted by Landlord; provided that, Landlord shall give sixty (60) days prior written notice thereof to Tenant. Landlord shall uniformly apply the Rules in a nondiscriminatory manner. Nothing contained in this Section 8.D. shall affect Tenant's rights under this Lease.

E. [Intentionally Deleted.]



F. Shopping Center Name

Tenant shall not use the name of the Shopping Center for any purpose other than in Tenant's advertising of Tenant's business at the Premises. Landlord retains all property rights in the Shopping Center name and reserves the right, in Landlord's sole discretion, to change such name and logo at any time. The Shopping Center was formerly known as "Central Coast Mall," but has been renamed "SLO Promenade."

G. Hazardous Material

Tenant hereby agrees that neither Tenant, nor Tenant's officers, directors, partners or employees, will engage in any activity in, on or about the Premises or the Project, nor permit others to engage in any such activity, which will result in the Premises or the Project containing any of the following: (a) any oil or "Hazardous Material" as such term is defined below; (b) asbestos in any form which is or could become friable; (c) urea formaldehyde foam insulation; (d) transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls in excess of fifty (50) parts per million; or (e) any other chemical, material, or substance exposure to which is prohibited, limited or regulated by any governmental authority or agency or which may or could pose a hazard to the health and safety of the occupants of the Shopping Center or the owners of property adjacent to the Shopping Center except for immaterial quantities of Hazardous Materials customarily used in the construction, maintenance or operation of like properties which have been and should be used in accordance with applicable laws, statutes, regulations and ordinances then in effect. If at any time it is determined that Tenant, or Tenant's officers, directors, partners or employees, have been responsible for the Premises or the Project containing any of the equipment or substances described in subsections (a) through (e) of this Section 8, then Tenant shall be solely responsible for and shall pay for all costs incurred in connection with the removal of said equipment and/or substances. The obligations on the part of Tenant set forth in this Section 8 shall survive the expiration of the Term of this Lease or the exercise by Landlord of any of Landlord's remedies under this Lease.

Landlord hereby agrees that neither Landlord, nor Landlord's officers, directors, partners or employees, will engage in any activity in, on or about the Premises or the Project, nor permit others to engage in any such activity, which will result in the Premises or the Project containing any of the following: (a) any oil or "Hazardous Material" as such term is defined below; (b) asbestos in any form which is or could become friable; (c) urea formaldehyde foam insulation; (d) transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls in excess of fifty (50) parts per million; or (e) any other chemical, material, or substance exposure to which is prohibited, limited or regulated by any governmental authority or agency or which may or could pose a hazard to the health and safety of the occupants of the Shopping Center or the owners of property adjacent to the Shopping Center except for immaterial quantities of Hazardous Materials customarily used in the construction, maintenance or operation of like properties which have been and should be used in accordance with applicable laws, statutes, regulations and ordinances then in effect. If at any time it is determined that Landlord, or Landlord's officers, directors, partners or employees, have been responsible for the Premises or the Project containing any of the equipment or substances described in subsections (a) through (e) of this Section 8, then Landlord shall be solely responsible for and shall pay for all costs incurred in connection with the removal of said equipment and/or substances. In the event the presence, installation, use, generation or disposal of any Hazardous Materials in or about the Shopping Center or the Premises (a) interferes with Tenant's business in all or part of the Premises and Tenant in Tenant's reasonable opinion is unable to conduct Tenant's business in the Premises, or (b) in the reasonable opinion of Tenant poses a threat to the health and safety of Tenant's agents, employees or invitees, Tenant shall be entitled to terminate the Lease upon delivery of thirty (30) days written notice to Landlord, provided however, that the Hazardous Materials in or about the Shopping Center or the Premises interfering with Tenant's business or posing a health threat were not stored, used, generated, or installed by Tenant. If Landlord lawfully removes all Hazardous Materials within the thirty (30) day notice period, Tenant's notice shall have no effect and this Lease shall remain in full force and effect.

Landlord warrants and covenants that upon Landlord's tender of possession of the building pad upon which the Premises are located to Tenant, such building pad shall be free from all Hazardous Materials, except for immaterial quantities of Hazardous Materials customarily used in the construction, maintenance or operation of like properties which have been and should be used in accordance with applicable laws, statutes, regulations and ordinances then in effect.

Landlord hereby agrees to protect, defend, indemnify and hold Tenant harmless from and against all claims, liabilities, penalties, costs, fines, damages and expenses, including, but not limited to, costs and expenses which Tenant is obligated to incur to correct or remedy the situation, the costs of defending civil enforcement actions, the costs of participating in regulatory proceedings, or any other civil or administrative action, including without limitation, attorneys' and expert fees and disbursements, directly or indirectly incurred by Tenant arising out of: (i) the presence of any Hazardous Materials in or about the Premises or the Shopping Center (except: (X) Hazardous Materials which are stored, used, generated, installed or disposed of by Tenant, and (Y) immaterial quantities of Hazardous Materials customarily used in the

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construction, maintenance or operation of like properties which have been and should be used in accordance with applicable laws, statutes, regulations and ordinances then in effect), or (ii) the inaccuracy of any representation, covenant, or warranty by Landlord in this Section 8.G. Landlord and Tenant agree that it is their intention that Tenant shall have no liability or responsibility for damage or injury to human health, economic losses or damage to the environment or natural resources caused by, or otherwise relating to Hazardous Materials located on or at the Premises or the Shopping Center which were not stored, used, generated, installed or disposed of by Tenant, Tenant's employees, Tenant's agents or Tenant's contractors.

For the purpose of this Lease, Hazardous Material shall include, but not be limited to, substances defined as "hazardous substances," "hazardous materials," or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 et seq. the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq.; and those substances defined as "hazardous wastes" in Section 25117 of the California Health & Safety Code or as "hazardous substances" in Section 25316 of the California Health & Safety Code; and in the regulations adopted and publications promulgated pursuant to said laws.

H. [Intentionally Deleted.]

I. Control of and Changes to Shopping Center

Landlord reserves the right to change the shape, size, location, number and extent of the improvements shown on Exhibit A or on any other plan, or eliminate or add any improvements or floors to the Shopping Center so long as such changes do not increase the Minimum Rent (per square foot) payable by Tenant and do not otherwise constitute a material or substantial deviation from the representations set forth in Exhibit A. Landlord shall have the exclusive right, in Landlord's sole discretion, without abatement of rent and without limiting Landlord's other rights under applicable law or this Lease, to: (1) expand, suspend, close, eliminate, adjust, alter, improve or replace any portion of the Shopping Center or any facilities, amenities, and services within the Shopping Center; (2) have access through the Premises for any work permitted by this Lease and (3) close entrances, doors, corridors, or other Shopping Center facilities or temporarily abate their operation; provided, however, nothing contained in this Lease or the CC&Rs to the contrary, no such action by Landlord shall adversely impair access to the Premises from Dalidio Drive, Madonna Road or El Mercado, adversely reduce visibility of the Premises or its signs from Dalidio Drive, Madonna Road or El Mercado, materially make the Premises less attractive or materially interfere in any way with Tenant's business in the Premises, cause additional structures to be constructed on top of the Premises, cause the relocation of the Premises, or reduce, interfere, change the use of, or build or construct any improvements (temporary or permanent) upon the Protected Parking Area (as defined in Section 24 below) or reduce the parking ratio of the Shopping Center below the Required Parking Ratio (as defined in Section 24 below). In the event Landlord eliminates or adds square footage to the Shopping Center, Tenant's Proportionate Share, as set forth in Section 20 of the Basic Lease Provisions shall be adjusted accordingly.

All work performed by Landlord and Landlord's contractors in the Shopping Center or in connection with the excavation, construction, repair, or addition to buildings in the Shopping Center shall be done in a manner causing Tenant the least interference and inconvenience reasonably practicable under the circumstances. Provided Landlord undertakes work in this manner, Tenant waives any claim for damages for any interference, injury, or inconvenience to Tenant's business, any loss of occupancy or quiet enjoyment of the Premises, or any other loss occasioned by the performance of such work or by Landlord's entry to the Premises as permitted by this Lease, except as caused by Landlord's or Landlord's agents', employees' or contractors' acts of negligence or willful misconduct. Landlord's entry shall not be deemed a trespass, a forcible or unlawful entry, a detainer of the Premises, or an eviction of Tenant. Tenant, without consideration shall afford to the person(s) causing or authorized to cause such excavation, construction, repair or addition to buildings, the license to enter upon the Premises upon forty-eight (48) hours prior written notice, at reasonable times, except in the event of an emergency, for the purpose of doing all necessary work to preserve the Shopping Center from injury or damage, and for its support.

9. UTILITIES

Tenant agrees to pay all charges for utilities including, but not limited to, gas, water, sewer, electricity, telephone and other utility services supplied to Tenant for which there is a separate meter and/or submeter to the Premises. With respect to those utility services for which there is no separate meter or submeter, Tenant agrees to pay to Landlord Tenant's share of all charges for such utility services supplied to the Premises upon billing by Landlord of Tenant's Proportionate Share (as set forth in Section 20 of the Basic Lease Provisions). Landlord may elect to furnish any utility services to the Premises, in which event Tenant shall pay to Landlord as Additional Rent, in arrears, on the first (1st) day of each month, the amount necessary to reimburse Landlord for the cost of utilities supplied to the Premises. Notwithstanding anything

to the contrary in this Section 9, in no event shall Tenant be required to pay a rate for any utility service to the Premises that is greater than the market rate charged by the direct third party provider of such utility service. If Landlord discontinues furnishing any of the utilities for any reason, Tenant shall obtain Tenant's own utility service for the Premises. Landlord shall not be liable, in any manner whatsoever, for and Tenant shall not be entitled to an abatement or reduction of rent by reason of Landlord's failure to furnish any of the foregoing utilities when such failure is caused by accidents, breakage, repairs, strikes, brownouts, blackouts, lockouts or other labor disturbances or labor disputes of any character, or by any other cause, similar or dissimilar, beyond the reasonable control of Landlord, nor shall such failure under such circumstances be construed as a constructive or actual eviction of Tenant. Landlord shall not be liable under any circumstances for loss or injury to property or business, however occurring, through or in connection with or incidental to Landlord's failure to furnish any of said services or utilities except those interruptions due to Landlord's negligence or willful misconduct, in which case Tenant shall be entitled to abatement of Minimum Annual Rent and Additional Rent to the extent and for the period Tenant is unable to conduct its business in the Premises. If Tenant fails to pay any charges referred to in this Section 9, when due, Landlord may pay the same, and any amount so paid by Landlord shall thereupon become due to Landlord from Tenant as Additional Rent.

10. TENANT'S TAXES

A. Definition.

The term "Taxes" as used herein shall include, to the extent due and payable during the Term of this Lease to any lawful taxing authority, real estate taxes, assessments (special or otherwise), interest on installment payments of Taxes and any other federal, state or local governmental tax or charge now or hereafter levied or assessed against the Shopping Center, but not including the following ("Excluded Taxes"): (a) any franchise tax or any other taxes measured by Landlord's income or profits from the Shopping Center or the operation thereof (unless the same are imposed in lieu of real estate taxes or assessments), or (b) any penalties for delinquent payments, or (c) any assessments levied in connection with the original construction or any expansion of the Shopping Center other than related specifically to Tenant's Premises. Except for Excluded Taxes, "Taxes" shall also include betterments and special and general assessments currently and in the future levied or imposed against the buildings and/or land located within the Shopping Center, provided that with respect to any such future assessments: (i) any such assessment is paid over the longest period of time permitted by law (assuming that the assessment is bonded or would be payable in installments) or, if not, the amount payable by Tenant in any tax year for such assessment shall be no greater than the amounts that would have been payable by Tenant had such assessment been bonded or been made payable over the longest period of time permitted, and (ii) any such special assessment shall relate to improvements which uniformly benefit the occupants and tenants of the Shopping Center. Taxes shall also mean any personal property taxes imposed upon the equipment of Landlord or machinery of Landlord located at and used in the operation or maintenance of the Shopping Center, and all costs and fees, including reasonable attorneys' and appraisers' fees incurred by Landlord in reasonably contesting Taxes and reasonably negotiating with public authorities as to the same (Landlord hereby agreeing that any reduction in Taxes resulting from any such contest by Landlord will be passed-through to Tenant through a proportionate reduction in Tenant's Tax Expense to the extent that Tenant has previously paid such amount, after first deducting Tenant's Proportionate Share of all expenses, including reasonable attorney's fees incurred by Landlord in obtaining such refund and not otherwise reimbursed to Landlord). In the event that any Taxes may, at the option of the taxpayer, be paid in installments, such Taxes shall be deemed paid in installments over the maximum period permitted by the taxing authority, and Taxes shall include only those installments due and payable during the Term of this Lease. In this connection, Landlord warrants and represents that, except for the assessments for SL Coastal Override and the State Water Project as shown on tax bills for the Shopping Center, neither the Shopping Center nor the Premises are, as of the date of this Lease, subject to any other special assessments. Landlord further warrants and represents to Tenant that the legal description set forth on Exhibit I accurately describes and fully encompasses the Shopping Center and Premises represented schematically on Exhibit A, and that the Shopping Center is a separately identified tax parcel.

The term "Taxes" shall also include any tax (now or hereafter imposed by any governmental entity) applicable to or measured by or on the rents or any other charges payable by Tenant under this Lease, including (but not limited to) any gross income tax, gross receipts tax or excise tax with respect to the receipt of such rent or other charges or the possession leasing or operation, use or occupancy of the Premises, but only to the extent that such taxes are levied in lieu of real property taxes, but not including any net income, franchise, capital stock, estate or inheritance taxes.

Tenant shall also be liable for all taxes levied against the personal property, including movable furniture, fixtures and equipment placed by or for Tenant in, on or about the Premises; and if any such taxes are levied against Landlord or Landlord's property, or if the assessed value of the property is increased (whether by special assessment or otherwise) by the inclusion therein of value placed on such personal property or movable furniture, fixtures and equipment, and Landlord pays any such taxes (which Landlord shall have

the right to do regardless of the validity thereof), Tenant, upon demand, shall fully reimburse Landlord for the taxes so paid by Landlord or for the proportion of such taxes resulting from such increase in any assessment.

B. Payment.

Tenant agrees to pay to Landlord Tenant's Proportionate Share of Taxes which are due and payable during the Term of this Lease or any extension thereof ("<u>Tenant's Tax Expense</u>"). Tenant's Tax Expense shall be determined by multiplying the Taxes by Tenant's Proportionate Share. Landlord's current estimate of Tenant's Tax Expense for the First Partial Lease Year shall be One Dollar (\$1.00) per square foot of gross leasable area in the Premises on an annualized basis.

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

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

For Partial Lease Years or partial lease months, Tenant's Tax Expense shall be prorated as provided in Section 4.C. of this Lease.

Tenant agrees to pay before delinquency any taxes levied or assessed upon Tenant's personal property located in the Premises.

C. [Intentionally Deleted.]

D. Contest of Property Taxes

If Tenant requests that Landlord seek a reduction in Taxes, or otherwise seek a reduction, abatement or exemption of Taxes, Landlord shall, unless Landlord authorizes Tenant to do so, institute the appropriate proceeding in order to contest the amount of Taxes; provided, however, Landlord shall not be required to withhold payment of any Taxes if at any time any part of the buildings, other improvements or land constituting the Shopping Center is in imminent danger of being forfeited or sold because of non-payment of any Taxes, and, in any event, Tenant shall indemnify and hold Landlord harmless from any and all costs, expenses, and liabilities, including reasonable attorney's fees, relating to such proceeding. If Landlord elects not to seek such reduction in Taxes, then Tenant may undertake such action on Tenant's own behalf, in which event Landlord shall reasonably cooperate with Tenant in any such proceeding at no expense to Landlord. If as a result of any such reduction, Landlord shall receive a refund of Taxes, Tenant shall be entitled to a prompt refund of Tenant's Proportionate Share thereof to the extent Tenant has previously paid such amount, after first deducting Tenant's Proportionate Share of all expenses, including reasonable attorney's fees, incurred by Landlord in obtaining such refund and not otherwise reimbursed to Landlord. This provision shall survive the expiration or termination of this Lease.

All reductions, refunds, or rebates of Taxes, less Landlord's reasonable expense in obtaining reductions, refunds or rebates, if any, shall belong to Tenant whether as a consequence of a Landlord proceeding or otherwise.

11. MAINTENANCE AND REPAIRS

A. Landlord's Repair.

Except as required to be performed by Tenant pursuant to Section 11.B. of this Lease, Landlord shall keep and maintain, or cause to be kept and maintained, in good order, condition and repair (i) all portions of the Shopping Center and the Common Areas (subject to the terms of the CC&R's), but excluding the Premises, and (ii) all portions of the building pad upon which the Premises are to be located other than the Premises, including, but not limited to, all mechanical, electrical and utility systems located outside of the Premises (Landlord shall not have any obligation regarding electrical or utility system inside of the Premises) which do not exclusively serve the Premises, sidewalks, roadways, and parking facilities. In the event Tenant, in its reasonable opinion, is unable to conduct its business in all or a part of the Premises for more than forty-eight (48) consecutive hours as a result of necessity of such repairs or maintenance or as a result of any excavation or other building operation by Landlord on the Shopping Center or any land adjoining the Shopping Center, Tenant shall be entitled to an equitable abatement of Minimum Rent and Additional Rent to the extent and for the period Tenant is unable to conduct its business in the Premises as a result thereof. Notwithstanding anything to the contrary contained in this Lease, Landlord shall not be liable for failure to make repairs required to be made by Landlord under the provisions of this Lease unless Tenant has previously notified Landlord in writing of the need for such repairs and Landlord has failed to commence and complete the repairs within a reasonable period of time following receipt of Tenant's written notification. Landlord shall not be required to make any repairs for damage caused by any negligent or intentional act or omission of Tenant or any person claiming through or under Tenant or any of Tenant's employees, subtenants, suppliers or shippers or by reason of Tenant's failure to observe or perform any conditions or agreements contained in this Lease or caused by alterations, additions or improvements made by Tenant or any one claiming under Tenant, in which event, Tenant shall repair such damage at Tenant's sole cost and expense. Landlord shall not be liable for and there shall be no abatement of rent with respect to, any injury to or interference with Tenant's business arising from any repair, maintenance, alteration or improvement in and to any portion of the Shopping Center or the Premises performed in accordance with this Lease, unless Tenant, in Tenant's reasonable opinion, is unable to conduct Tenant's business from the Premises for more than twenty-four (24) hours. Notwithstanding anything to the contrary contained in this Lease, Landlord shall not be liable for failure to make repairs required to be made by Landlord under the provisions of this Lease unless Tenant has previously notified Landlord in writing of the need for such repairs and Landlord has failed to commence and complete the repairs within a reasonable period of time following receipt of Tenant's written notification.

B. Tenant's Repair.

Tenant shall keep and maintain in good condition and repair the Premises and every part thereof, including without limitation, the exterior and interior portion of all windows and window frames; doors and door frames; plate glass; store front; signs; fixtures; mechanical, plumbing, lighting, electrical, sewage, heating, air conditioning and sprinkler systems, equipment and facilities located inside or outside the Premises which exclusively serve the Premises; interior walls and partitions; floors and floor coverings; ceilings; show cases; and that portion of any pipes, lines, ducts, wires or conduits installed by or on behalf of Tenant contained under, above or within and which exclusively serve the Premises, and any garbage area exclusively used by Tenant. Tenant shall, at its expense, repair and replace any and all broken or cracked plate or other glass located in the interior or on the exterior of the Premises with glass of equal quality. Tenant shall keep and maintain the Premises, at its sole cost and expense, in a sanitary and safe condition in accordance with the laws of the State of California and in accordance with all mandatory directions, rules and regulations of the appropriate governmental agencies. If Tenant unreasonably refuses or neglects to promptly repair or properly keep and maintain the Premises, after thirty (30) days written notice to Tenant (unless the need for such repair or maintenance in the reasonable opinion of Landlord constitutes an emergency, in which event Landlord shall provide Tenant with a reasonable period to complete such repairs or maintenance) Landlord may, but shall not be obligated to, make and complete such repairs and maintenance on behalf of Tenant, and Tenant shall pay Landlord the reasonable costs incurred therefor upon demand. Notwithstanding anything in this Section 11.B. apparently to the contrary, after construction of the building of which the Premises are a part, Tenant shall not be required to make any capital improvements to the Premises unless required by applicable governmental authority as a result of Tenant's specific use of the Premises. As it is the parties' intent that the terms of this Lease shall govern the parties' respective rights and obligations to make repairs, with respect to maintenance and repair obligations which are Tenant's pursuant to this Section 11.B., Tenant hereby waives and releases its right to make repairs at Landlord's expense under Sections 1941 and 1942 of the California Civil Code or any similar law, statute or ordinance now or hereafter in effect, and to the extent that such Civil Code provision(s) conflict with any provision of this Lease, this Lease shall prevail.

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C. Condition of Premises Upon Surrender

Tenant shall, upon the expiration or earlier termination of the Term, surrender the Premises to Landlord broom clean, reasonable wear and tear excepted. All trade fixtures, furnishings and equipment shall be removed by Tenant, at Tenant's sole cost and expense, and Tenant shall repair any damage occasioned to the Premises by reason of such removal. Any of Tenant's property not removed from the Premises prior to the expiration of the Term, or applicable Option Terms shall become the property of Landlord and may be removed by Landlord. Any damage to the Premises, including any structural damage, resulting from Tenants use or from the removal of Tenant's fixtures, furnishings and equipment shall be repaired by Tenant at Tenant's expense.

12. REIMBURSEMENT OF COMMON EXPENSES

A. Definitions

- (1) "Common Areas" means all areas, space and equipment within the Project for the common and general use and benefit of the tenants and owners of the Project, and their employees, agents, servants, suppliers, customers and other invitees (subject to the terms and conditions of the CC&Rs), including, by way of illustration, but not limitation, any retaining walls, fences, landscaped areas, parks, curbs, sidewalks, private roads, restrooms, stairways, elevators, lobbies, hallways, patios, service quarters, parking areas, all common areas as designated in any CC&Rs and all other areas within the exterior of the buildings comprising the Shopping Center as shown on the site plan attached to this Lease as Exhibit A.
- (2) "Common Operating Costs" as used herein shall mean all costs and expenses paid or incurred by Landlord in operating, cleaning, equipping, protecting, lighting, insuring (to the extent provided below), repairing and maintaining the non-structural and non-building portions of the Common Areas of the Project, exclusive of the "Allocable Share of Operating Costs" (as defined in the REA) charged to the Gottschalks Property and the Hotel Property as provided under the REA. Common Operating Costs shall include, but not be limited to, the reasonable cost of the following, to the extent each relates to the non-structural and non-building portions of the Common Areas only: illumination and maintenance of Shopping Center identification signs; utilities; supplies; janitorial services; expenses for security services; total employee compensation for on-site non-management employees of Landlord to the extent they provide maintenance and repair services to the non-structural and non-building portions of the Common Areas; garbage, snow and ice removal; providing the liability insurance described in Section 6.B. of this Lease and the property insurance allocable to the Common Areas; maintenance and repairs, including those to any utility, security or lighting system located within and serving the non-structural and non-building portions of the Common Areas; landscaping; painting; lighting; amortization of equipment used in operation and maintenance of the Common Areas; amortization of capital expenditures which reduce the Common Operating Costs of the non-structural and non-building portions of the Common Areas; sealing and striping of parking lots; installation and operation of loudspeaker system and music program services; maintenance and repair of sprinkler systems serving the Common Areas; and an amount equal to fifteen percent (15%) of the aggregate of the above expenses, exclusive of insurance and Taxes, to cover administration, management, bookkeeping and accounting costs, to include but not be limited to, salaries, expenses, fringe benefits and other compensation paid to supervisory, management and upper management personnel.
- (3) "Common Operating Costs" shall not include: any costs associated with structural repairs or capital improvements, additions or alterations to the Common Areas or the Shopping Center (including but not limited to, those relating to the roofs and parking lots) or amortization of any of the foregoing, (except the amortization of any capital improvements made to the non-structural and non-building portions of the Common Areas which as of the date incurred were reasonably intended and expected by Landlord to reduce Common Operating Costs, provided that such costs are amortized over the useful life of the improvement or the applicable tax code depreciation schedule; whichever is longer, and as otherwise provided in the first paragraph of Section 12.B. below); any costs or expenses relating to the structural or building portions of the Shopping Center, including, but not limited to, the operating, equipping, protecting, insuring, repairing and maintaining of the same; costs incurred in connection with the original construction or expansion of the Shopping Center, including any interest or payments on any financing; ground rent, depreciation, amortization or interest on any capital financing or debt with respect to the Common Areas; cost of correcting defects in the initial design or construction of the Shopping Center or any expansion thereof or any repairs resulting from inferior or deficient workmanship; any costs or expenses incurred by Landlord in bringing the Shopping Center, or any portion thereof, into compliance with any applicable federal, state or local statutes, codes, ordinances or rules; costs of any required corrective action with respect

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to Hazardous Materials in the Common Areas; fines or penalties incurred due to violations by Landlord of any governmental rule or authority other than as a result of the errors or omissions of Tenant; any costs relating to the restoration and/or repair obligations of Landlord with respect to the Shopping Center pursuant to Section 16 and/or Section 18 of this Lease; any cost for which Landlord is reimbursed, receives a credit or is otherwise compensated, including, without limitation, the payment to Landlord of the "Allocable Share of Operating Costs" (as defined in the REA) of the Gottschalks Property and the Hotel Property pursuant to the REA (other than Tenant reimbursements for Taxes or Operating Costs as respectively provided in Sections 10 and 12); repairs and maintenance for items that are covered by guarantees or service contracts; reserves for anticipated future expenses; legal and other professional fees; leasing commissions or other expenses relating to leasing personnel; costs, disbursements, and other expenses incurred in acquiring tenants, or developing new business properties; advertising or promotional expenses (other than Christmas or other seasonal decorations, the cost of which shall not exceed One Thousand Dollars (\$1,000.00) for the entire Shopping Center per year); any items for which Landlord is reimbursed by insurance; any bad debt losses, rent losses or reserves for bad debts or rent losses; all interest or penalties incurred as a result of Landlord's failure to pay any bill as it shall become due; costs resulting from the gross negligence of Landlord its agents, employees and/or independent contractors; the cost of leasing any item other than items whose purchase price would be included in reimbursable expenses hereunder; expenses related to management offices, utility rooms, storage areas and outparcels; individual compensation or other expenses with respect to officers, executives or on- or off-site management or administrative personnel of Landlord, or third parties engaged by Landlord to provide such services, or any other costs or expenses relating to administrative, bookkeeping, accounting, management or similar services or functions with respect to the Common Areas; any amount paid to any corporation or other entity related to Landlord or to the managing agent of Landlord which is in excess of the amount which would have been paid in the absence of such relationship; costs in excess of fair market expenses; any cost related to the operation of Landlord as an entity rather than the operating of the Shopping Center, including the cost and formation of the entity, internal accounting, legal matters, preparation of tax returns, etc.; mortgage payments or ground rents, or any costs associated with refinancing the Shopping Center, including points and closing fees; trustee fees; the cost of garbage removal and maintenance and repair of common garbage areas of other tenants if Tenant has an exclusive and enclosed garbage area which it maintains and repairs pursuant to Section 11.B.; any costs associated with tenant alterations, improvements or decorations or the cost of any utility, maintenance, service or repair provided exclusively to any leased or leasable premises in the Shopping Center or any portion of the Common Areas which provide income for Landlord; and costs, disbursements and other expenses in connection with services or other benefits of the type which are not provided Tenant but which are provided to another tenant or occupant of the Shopping Center.

(4) "Tenant's Proportionate Share" the amount of which is set forth in Item 20 of the Basic Lease Provisions, shall be a fraction, the numerator of which is the number of square feet of gross leasable area in the Premises and the denominator of which is the gross leasable area of the Shopping Center.

B. Reimbursement

Within a reasonable time before the commencement of each Lease Year during the Term, Landlord shall deliver to Tenant a reasonable estimate of the anticipated Common Operating Costs for the forthcoming Lease Year. Tenant shall pay to Landlord, as Additional Rent, commencing on the Lease Commencement Date, and continuing on the first day of each calendar month thereafter, an amount equal to one-twelfth (1/12th) of the product obtained by multiplying the then estimated Common Operating Costs times Tenant's Proportionate Share. The estimated monthly charge for Tenant's Proportionate Share may be adjusted one time by Landlord during the Lease Year on the basis of Landlord's reasonably anticipated costs. Common Operating Costs shall not include the amortization of any capital improvements made to the Shopping Center except for (i) capital improvements intended to reduce Common Operating Costs but only to the extent of the reduction in any particular Lease Year provided that such costs are amortized over the useful life of the improvement or the applicable tax code depreciation schedule; whichever is longer; (ii) the costs of repaving the parking lot to a thickness of two inches (2") one time every seven (7) years provided that such costs are amortized over seven (7) years or the warranty period covering such work; whichever is longer; and (iii) the costs of slurry coating the parking lot one time every three (3) years provided that such costs are amortized over three (3) years or the warranty period covering such work; whichever is longer.

Notwithstanding anything herein to the contrary, Landlord's budget for "controllable expenses" for any Lease Year shall not exceed one hundred seven percent (107%) of the actual Common Operating Costs for the immediately preceding Lease Year or Partial Lease Year, as applicable (exclusive of Taxes, insurance and extraordinary non-recurring expenses during such prior Lease Year). As used herein the term "controllable expenses" means those items included within Common Operating Costs, the cost of which are



within Landlord's control including, by way of example only, janitorial and landscaping services but excluding, by way of example only, utility costs, costs which are subject to market forces beyond Landlord's control, insurance and costs relating to compliance, by either Landlord or Landlord's vendors, contractors or service providers, with laws or regulations, including by way of example only, increased minimum wage laws and employee benefit acts.

For Partial Lease Years or partial lease months, these limitations should be prorated as provided in Section 4.C. of this Lease.

Landlord's current estimate of Tenant's Proportionate Share of Common Operating Costs for the First Partial Lease Year shall be Two and 60/100 Dollars (\$2.60) per square foot of gross leasable area in the Premises on an annualized basis.

C. Rebate or Additional Charges

After the end of each Lease Year, Landlord shall furnish to Tenant a statement showing the total Common Operating Costs and Tenant's Proportionate Share of the Common Operating Costs for the Lease Year just ended. If the amount of estimated Common Operating Costs paid by Tenant for any year during the Term, or applicable Option Terms exceeds the actual Common Operating Costs for such year, Landlord shall refund such excess to Tenant. If the estimated Common Operating Costs for such year are less than the actual Common Operating Costs for such year, then Tenant shall pay to Landlord, within thirty (30) days of Tenant's receipt of Landlord's statement, as Additional Rent, Tenant's Proportionate Share of the amount by which the actual Common Operating Costs exceeds the estimated Common Operating Costs. In the event the Term of this Lease expires, or this Lease is otherwise terminated, Landlord shall compute the credit or deficiency up to the date the Lease expired or was terminated.

No payment by Tenant with respect to Common Operating Costs shall derogate Tenant's rights to audit and review the books and records of Landlord kept in connection with the Taxes and Common Operating Costs. Landlord agrees to make such books and records available to Tenant upon three (3) business days advance written request by Tenant. If any such audit shows that Tenant's Common Operating Costs or Tenant's Proportionate Share of Taxes has been overstated by more than three percent (3%), Landlord shall immediately pay to Tenant the reasonable cost of such audit, and in any event shall remit the total amount of such overstatement.

D. Control of Common Areas and Shopping Center

Landlord shall have the sole and exclusive control of the Common Areas, as well as the right to make changes to the Common Area subject to the provisions of Section 8 and the terms and conditions of the CC&Rs. Landlord's rights shall include, but not be limited to, the right to (a) restrain the use of the Common Areas by unauthorized persons, (b) utilize from time to time any portion of the Common Areas for promotional, entertainment and related matters, (c) place permanent or temporary kiosks, displays, carts and stands in the Common Areas (excluding, however, those portions of the Common Areas immediately in front of or adjacent to the Premises or the Protected Parking Area) and to lease the same to tenants, (d) temporarily close any portion of the Common Areas for repairs, improvements or alterations, and (e) change the configuration, shape and size of the Common Areas or change the location of improvements to the Common Areas, including, without limitation, buildings, parking areas, roadways, and curb cuts, and construct buildings on the Common Areas, subject, however, to the restrictions set forth in Section 8.I. Landlord may determine the nature, size and extent of the Common Areas as well as make changes to the Common Areas from time to time which, in Landlord's opinion, are deemed desirable for the Project or Shopping Center.

13. ALTERATIONS, ADDITIONS AND TRADE FIXTURES

Tenant shall not make any material alterations, additions or improvements to the Premises, or any part thereof, whether structural or nonstructural (hereafter "Alterations"), without at least thirty (30) days' prior written notice to Landlord and Landlord's prior written consent, which consent shall not be unreasonably withheld or delayed; provided however such consent shall not be necessary for non-structural alterations which do not modify the exterior of the Premises, do not decrease the value of the Premises and which in the aggregate cost less than Forty Thousand Dollars (\$40,000.00) in any Lease Year. In order to obtain Landlord's consent, Tenant shall submit such information as Landlord may require, including, without limitation, (i) plans and specifications, (ii) permits, licenses and bonds and (iii) evidence of insurance coverage in such types and amounts and from such insurers as Landlord deems satisfactory. All Alterations shall be done in a good and workmanlike manner by qualified and licensed contractors. Tenant shall indemnify, defend, and keep Landlord free and harmless from all liability, loss, claim, damage, cost, attorneys fees and any other expense incurred on account of claims by any person performing work or furnishing materials or supplies for Tenant or any person claiming under Tenant. Landlord may require



Tenant to provide Landlord, at Tenant's sole cost and expense, a lien and completion bond in an amount equal to one and one-half times the estimated cost of such improvements, to insure Landlord against any liability for mechanic's liens and to insure completion of the work, however Landlord shall not exercise Landlord's right to require a bond so long as Tenant is Tahoe Joe's, Inc. or any affiliate corporation or entity of Tenant as described in Section 21.F. of this Lease. Landlord shall have the right at all times to post on the Premises any notices permitted or required by law, or that Landlord shall deem proper, for the protection of Landlord, the Premises, the Shopping Center, and any other party having an interest therein, from mechanics' and materialmen's liens.

14. MECHANIC'S LIENS

Tenant shall keep the Shopping Center and the Premises free from any liens arising out of any work performed, material furnished or obligation incurred by or for Tenant or any person or entity claiming through or under Tenant. In the event that Tenant shall not, within ten (10) days following the imposition of any such lien, cause the same to be released of record by payment or posting of a proper bond, Landlord shall have, in addition to all other remedies provided herein and by law, the right, but not the obligation, to cause such lien to be released by such means as Landlord deems proper, including payment of the claim giving rise to such lien. All such sums paid and all expenses incurred by Landlord in connection therewith shall be due and payable to Landlord by Tenant on demand.

15. ENTRY BY LANDLORD

Landlord reserves and shall at any and all times have the right to enter the Premises at reasonable times (to the extent Landlord enters non-public portions of the Premises, Landlord shall provide two (2) days advance written notice to Tenant) to inspect the same, to supply any service to be provided by Landlord hereunder and to determine whether Tenant is complying with Tenant's obligations hereunder, to exhibit the Premises to prospective purchasers, mortgagees or, during the final six (6) months of this Lease, to prospective tenants, to post notices of non-responsibility, provided such notices do not detract from Tenant's decor or interfere with Tenant's business in the Premises, and to alter, improve or repair the Premises and any portion of the Shopping Center, as Landlord deems necessary or desirable, without abatement of rent, unless such repairs restrict Tenant, in Tenant's reasonable opinion, from conducting Tenant's business from the Premises, and may for that purpose erect scaffolding and other necessary structures that are reasonably required by the character of the work to be performed by Landlord, provided that the business of Tenant shall not be interfered with unreasonably. Landlord shall have the right to use any and all means which Landlord may deem proper to open Tenant's doors in the event of an emergency. Any entry to the Premises or portions thereof obtained by Landlord for the purposes set forth in this Section 15, shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an eviction, actual or constructive, of Tenant from the Premises, or any portion thereof. Notwithstanding the foregoing, in the event such entry and/or exercise of Landlord's rights under this Section 15 interferes with Tenant's business in the Premises and Tenant, in its reasonable opinion, is unable to conduct its business in all or a part of the Premises for more than forty-eight (48) consecutive hours as a result thereof, Tenant shall be entitled to abatement of Minimum Annual Rent and Additional Rent to the extent and for the period Tenant is unable to conduct its business in the Premises as a result thereof.

16. DAMAGE OR DESTRUCTION

In the event of (i) any damage or destruction to the Premises by reason of fire or other casualty and the extent of such damage or destruction exceeds fifty percent (50%) or more of the insurable value of the Premises, or (ii) any damage or destruction exceeding twenty percent (20%) of the full constructionreplacement cost of the Premises occurs during the last three (3) Lease Years of the Term or any Extended Term, then Tenant may terminate this Lease without further liability to Tenant, upon thirty (30) days written notice to Landlord given within sixty (60) days after the date of such damage or destruction. In the event that any damage or destruction to the Shopping Center or the Premises both (a) results in a loss of any part of the vehicular parking located within the Protected Parking Area (unless replacement parking of equivalent accessability and distance from the entry to the Premises is provided, and the Protected Parking Area is redrawn to include those replacement areas), restricts reasonable ingress and egress to the Shopping Center from Dalidio Drive, Madonna Road or El Mercado, or reduces the Shopping Center parking ratio below the Required Parking Ratio, and (b) in any such event Landlord does not replace within forty-five (45) days (or such longer period as may be reasonably necessary to complete such replacement if the same cannot reasonably be completed within said forty-five (45) day period so long as Landlord initiates such replacement within said forty-five (45) day period and diligently pursues the same to completion) after the date of such destruction or damage, to the reasonable satisfaction of Tenant, all vehicular parking within the Protected Parking Area, ingress and egress to the Shopping Center and the Premises from Dalidio Drive, Madonna Road or El Mercado, and/or the Shopping Center parking ratio to the Required Parking Ratio, as the case may be, then Tenant may terminate this Lease without further liability to Tenant, upon thirty (30) days prior



written notice to Landlord following the expiration of such forty-five (45) day period (but in no event later than one hundred twenty (120) days following such damage or destruction). Further, in the event of any damage or destruction to the Shopping Center by reason of fire or other casualty and within two hundred seventy (270) days after the date of such damage or destruction Landlord has not repaired and restored not less than the greater of (x) seventy-five percent (75%) of the gross leasable area of the Shopping Center as the same existed immediately prior to such damage or destruction, or such other condition as the parties may reasonably agree upon and (y) seventy-five percent (75%) of the gross leasable area of the Common Areas to the condition the same existed immediately prior to such damage or destruction, Tenant shall have the option to terminate this Lease without further liability to Tenant, upon delivery of written notice to Landlord given within thirty (30) days after the expiration of such two hundred seventy (270) day period. Further, in the event of any damage or destruction to the Shopping Center by reason of fire or other casualty, whether or not the Premises is damaged or destroyed, and the extent of such damage or destruction exceeds fifty percent (50%) or more of the gross leasable area of the Shopping Center, Landlord may terminate this Lease upon thirty (30) days written notice to Tenant given within sixty (60) days after the date of such damage or destruction. If Landlord terminates this Lease, it must terminate all other tenants of the Shopping Center similarly situated and similarly affected by the damage or destruction. In the event this Lease is terminated as provided in this Section 16, the Term of this Lease shall expire as of the date of the applicable damage or destruction and Tenant shall vacate and surrender the Premises to Landlord within thirty (30) days after delivery of or receipt of such termination notice.

If this Lease is not terminated as provided in this Section 16 and a portion of the Shopping Center and/or the Premises is damaged or destroyed by fire or other casualty: (i) Landlord shall diligently proceed at its sole expense, subject to reimbursement by applicable insurance coverage or third parties, to restore (A) the building pad upon which the Premises are located other than Tenant's Work, and (B) the Shopping Center (subject, however, to the seventy-five percent (75%) floor set forth in the immediately preceding paragraph of this Section 16) to the condition in which they existed immediately before the destruction or damage, (ii) after completion of the restoration work by Landlord described in (i) above, Tenant shall diligently proceed at Tenant's sole expense to restore the Premises and Tenant's Work to the condition which they existed immediately before the damage or destruction (provided, however, in the event (X) the extent of such damage or destruction exceeds fifty percent (50%) or more of the insurable value of the Premises, (Y) Tenant is prohibited from repairing or rebuilding the Premises by reason of any applicable law or ordinance, or (Z) Tenant reasonably determines that the Premises cannot be restored within two hundred seventy (270) days after the date of such damage or destruction, then in any such event Tenant shall not be obligated to restore the Premises or Tenant's Work, but instead within sixty (60) days following the date of such damage or destruction Tenant shall commence and thereafter diligently proceed to remove any rubble and debris resulting from such damage or destruction from the Premises so that the same shall be clean and sightly) and (iii) Tenant shall be entitled to abatement of Minimum Rent and Additional Rent from the date of such damage or destruction if, in exercising reasonable and prudent management, Tenant is unable to conduct its business in the Premises during the performance of the restoration work by Landlord described in (i) above. All rental will resume upon the earlier of (1) two hundred seventy (270) days after the date Landlord has finished its restoration and repair work at the building pad upon which the Premises are located and delivered possession of such building pad to Tenant, whether or not Tenant has finished its work, unless Tenant's delay in finishing its work is caused in any way by Landlord, or (2) the day Tenant reopens or resumes normal operation of its business in the Premises. The foregoing two hundred seventy (270) day period shall be extended by one (1) day for each day that Tenant is delayed in the performance of its restoration and repair work at the Premises by any matter described in Section 32.L, below.

17. DEFAULT

A. Tenant's Default

The failure by Tenant to perform any one or more of the following obligations shall constitute a default hereunder by Tenant:

- (1) If Tenant abandons the Premises or vacates the Premises except as set forth in Section 8.B or as otherwise permitted in this Lease;
- (2) If Tenant fails to pay any rent or other charges required to be paid by Tenant under this Lease and such failure continues for ten (10) days after Landlord's written notice of same to Tenant; provided, however, that the obligation of Tenant to pay a late charge or interest pursuant to Section 26 below shall commence as of the expiration of such ten (10) day grace period and further provided that Landlord shall be obligated to provide written notice of Tenant's failure and a grace period only two (2) times in any Lease Year;
- (3) If Tenant involuntarily transfers Tenant's interest in this Lease or voluntarily transfers (attempted or actual) Tenant's interest in this Lease, except in the manner set forth in Section 21;

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- (4) If Tenant or Guarantor files a voluntary petition for relief or if a petition against Tenant or Guarantor in a proceeding under the Federal Bankruptcy Laws or other insolvency laws is filed and not withdrawn or dismissed within forty-five (45) days thereafter, or if under the provisions of any law providing for reorganization or winding up of corporations, any court of competent jurisdiction assumes jurisdiction, custody or control of Tenant or Guarantor or any substantial part of the Premises or any of Tenant's personal property located at the Premises and such jurisdiction, custody or control remains in force unrelinquished, unstayed or unterminated for a period of forty-five (45) days;
- (5) If in any proceeding or action in which Tenant is a party, a trustee, a receiver, agent or custodian is appointed to take charge of the Premises or any of Tenant's personal property located at the Premises for the purpose of enforcing a lien against the Premises or Tenant's personal property which lien is not bonded over within ten (10) days; or
- (6) If Tenant fails to promptly and fully perform any other covenant, condition or agreement contained in this Lease and such failure continues for thirty (30) days after written notice thereof from Landlord to Tenant.

B. Remedies

Upon the occurrence of a default by Tenant that is not cured by Tenant within any grace period specified above, Landlord shall have the following rights and remedies in addition to all other rights and remedies available to Landlord at law or in equity:

- (1) The rights and remedies provided by California Civil Code Section 1951.2 to recover from Tenant upon termination of the Lease:
 - (a) the worth at the time of award of the unpaid rent which had been earned at the time of termination;
 - (b) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided;
 - (c) subject to Subdivision (c) of California Civil Code Section 1951.2, the worth at the time of award of the amount by which the unpaid rent for the balance of the Term after the time of award exceeds the amount of rental loss that Tenant proves could be reasonably avoided; and
 - (d) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform Tenant's obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including, but not limited to, any attorneys' fees, broker's commissions or finder's fees (not only in connection with the reletting of the Premises, but also that portion of any leasing commission paid by Landlord in connection with this Lease which is applicable to that portion of the Lease Term which is unexpired as of the date on which this Lease is terminated), any costs for repairs, clean-up, refurbishing, removal (including the repair of any damage caused by such removal) and storage (or disposal) of Tenant's personal property, equipment, fixtures, and anything else that Tenant is required (under this Lease) to remove but does not remove, and any costs for alterations, additions and renovations (and any other costs and expenses) incurred by Landlord in regaining possession of and reletting (or attempting to relet) the Premises.

The "worth at the time of award" of the amounts referred to in clauses (a) and (b) of this Section 17.B. shall be computed by allowing interest at the prime rate. The "worth at the time of award" of the amount referred to in clause (c) of this Section 17.B. shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

- (2) The rights and remedies provided by California Civil Code Section 1951.4, which allows Landlord to continue this Lease in effect and to enforce all of Landlord's rights and remedies under this Lease, including the right to recover rent and any other additional monetary charges as they become due, for as long as Landlord does not terminate Tenant's right to possession; provided, however, if Landlord elects to exercise Landlord's remedies described in this subsection (2) and Landlord does not terminate this Lease, and if Tenant requests Landlord's consent to an assignment of this Lease or a sublease of the Premises at such time as Tenant is in default, Landlord shall not unreasonably withhold Landlord's consent to such assignment or sublease. Acts of maintenance or preservation, efforts to relet the Premises or the appointment of a receiver upon Landlord's initiative to protect Landlord's interest under this Lease shall not constitute a termination of Tenant's right to possession.
- (3) The right to terminate this Lease by giving notice to Tenant in accordance with applicable law.

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C. Landlord's Default

If Landlord shall (i) fail to pay prior to delinquency taxes, mortgage payments, ground rent or any other charge or assessment, the lien of which is prior to this Lease (other than those liens in which the lien holder has entered into a non-disturbance agreement with Tenant), or (ii) fail to perform any of Landlord's covenants or conditions of this Lease and Landlord does not cure such default within thirty (30) days (five (5) business days in the event of defaults in the performance of Landlord's Work) after written notice shall have been given to Landlord (or such longer period as may be reasonably necessary to cure such default so long as (A) Landlord initiates such cure within said thirty (30) day period and diligently pursues the same to completion, and (B) such default does not materially and adversely interfere with Tenant's business in the Premises during such longer period), unless such default in the reasonable opinion of Tenant constitutes an emergency in which event Landlord shall have a reasonable period of time to cure such default, then Tenant may, at Tenant's option, in addition to any other remedies available to Tenant at law or equity, incur any expense necessary to perform such obligation of Landlord and deduct such expense from the Minimum Annual Rent and/or Additional Rent first coming due under this Lease, together with interest thereon at the Default Rate (as defined in Section 26.A). If it shall be unlawful to charge Landlord the aforesaid interest rate, then in such event the interest rate shall be the highest rate per annum allowed by law. No consent or waiver, express or implied by Landlord to any breach of any term of this Lease on the part of the Tenant shall be construed as a consent or waiver of any other breach of the same or any term, unless in writing signed by Landlord.

Tenant's notice as to Landlord's default will be sent simultaneously to Landlord and any mortgagee of a mortgage or beneficiary of a deed of trust encumbering the Premises which has requested such notice, provided such mortgagee has first provided Tenant with a non-disturbance agreement. Any such mortgagee or beneficiary of which Landlord has notified Tenant of its address in the manner provided for notices in this Lease will have the right to cure Landlord's defaults under this Section 17.C. In this connection, any representative of the mortgagee or beneficiary shall have the right to enter upon the Premises for the purpose of curing Landlord's default.

Notwithstanding the foregoing Landlord's Default described in Section 17.C.(i), above, if Landlord fails to pay, prior to delinquency, taxes, mortgage payments, ground rent or any other charge or assessments, the lien of which is prior to this Lease (other than those liens in which the lien holder has entered into a non-disturbance agreement with Tenant) as a result of a good faith dispute between Landlord and the lawful payee of such taxes, payments, rents, charges or assessments, Landlord shall not be in default of this Lease if: (1) Landlord pays such taxes, payments, rents, charges or assessments to a court of competent jurisdiction in an interpleader action; and (2) Landlord gives Tenant a ten (10) day advance written notice of Landlord's intent to make interpleader payments.

18. CONDEMNATION

In the event the whole of the Premises and/or the Shopping Center shall be taken by any public or quasi public authority under the power of eminent domain, then this Lease shall automatically terminate without further liability to Tenant. If any portion of the Premises or the Protected Parking Area shall be taken (unless replacement parking of equivalent accessibility and distance from the entry to the Premises is provided, and the Protected Parking Area is redrawn to include those replacement areas), or if so much of the parking facilities shall be so taken that the Shopping Center parking ratio is reduced below the Required Parking Ratio, or, if any material means of ingress to and egress from the Shopping Center from Dalidio Drive, Madonna Road or El Mercado, shall be taken so that reasonable means of ingress and egress for the continued operation of the Shopping Center shall not be available for use by patrons of the Shopping Center, then in any such event Tenant may terminate this Lease without further liability to Tenant, by delivery of written notice to Landlord within thirty (30) days after the date Tenant receives written notice of such taking. Further, if less than whole of the Shopping Center shall be so taken and within one hundred eighty (180) days after the date of such taking Landlord has not repaired and altered the Shopping Center (including, but not limited to, the Common Areas) so that the same is architecturally complete and tenantable and contains not less than seventy-five percent (75%) of the gross leasable area of the Shopping Center as the same existed immediately prior to such taking, and (b) seventy-five percent (75%) of the gross leasable area of the Common Areas to the condition the same existed immediately prior to such taking, Tenant may terminate this Lease without further liability to Tenant, by delivery of written notice of termination to Landlord within thirty (30) days after the expiration of such one hundred eighty (180) day period.

If less than the whole but more than fifty percent (50%) of either the Common Areas or the gross leasable area of the Shopping Center shall be taken by any public or quasi public authority under the power of eminent domain, then Landlord may terminate this Lease by delivering of written notice to Tenant within thirty (30) days after the date the terminating party receives written notice of such taking. In the event Landlord terminates this Lease as provided in this Section 18, (1) Landlord must terminate the leases of all

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tenants of the Shopping Center similarly situated and similarly affected by such taking, and (2) except to the extent Tenant receives an award from the condemning authority, Landlord shall pay to Tenant Tenant's unamortized cost of constructing and performing Tenant's Work in the amount equal to the lesser of: (x) the depreciated amount at which the Tenant's Work are carried on Tenant's books, utilizing a thirty (30) year straight line amortization schedule based upon Tenant's recorded costs of the improvements, or (y) an amount determined by multiplying the original costs of constructing and performing Tenant's Work by a fraction, the numerator of which shall be the number of unexpired Lease Years remaining in the Term of this Lease, including extensions, and the denominator of which shall be the original number of Lease Years of the Term of this Lease, including extensions, less an amount equal to any monetary remuneration Tenant shall have received from the public or quasi public authority as an award for Tenant's Work as a result of such taking. Any termination under this Section 18 shall be effective on the day possession shall be taken by such public or quasi public authority and Minimum Rent and Additional Rent shall be paid up to the day possession is taken with a proportionate refund by Landlord to Tenant of such rent as may have been paid in advance for a period subsequent to the date of the taking of possession.

If the Lease is not terminated as provided in the first paragraph of this Section 18 and a portion of the Premises and/or the Shopping Center is taken by such public or quasi public authority: (i) Tenant shall pay Minimum Rent and Additional Rent up to the day possession is taken by such authority with appropriate refund by Landlord to Tenant of such rent as may have been paid in advance for a period subsequent to the date of taking of the Premises (ii) Landlord shall, at its sole expense, diligently proceed to make all necessary repairs or alterations to (A) the portions of the building pad upon which the Premises are located other than the Premises and Tenant's Work, and (B) the Shopping Center (subject, however, to the seventy-five percent (75%) gross leasable area set forth in the immediately preceding paragraph of this Section 18), so as to make the same complete architectural and tenantable units, and (iii) Tenant shall be entitled to an equitable abatement of Minimum Rent and Additional Rent during such period of repair to the extent the Premises is rendered untenantable thereby during the performance of the restoration work by Landlord described in (ii) above. All rental will resume upon the earlier of (1) one hundred fifty (150) days after the date Landlord has finished its restoration and repair work at the building pad upon which the Premises are located and delivered possession of such building pad to Tenant, whether or not Tenant has finished its work, unless Tenant's delay in finishing its work is caused in any way by Landlord, or (2) the date fifteen (15) days following the date Tenant completes Tenant's Work, or (3) the day Tenant reopens or resumes normal operation of its business in the Premises. The foregoing one hundred fifty (150) day period shall be extended by one (1) day for each day that Tenant is delayed in the performance of its restoration and repair work at the Premises by any matter described in Section 32.L, below. All damages awarded for a taking under the power of eminent domain of all or any part of the Premises or the Shopping Center shall be divided as follows:

- (i) any award for the relocation of Tenant's business, depreciation or damage to and cost of removal of Tenant's personal property, equipment and/or trade fixtures, utilizing a thirty (30) year straight line amortization schedule based upon Tenant's recorded costs of said items, shall belong to and shall be paid to Tenant; and
- (ii) the remaining portion of the award shall be paid to Landlord.

The provisions contained in this Section 18 shall apply in like way to any sale made under imminent threat of a taking under the power of eminent domain.

19. HOLDING OVER

Any holding over after the expiration of the Term, or applicable Option Terms (the "Hold Over Period"), with the consent of Landlord, shall be construed to be a tenancy from month to month and Tenant shall pay to Landlord Minimum Annual Rent in amounts equal to one hundred fifty percent (150%) of the amounts which were payable for the twelve (12) month period immediately preceding the expiration of the Lease (prorated on a monthly basis) unless Landlord shall specify a lesser amount for rent in Landlord's sole discretion, together with an amount estimated by Landlord for the monthly Common Operating Costs payable under this Lease, and shall otherwise be on the terms and conditions herein specified as far as applicable (the "Hold Over Payment"). If Landlord and Tenant are in good faith negotiation during the Hold Over Period, and an agreement is consummated between the parties to continue a Landlord/Tenant relationship, all rental payments under the new agreement ("New Rental Payments") shall be retroactive to the first day of the Hold Over Period. Any Hold Over Payments made by Tenant in excess of the New Rental Payments shall be a credit to the New Rental Payments first coming due, and any deficiency between the New Rental Payments and the Hold Over Payments made during the Hold Over Period shall be paid by Tenant to Landlord with the first New Rental Payments. Acceptance by Landlord of any Minimum Annual Rent, or Additional Rent after the expiration or earlier termination of this Lease shall not constitute a consent to a hold over hereunder, constitute acceptance of Tenant as a tenant at will or result in a renewal of this Lease. Any holding over without Landlord's consent shall constitute a default by Tenant and shall entitle Landlord to re-enter the Premises as provided in Section 15 hereof.

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20. ATTORNEYS' FEES

Tenant shall pay to Landlord all amounts for costs, including, but not limited to, reasonable attorneys fees and amounts paid to any collection agency, incurred by Landlord in connection with any breach or default by Tenant under this Lease or incurred in order to enforce the terms or provisions of this Lease. Such amounts shall be payable upon demand. In addition, if any action shall be instituted by either Landlord or Tenant for the enforcement or interpretation of any of its rights or remedies in or under this Lease, the prevailing party shall be entitled to recover from the losing party all costs incurred by the prevailing party in said action and any appeal therefrom, including reasonable attorneys' fees and court costs to be fixed by the court therein.

21. ASSIGNMENT AND SUBLETTING

A. Assignment, Subletting and Release.

Tenant shall not assign or in any manner transfer this Lease or any estate or interest therein or sublease any part or all of the Premises at any time during the First Partial Lease Year plus the first five (5) full Lease Years (excluding any assignment, transfer or sublease to an "affiliate corporation or entity" of Tenant, as that term is defined below); thereafter, Tenant may do so, but only with Landlord's prior written consent, which consent shall not be unreasonably withheld or delayed. In the event that Tenant, with or without the previous consent of Landlord, does assign or in any manner transfer this Lease or any estate or interest therein or sublease the Premises, Tenant shall not be released from any of Tenant's obligations under this Lease; provided, however, in the event Tenant's assignee, transferee or sublessee has a net worth equal to or greater than Thirty Million Dollars (\$30,000,000.00) and Tenant obtained the prior written consent of Landlord as required in this Section 21, then Tenant shall be fully released from Tenant's obligations under this Lease which arise or accrue after the effective date of the assignment, transfer or sublease. Landlord's consent to any of the foregoing shall not release or waive the prohibition against them thereafter or constitute a consent to any other assignment, transfer, or sublease. Except as otherwise provided in this Section, if this Lease is assigned or if the Premises or any part thereof is transferred, subleased or occupied by anybody other than Tenant, whether with or without Landlord's consent, Landlord may collect from the assignee, sublessee, occupant, licensee, or concessionaire, those rentals and other charges payable by Tenant to the extent set forth in this Lease, and apply the amounts collected to the extent of the rentals and other charges herein reserved, but such collection by Landlord shall not be deemed an acceptance of the assignee, sublessee, occupant, licensee, or concessionaire as Tenant nor a release of Tenant from the performance by Tenant of this Lease, except as otherwise specifically provided in this Section 21.A.

B. Required Information for Approval.

If Tenant desires at any time to enter into an assignment, or a sublease of the Premises or any portion thereof, which requires Landlord's consent pursuant to Section 21.A. above, Tenant shall request in writing, at least sixty (60) days prior to the effective date of the assignment or sublease, Landlord's consent to the assignment or sublease, and provide the following: (a) the name of the proposed assignee, subtenant or occupant, (b) the nature of the proposed assignee's, subtenant's or occupant's business to be carried on in the Premises and such transferee's experience in such business, (c) the terms and provisions of the proposed Assignment or Sublease, and (d) such reasonable financial information concerning the proposed assignee, subtenant or occupant which Landlord shall have requested following Landlord's receipt of Tenant's request for consent to evaluate the assignee or subtenant's net worth.

C. Criteria for Approval.

At any time within thirty (30) days after Landlord's receipt of the notice specified in subparagraph B., above, Landlord may by written notice to Tenant elect either to: (a) consent to the proposed assignment or sublease, or (b) refuse to consent to the proposed assignment or sublease. Landlord and Tenant agree (by way of example and without limitation) that it shall be reasonable for Landlord to withhold Landlord's consent if any of the following situations exist or may exist: (i) in Landlord's reasonable business judgment, the proposed transferee lacks sufficient business experience to operate a successful business of the type and quality permitted under this Lease, (ii) Tenant is in material default beyond any applicable period to cure such default pursuant to this Lease, (iii) the assignment would breach any covenant of Landlord respecting radius, location, use or exclusivity in any other lease or other agreement relating to the Shopping Center (excepting Tenant's Permitted Use), or (iv) the nature of the proposed transferee's proposed or likely use of the Premises would impose a materially increased burden on the Common Areas or involve any increased risk of the presence, use, release or discharge of Hazardous Materials.



D. Consent.

If Landlord consents to the sublease or assignment within said thirty (30) day period, Tenant may enter into such assignment or sublease of the Premises or portion thereof, but only upon the terms and conditions set forth in the notice furnished by Tenant to Landlord pursuant to subparagraph B.

E. No Release of Tenant.

Except as provided in Section 21.A. hereof, no consent by Landlord to any assignment or sublease by Tenant shall relieve Tenant of any obligation to be performed by Tenant under this Lease, whether arising before or after the assignment or sublease. The consent by Landlord to any assignment or sublease shall not relieve Tenant of the obligation to obtain Landlord's express written consent to any other assignment or sublease. Any assignment or sublease that is not in compliance with this Section 21 shall be void and, at the option of Landlord, shall constitute a material default by Tenant under this Lease. The acceptance of rent or payment of any other monetary obligation by Landlord from a proposed assignee or sublessee shall not constitute the consent by Landlord to such assignment or sublease.

F. Tenant's Affiliates.

Notwithstanding anything contained herein to the contrary, Tenant may, without the necessity of the consent of, but subject to Tenant providing written notice thereof to Landlord, at any time assign, sublease, or otherwise transfer this Lease or any portion thereof to any parent, subsidiary, or affiliate corporation or entity; any corporation resulting from the consolidation or merger of Tenant into or with any other entity; or any person, firm, entity, or corporation acquiring a majority of Tenant's issued and outstanding capital stock or all or substantially all of Tenant's assets. As used herein, the expression "affiliate corporation or entity" means a person or business entity, corporate, or otherwise, that directly or indirectly through one or more intermediaries, controls or is controlled by or is under control with Tenant. The word "control" means the right and power, direct or indirect, to direct or cause the direction of the management and policies of a person or business entity, corporation, or otherwise. Notwithstanding anything contained herein to the contrary, in no event shall Landlord be entitled to claim any portion of any rent or other charges or consideration whatsoever paid to Tenant by any parent, subsidiary, or affiliate corporation or entity pursuant to an assignment or sublease of this Lease related to any portion of the Premises, including, without limitation, any rent or other charges or consideration paid in connection with such assignment or sublease.

G. Joint Liability.

Each assignee, or other transferee, other than Landlord, shall assume, as provided in this subparagraph G, all obligations of Tenant under this Lease and shall be and remain liable jointly and severally with Tenant for the payment of Minimum Annual Rent and all other monetary obligations hereunder, and for the performance of all the terms, covenants, conditions and agreements herein contained on Tenant's part to be performed for the Term. No assignment, transfer or sublease shall be binding on Landlord unless prior written consent by Landlord as required in this Section 21 has been obtained by Tenant, and until the assignee or Tenant shall have delivered to Landlord a counterpart of the Assignment and an instrument in recordable form that contains a covenant of assumption by the assignee satisfactory in substance and form to Landlord, consistent with the requirements of this subparagraph G., but the failure or refusal of the assignee to execute such instrument of assumption shall not release or discharge the assignee from its liability as set forth above.

H. Administrative Costs.

Tenant shall pay Landlord's actual reasonable attorneys' fees and other expenses up to a maximum of Five Hundred Dollars (\$500.00) incurred in connection with each such proposed transfer (other than related to transfers not requiring Landlord's consent) to cover the legal review and processing expenses of Landlord, whether or not Landlord shall grant Landlord's consent to such proposed transfers.

22. MORTGAGE PROTECTION/SUBORDINATION

A. Subordination

The rights of Tenant under this Lease are and shall be, at the option of Landlord, either subordinate or superior to the interest created by any mortgage or deed of trust (including a consolidated mortgagee or deed of trust) constituting a lien on the Premises or Landlord's interest therein or any part thereof, whether such mortgage or deed of trust has heretofore been, or may hereafter be, placed upon the Premises by Landlord, and to any ground or master lease if Landlord's title to the Premises or any part thereof is or shall become a leasehold interest. To further assure the foregoing subordination or superiority, Tenant shall, upon Landlord's request, together with the request of any mortgagee under a mortgage or beneficiary under a deed



of trust or ground or master lessor, execute any instrument or instruments intended to subordinate this Lease, or at the option of Landlord, to make it superior to the interest created by any mortgage, deed of trust, or ground or master lease. Notwithstanding any such subordination, Tenant's right to occupy the Premises pursuant to this Lease shall remain in effect for the full Term, and applicable Option Terms so long as Tenant is not in material default beyond any applicable time to cure such default hereunder.

B. Attornment

Notwithstanding the provisions of A. Subordination next above, Tenant agrees (1) to attorn to any mortgagee of a mortgage or beneficiary of a deed of trust encumbering the Premises and to any party acquiring title to the Premises by judicial foreclosure, trustee's sale, or deed in lieu of foreclosure, and to any ground or master lessor, as the successor to Landlord hereunder, (2) to execute any attornment agreement reasonably requested by a mortgagee, beneficiary, ground or master lessor, or party so acquiring title to the Premises, and (3) that this Lease, subject to the rights under any outstanding non-disturbance agreement shall remain in force notwithstanding any such judicial foreclosure, trustee's sale, deed in lieu of foreclosure, or merger of titles. Notwithstanding the foregoing, neither a mortgagee of a mortgage or beneficiary of a deed of trust encumbering the Premises, any party acquiring title to the Premises by judicial foreclosure, trustee's sale, or deed in lieu of foreclosure, or any ground lessor or master lessor, as the successor to Landlord hereunder, shall be liable or responsible for any breach of a covenant contained in this Lease that occurred before such party acquired its interest in the Premises and no such party shall be liable or responsible for any security deposits held by Landlord hereunder which have not been transferred or actually received by such party, and such party shall not be bound by any payment of rent or Additional Rent for more than two (2) months in advance, however, in no event shall such party be relieved of its obligations to remedy any failure of duty by the Landlord which is subsisting when such receiver acquires Landlord's interest in the Premises.

C. Non-disturbance

Landlord, within thirty (30) days after Landlord's and Tenant's execution of this Lease as a precondition to Tenant's obligations under this Lease shall provide Tenant with an executed non-disturbance agreement substantially in the form of Exhibit G attached hereto and incorporated herein by this reference, with such changes thereto as reasonably may be required by any mortgagee of Landlord or other party holding an interest in the Shopping Center, as reasonably accepted by Tenant in writing, from any and all existing mortgagees, holders of deeds of trust, and any other parties holding an interest in the Shopping Center or the Premises; and thereafter, Landlord shall similarly provide Tenant with executed non-disturbance agreements from any and all future mortgagees, holders of deeds of trust, and any other parties holding an interest in the Shopping Center or Premises, within thirty (30) days after the date said parties obtain such an interest.

23. TRANSFER OF LANDLORD'S INTEREST / ESTOPPEL CERTIFICATE / FINANCIAL STATEMENTS

A. Estoppel Certificate

Landlord and Tenant, at any time and from time to time upon not less than twenty (20) days' prior written notice from the other, agrees to execute and deliver to the other a statement (a) certifying that this Lease is unmodified and in full force and effect, or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect and the date to which the rent and other charges are paid in advance, if any; (b) acknowledging that there are not, to such party's knowledge, any uncured defaults on the part of Landlord hereunder, or specifying such defaults if they are claimed evidencing the status of this Lease; and (c) as to such other matters as may be reasonably requested.

B. Furnishing of Financial Statements

Landlord has reviewed financial statements if so requested of the Tenant and has relied upon the truth and accuracy thereof with Tenant's knowledge and representations of the truth and accuracy of such statements and that said statements accurately and fairly depict the financial condition of Tenant. Said financial statements are an inducing factor and consideration for the entering into of this Lease by Landlord with this particular Tenant. Tenant shall, from time to time, upon Landlord's reasonable request therefore, furnish Landlord with printed or electronic financial statements reflecting Tenant's and Guarantor's then financial condition by consolidated financials of Tenant and Guarantor (or by separate financials if Tenant has the same).

C. Liability of Transferee

In the event Landlord shall sell or otherwise convey Landlord's title to the Premises and Landlord's purchaser or grantee expressly assumes, in writing, all obligations and liabilities of Landlord, after the effective date of such sale or conveyance Landlord shall have no further liability under this Lease to Tenant except as to matters of liability which have accrued and are unsatisfied as of the date of sale or conveyance, and Tenant shall seek performance solely from Tenant's purchaser or successor in title.



24. PARKING

Landlord agrees to maintain or cause to be maintained an automobile parking area and to maintain and operate, or cause to be maintained and operated, said automobile parking area during the Term, and applicable Option Terms of this Lease for the benefit and use of the customers, service suppliers, other invitees and employees of Tenant. Whenever the words "automobile" or "parking area" are used in this Lease, it is intended that the same shall include, whether in a surface parking area or a parking structure, the automobile parking stalls, driveways, loading docks, truck areas, service drives, entrances and exits and sidewalks, landscaped areas, pedestrian passageways in conjunction therewith and other areas designed for parking. Landlord shall keep said automobile parking area in a neat, clean and orderly condition, lighted and landscaped, and shall repair any damage to the facilities thereof (subject to the provisions of Section 11A above), the cost of which shall be included in Common Operating Costs as defined in Section 12 above. Landlord shall also have the right to establish such reasonable rules and regulations as may be deemed desirable, at Landlord's sole discretion, for the proper and efficient operation and maintenance of said automobile parking area.

Landlord shall at all times during the Term, and applicable Option Terms hereof, have the sole and exclusive control of the automobile parking area (subject to the terms and conditions of the CC&Rs), and may at any time during the Term, and applicable Option Terms hereof, exclude and restrain any person from use or occupancy thereof; excepting, however, Tenant and employees, customers, service suppliers and other invitees of Tenant and of other tenants in the Shopping Center who make use of said area in accordance with any rules and regulations established by Landlord from time to time with respect thereto. Landlord also shall have the right to prescribe and restrict parking by designating certain parking areas to be used by Landlord's tenants and their respective employees, agents, representatives and licensees. It is understood that areas designated for employee parking may be located in those portions of the parking area most distant from the lease buildings within the Shopping Center. The rights of Tenant and Tenant's employees, customers, service suppliers and invitees referred to in this Section shall at all times be subject to (i) the rights of Landlord and other tenants in the Shopping Center to use the same in common with Tenant and Tenant's employees, customers, service suppliers and invitees, and (ii) the availability of parking spaces in said automobile parking area.

At all times during the Term and any Option Term, Landlord shall maintain exclusively for vehicular parking the area as approximately outlined on Exhibit A containing at least one hundred fifty (150) parking spaces and referred to in this Lease and on Exhibit A as the "Protected Parking Area", and shall not interfere with, change the use of, or build or construct any improvements thereupon which would reduce the number of parking spaces thereon or which would adversely affect access to or visibility of the Premises. Nothing in this Lease shall be deemed to designate the Protected Parking Area as an exclusive parking area for the use of Tenant and Tenant's invitees only. Further, Landlord agrees to maintain a parking ratio for the Shopping Center of at least the greater of three and eighty-seven hundredths (3.87) parking spaces per one thousand (1,000) square feet of gross leasable area in the Shopping Center, or the minimum parking ratio required for the Shopping Center under any applicable governmental law, ordinance, or rule (the "Required Parking Ratio"). Further Landlord agrees that Landlord will provide signage on four (4) parking spaces immediately in front of the Premises that will indicate said parking spaces are for "take-out" customers only.

25. SIGNS

Tenant may erect and maintain only such signs as consented to by Landlord. In the event Landlord consents to Tenant placing a sign on or about the Premises, or the building in which the Premises are located, any such sign shall (i) be subject to Landlord's approval of the color, size, style and location of such sign, (ii) conform to any future or current sign criteria established by Landlord or the CC&Rs for signs in the Shopping Center or Project and (iii) comply with all laws, ordinances, orders, codes, rules and regulations of all governmental agencies asserting jurisdiction over the Shopping Center or Project. Upon the expiration or earlier termination of the Term, Tenant agrees to remove, at Tenant's sole cost and expense, all signs, names and insignia from the Premises or the building in which the Premises are located, and shall promptly repair any damage to the Premises or the building in which the Premises are located resulting from such removal.

Except as otherwise consented to by Landlord, Tenant shall not affix upon the Premises, the building of which the Premises are a part or anywhere in the Common Areas or in any interior portions of the Premises that may be visible from the exterior of the building, signs, advertising placard, name, insignia, trademark, descriptive material or any other similar item without Landlord's prior written consent, which consent shall not be unreasonably withheld or unduly delayed.



Notwithstanding anything to the contrary set forth above, but subject to Tenant's compliance with the provisions of clause (iii) of the first paragraph of this Section 25, Tenant may, in Tenant's discretion, and at Tenant's expense, and subject to applicable laws and ordinances, install and throughout the Term, and applicable Option Terms of this Lease maintain Tenant's standard sign on the front sign band and all sides of the Premises with individually illuminated letters consistent with the Master Sign Program attached hereto as Exhibit I and incorporated herein by reference. In addition, Tenant shall have the right to use a portion of the existing Shopping Center billboard sign (controlled by Landlord) if said signage is available and Tenant agrees to pay its pro rata share of costs incurred for said billboard sign use. In addition, Tenant shall be allowed signage on the monument to be located at the corner of El Mercado and Madonna Road, which signage is approved and attached hereto as Exhibit I (said monument sign will contain ten (10) full panels and four (4) half panels when counting both sides, and Tenant shall have the right to two (2) half panels and Tenant will pay for the cost of its panels and its prorata share of the costs for designing, permitting, constructing, maintaining and insuring such sign). In addition, Landlord acknowledges that Tenant may petition, at Tenant's sole cost and expense, the applicable governmental authorities for approval of, in lieu of the two (2) half panels, one (1) full size panel on said monument sign and Landlord agrees to cooperate with and assist Tenant in its efforts. In no event shall Tenant have any right to any approved pylon or monument sign along the freeway. Tenant may hang professionally prepared "coming soon" and "now open" banners on the front and each side of the Building within thirty (30) days of opening for business or erect a temporary street monument, subject to all applicable governmental approvals. The location and size of Tenant's signage on the Premises and monument is shown on the drawings attached hereto as Exhibit I and incorporated herein by this reference. Notwithstanding the foregoing or the attached Exhibits, Tenant will in any event be allowed maximum signage permitted by applicable law.

26. LATE PAYMENTS; INTEREST AND LATE CHARGES

A. Interest

Any amount due from Tenant to Landlord which is not paid when due shall bear interest at the annual rate of two percent (2%) over the rate then announced by Chase Manhattan Bank as its base or prime rate ("**Default Rate**") from ten (10) days following Landlord's written notice to Tenant that such payment is due until paid, except that amounts spent by Landlord on behalf of Tenant shall bear interest at such rate from the date of disbursement by Landlord.

B. Late Charges

Tenant acknowledges that late payment of rent by Tenant to Landlord will cause Landlord to incur costs not contemplated by this Lease, including without limitation, administrative and collection costs and processing and accounting expenses, the exact amount of such costs being extremely difficult and impracticable to fix. Therefore, in addition to interest, Tenant shall pay to Landlord, as Additional Rent, a late charge equal to Three Hundred Dollars (\$300.00) concurrently with any rent payment received by Landlord ten (10) or more days after such rent payment is due. The foregoing late charge, for the first late payment by Tenant during any calendar year, shall be disclaimed by Landlord.

C. No Waiver

Neither assessment nor acceptance of interest or late charges by Landlord shall constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of Landlord's other rights and remedies under this Lease. Nothing contained in this Section shall be deemed to condone, authorize, sanction or grant to Tenant an option for the late payment of rent, Additional Rent or other sums due hereunder, and Tenant shall be deemed in default with regard to any such payments should the same not be made by the date on which they are due.

27. BROKER

Tenant warrants and represents that it has not dealt with any real estate broker or agent in connection with this Lease or Tenant's negotiation except the Brokers identified in Item 16. of the Basic Lease Provisions. Tenant shall indemnify and hold Landlord harmless from any cost, expense or liability (including costs of suit and reasonable attorneys' fees) for any compensation, commission or fees claimed by any other real estate broker or agent in connection with this Lease or Tenant's negotiation by reason of any action or inaction of Tenant.

Landlord warrants and represents that it has not dealt with any real estate broker or agent in connection with this Lease or Landlord's negotiation except the Brokers identified in Item 16. of the Basic Lease Provisions whose commissions shall be paid by Landlord as provided in said Item 16. Landlord shall indemnify and hold Tenant harmless from any cost, expense or liability (including costs of suit and reasonable attorneys' fees) for any compensation, commission or fees claimed by any other real estate broker or agent in connection with this Lease or Landlord's negotiation by reason of any action or inaction of Landlord.



28. NO PERSONAL LIABILITY OF LANDLORD

The term "Landlord" as used in this section shall mean the fee owner of the Shopping Center, and in the event of transfer by such owner of its interest in the Shopping Center, such owner shall thereupon be released and discharged from all covenants and obligations of the Landlord thereafter accruing under this Lease, but such covenants and obligations shall be binding upon each new owner for the duration of such owner's ownership during the Lease Term. Notwithstanding any other provision hereof, Tenant acknowledges and agrees with Landlord that Landlord shall not have any personal liability under this Lease or arising out of the relationship of the parties created thereby for any damage or liability of any kind or for injury to or death of persons or damage to property of Tenant or any other person occurring from and after substantial completion of Landlord's Work at the Premises, from any cause whatsoever related to the use, occupancy, or enjoyment of the Premises by Tenant or any person thereon or holding under Tenant, including, but not limited to, damages resulting from a breach or default by Landlord in any term or provisions of this Lease. Tenant agrees to look solely to the rents, insurance recoveries and proceeds related thereto, and the proceeds from the sale of the Shopping Center and to the equity then owned by Landlord in the land and improvements which constitute the Shopping Center. Any judgments rendered against Landlord shall be satisfied solely out of the income, rents, insurance recoveries and proceeds related thereto, from the operation of the Shopping Center and from any proceeds of sale of Landlord's interest in the Shopping Center and as set forth herein. However, in no event shall any personal or deficiency judgment or any monetary judgment of any kind be sought or obtained against Landlord or any of Landlord's other assets except for all Landlord's right, title, and interest in the Shopping Center. These provisions are not designed to relieve Landlord from the performance of any of Landlord's obligations under this Lease, but only to limit the personal liability of the Landlord in case of recovery of a judgment against Landlord. These provisions shall inure to the benefit of Landlord's successors and assigns and shall survive the expiration or earlier termination of this Lease.

29. NOTICES

Any notice, demand, approval, consent, bill, statement or other communication required or desired to be given under this Lease shall be in writing and directed to Landlord at Landlord's Address for Notice or to Tenant at Tenant's Address for Notice, as set forth in Items 17. and 18., respectively, of the Basic Lease Provisions, and shall be personally served or given by nationally recognized overnight messenger service or United States mail, and shall be deemed to have been received upon receipt of delivery, or, if mailed, when three (3) business days have elapsed from the date of the deposit into the United States mail, certified and postage prepaid.

30. QUIET ENJOYMENT

Upon payment by the Tenant of the rents herein provided and upon the observance and performance of all other covenants, terms and conditions on Tenant's part to be observed and performed, Tenant shall quietly enjoy the Premises without hindrance or interruption by Landlord or anyone claiming through Landlord. Landlord represents and warrants that: (i) Landlord has good and marketable leasehold title to the Shopping Center; (ii) the Shopping Center, as of the date of this Lease, is not subject to the lien of any deed of trust, mortgage or other similar encumbering instrument, except Bank of America (which representation and warranty shall not, subject to the provisions of Section 22 of this Lease, restrict in any way Landlord's right to subsequently modify such current lien or further encumber the Shopping Center with any future liens as may be desired by Landlord at its sole discretion); (iii) Landlord has the full and unencumbered power, right and authority to make this Lease for the Term hereof; (iv) Landlord will put Tenant into complete and exclusive possession of the Premises, subject only to easements, covenants, restrictions, agreements or other matters of record which affect the Premises; (v) the Shopping Center contains adequate parking facilities required by applicable codes or ordinances for the Shopping Center and the Premises as constructed and operated in accordance with the provisions of this Lease, the CC&R's and Tenant's Plans, and (vi) as of the date of this Lease, the Shopping Center, including, but not limited to, the Premises, are in compliance with all applicable federal, state and local statutes, codes, ordinances and rules (other than those compliance failures not affecting Tenant's business).

31. [INTENTIONALLY DELETED.]

32. GENERAL

A. Paragraph Headings

The paragraph headings used in this Lease are for the purposes of convenience only. They shall not be construed to limit or to extend the meaning of any part of this Lease.



B. Incorporation of Prior Agreements; Amendments

This Lease contains all agreements of Landlord and Tenant with respect to any matter mentioned, or dealt with, herein. No prior agreement or understanding pertaining to any such matter shall be binding upon Landlord. Any amendments to or modifications of this Lease shall be in writing, signed by the parties hereto, and neither Landlord nor Tenant shall be liable for any oral or implied agreements.

C. Waiver

Waiver by Landlord of any breach of any term, covenant, or condition contained in this Lease shall not be deemed to be a waiver of such term, covenant, or condition or of any subsequent breach of the same or of any other term, covenant, or condition contained in this Lease. Landlord's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Landlord's consent to, or approval of, any subsequent act by Tenant. The acceptance of rent or other sums payable hereunder by Landlord shall not be a waiver of any preceding breach by Tenant of any provision hereof, other than failure of Tenant to pay the particular rent or other sum so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such rent, or sum equivalent to rent.

D. Short Form

Upon the request of Tenant, Landlord and Tenant agree to execute, deliver, and acknowledge a short form of this Lease in substantially the same form as <u>Exhibit H</u> attached hereto and record such short form in the county where the Premises are located with the cost of recording to be the exclusive responsibility of Tenant.

E. Time of Essence

Time is of the essence in the performance of each provision of this Lease.

F. Examination of Lease

Submission of this instrument for examination or signature by Landlord or Tenant does not constitute a reservation of or option for lease, and it is not effective as a lease or otherwise until execution by and delivery to both Landlord and Tenant.

G. Severability

If any term or provision of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

H. Surrender of Lease Not Merger

Neither the voluntary or other surrender of the Lease by Tenant nor the mutual cancellation thereof shall cause a merger of the titles of Landlord and Tenant, but such surrender or cancellation shall, at the option of Landlord, either terminate all or any existing subleases or operate as an assignment to Landlord of any such subleases.

I. Corporate Authority

If Tenant is a corporation, each individual executing this Lease on behalf of Tenant represents and warrants (1) that he is duly authorized to execute and deliver this Lease on behalf of Tenant in accordance with a duly adopted resolution of the board of directors of Tenant in accordance with the by-laws of Tenant and (2) that this Lease is binding upon and enforceable by Landlord against Tenant in accordance with its terms.

J. Bankruptcy

If Landlord shall not be permitted to terminate this Lease because of the provisions of Title 11 of the United States Code relating to Bankruptcy, as amended ("Bankruptcy Code"), Tenant, as a debtor-in-possession or any trustee for Tenant, agrees promptly, within no more than fifteen (15) days upon request by Landlord to the Bankruptcy Court, to assume or reject this Lease, and Tenant on behalf of itself and any trustee agrees not to seek or request any extension or adjournment of any application to assume or reject this



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Lease by Landlord with such Court. In no event after the assumption of this Lease shall any then existing default remain uncured for a period in excess of the earlier of ten (10) days or the time period set forth herein. In the event of a filing of a petition under the Bankruptcy Code, Landlord shall have no obligation to provide Tenant with any services or utilities as herein required unless Tenant shall have paid and is current in all payments of operating charges for Common Operating Costs and other charges for services.

K. Advertising and Promotion

Nothing in this Lease shall require Tenant to: (i) participate in any joint advertising or promotional event; (ii) become a member of any merchants association or promotion fund concerning the Shopping Center; or (iii) contribute more than Fifty and No/100 Dollars (\$50.00) in any month during the Term or any Option Term for any such merchant's association or promotional fund. Notwithstanding any other provision of this Lease, procedures for promotions and Landlord's restrictions on solicitation and distribution in Common Areas pursuant to this Lease will be applicable uniformly to all tenants of Landlord. If Landlord elects (in its sole discretion) to permit tenants to conduct such promotions and solicitations or distributions, Tenant will be permitted to do so in compliance with all reasonable rules adopted by Landlord to govern tenants' rights to conduct such activities.

L. Delays

In the event that either party hereto shall be delayed, or hindered in, or prevented from the performance of any act required hereunder by reason of acts of God, strikes, lockouts, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, war, acts (or failure to act) of government (provided timely application and diligent prosecution for such governmental action, if required was undertaken by the delayed party) or other reason of like nature not the fault of, or within the control of, the party delayed in performing work or doing acts required under the terms of this Lease, then performance of such work or act shall be excused for the period of the delay and the period for the performance of any such work or act shall be extended for a period equivalent to the period of such delay. This provision shall not operate to excuse Tenant from prompt payment of Minimum Annual Rent or Additional Rent, or any other payments required by the terms of this Lease, unless the Lease Commencement Date or periods permitting Tenant to abatement of rent are postponed or extended by such delays.

M. Temporary Space.

For not more than sixty (60) days prior to the Lease Commencement Date, Landlord shall allow Tenant to use vacant space (if any exists within the Shopping Center) for the purpose of interviewing and training prospective employees. Tenant shall pay for utilities and insurance, but will pay no Minimum Rent or other charges for this temporary space. In addition, Tenant agrees to vacate said space within ten (10) business days of prior written notice from Landlord.

N. Cotenancy.

Notwithstanding anything in this Lease to the contrary, in the event during any period of the Term or any Option Term (i) less than fifty percent (50%) of the gross leasable area of the Shopping Center is occupied by tenants of the Shopping Center who during such period are regularly open for business and operating their respective leased premises for retail purposes shall cease regular and continuous operation of their respective leased premises for retail purposes for, and is not replaced within twelve (12) consecutive months, and (ii) Tenant's Gross Sales for such period of time decreases by ten percent (10%) or more as compared to Tenant's Gross Sales over the same twelve (12) month period in the preceding calendar year (the occurrence of items (i) and (ii) shall be referred to hereinafter as "Cotenancy Period"), then under the occurrence of such Cotenancy Period, Tenant, at its option exercised by delivering fifteen (15) day prior written notice to Landlord, shall be entitled to pay to Landlord, in lieu of Minimum Rent and Additional Rent during such Cotenancy Period, commencing on the next scheduled rental payment date, a monthly gross rental for the Premises equal to two percent (2%) of Tenant's Gross Sales (as such term is defined in Section 8A above) during any such Cotenancy Period ("Gross Rental"). Tenant shall pay any such Gross Rental to Landlord monthly, on or before the fifteenth (15th) day of the month following each calendar month, or part thereof, occurring during a Cotenancy Period. Tenant shall deliver to Landlord a monthly statement of Tenant's Gross Sales with respect to any Cotenancy Period concurrent with the Gross Rental. The Gross Sales statement shall be signed by an authorized accounting employee of Tenant to be correct. Landlord shall have the right to audit Tenant's books and records for the purpose of determining the accuracy of such statement, in the same manner as provided in Section 8A above. Any right of setoff, abatement or deduction in favor of Tenant with respect to Minimum Rent and/or Additional Rent as provided in this Lease shall similarly apply to any Gross Rental payable by Tenant during any Cotenancy Period. At any time after six (6) months from the date that Landlord receives Tenant's written notice of its election to pay Gross Rental, Landlord may provide Tenant with a written demand that Tenant recommence paying Minimum Rent and Additional



Rent pursuant to Section 4 of this Lease. Within thirty (30) days of receiving such demand, Tenant shall elect either to terminate this Lease within sixty (60) days following receipt of said notice or recommence paying Minimum Rent and Additional Rent as provided herein.

O. Disclaimer.

No provision of the Lease will be construed as a limitation on Tenant's right to conduct business in other locations. There is no express or implied radius restriction or covenant of operation. There is no percentage rent (except in instances otherwise set forth in this Lease wherein Tenant utilizes a percentage rent format as, in whole or in part, a remedy for certain conditions and/or Landlord default(s)).

P. Governing Law

This Lease will be governed and construed in accordance with the laws of the State of California.

33. EXECUTION

This Lease may be executed in several duplicate counterparts, each of which shall be deemed an original of this Lease for all purposes.

34. SEPARATE PARCELS

Notwithstanding anything apparently to the contrary in this Lease (specifically including, without limitation, Section 23), not the fact of: (a) the building pad upon which the Premises are located becoming a separate parcel for real estate tax purposes or otherwise, nor (b) such building pad or the Shopping Center being sold or conveyed in any manner, nor (c) such building pad in any manner coming into a state of separate ownership with respect to the remainder of the Shopping Center, shall in any manner affect (i) the calculations of Additional Rent, Taxes or Tenant's Proportionate Share of Common Operating Costs as set forth in this Lease, (ii) the liability and obligations of Landlord (and its successor(s) and assign(s) to comply with the provisions of this Lease with regard to the Project, the Shopping Center and the Premises, or (iii) Tenant's rights as provided in this Lease with respect to the Premises, the Shopping Center and the Project.

"LANDLORD"

"TENANT"

MBK SOUTHERN CALIFORNIA LTD., a California limited partnership,

TAHOE JOE'S, INC., a Delaware corporation

By: MBK Southern California, Inc., a California corporation,

its sole general partner

By: Print:

Its:

By: —
Print:

Its:

Michael H. Voss

By: Print:

H. Thomas Mitchell

Its:

Secretary

By:

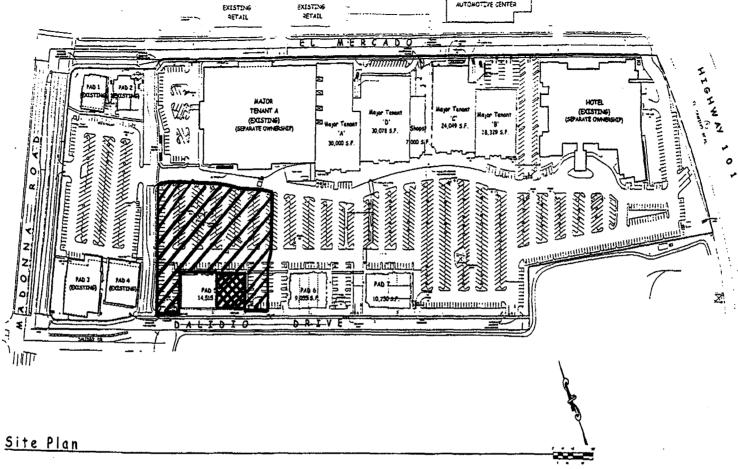
Print: Clark C. Grant

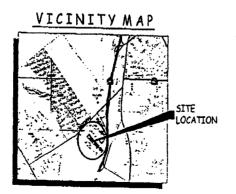
Its:

Chief Financial Officer















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EXHIBIT B INTENTIONALLY DELETED



EXHIBIT C CONSTRUCTION WORK LETTER

By the Tender Date, the building pad upon which the Premises are located must be graded and compacted in the manner described below and there is Substantial Completion of Landlord's Work as provided in Section 3.D of the Lease. Notwithstanding the foregoing, Landlord shall have (i) until and including June 10, 2000, to cause all utilities to be installed and ready for use; (ii) until and including July 10, 2000, to complete all curbing on the building pad upon which the building of which the Premises are a part will be located; and (iii) until and including August 20, 2000, to complete the remainder of Landlord's Work and the parking areas adjacent to such building pad. In the event Landlord shall fail to perform any of Landlord's Work by said dates, Tenant shall have such remedies as provided in Section 3.D. and 17.C. of the Lease.

LANDLORD'S WORK

Landlord agrees to provide the following in a location as shown on the point of connection plan attached hereto as <u>Exhibit C-1</u> and in a location as directed by Tenant:

- a. <u>Electrical</u>: Twelve hundred (1200) amp electrical service at 120/208 volts, three (3) phase.
- b. <u>Temporary Electrical</u>: Temporary electrical service of two hundred (200) amps at 120/208 volts within one hundred (100) feet of the building of which the Premises are a part during construction.
- c. Gas: A gas line capable of supplying three (3) million BTU's of natural gas at a pressure equal to a seven (7) inch water column with meter. Tenant acknowledges that the capacity of such gas line is strictly dependent upon the gas company's approval and installation of the same; provided, however, Tenant has been told by the gas company that they will provide the foregoing and Landlord agrees to use commercially reasonable efforts to compel the gas company to provide the same.
- d. <u>Telephone Service Lines</u>: Provide two (2) inch conduit and pull string from main service. Tenant requires up to ten (10) lines.
- e. <u>Fire Service</u>: A six (6) inch water supply line at a pressure equal to fifty (50) pounds to be shared with the balance of "Pad 5" as depicted on <u>Exhibit A</u> of the Lease.
- f. Water: A two (2) inch water supply line at a pressure equal to sixty (60) pounds.
- g. <u>Irrigation</u>: Provide tie into the existing Shopping Center's irrigation maintained by Landlord or if no irrigation system exists, provide a one and one-half (1½) water supply line at pressure equal to sixty (60) pounds.
- h. Sanitary Sewer:

 A minimum four (4) inch dedicated sewer line. Tenant acknowledges that the sewer size, depth and location proposed on Landlord's drawing dated January 20, 2000 labeled C-7 a portion of which is attached hereto as Exhibit C-2 is acceptable. Tenant agrees that the grease trap to be designed and installed by Tenant shall be located in the location as shown on Exhibit C-2 or in such other location as mutually agreed upon by Landlord and Tenant.
- i <u>Storm Sewer</u>: Storm water drainage and retention of adequate size and capacity to accommodate parking lot and roof drainage of Tenant's improvements.
- j. Fees: Tenant will be responsible for all improvement/modification fees, including, but not limited to, city, state and local sewer and water hook-up/connection fees, as well as fees associated with conveyance, traffic, impact and treatment. Landlord shall disclose to Tenant and Tenant shall have rights to sewer and water access credits available to Landlord from the municipalities.
- k. <u>Site Preparation</u>: All site preparation of the building pad upon which the Premises are located and Common Areas adjacent thereto shall be completed as necessary, including, without limitation, grading, paving, curbs, striping, site lighting, public conveyance sidewalks, landscaping and irrigation as necessary. The pad shall be delivered within 1/10 of one foot of the elevation recommended in the applicable

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civil engineer's drawings. Site to be compacted by Landlord in compliance with recommendations set forth in Landlord's geo-technical report (which compaction Landlord represents and warrants to Tenant will be in compliance with the December 23, 1998 report prepared by Earth Systems Consultants Northern California, as such report may be amended from time to time, so long as the building pad upon which the Premises are to be located is delivered to Tenant at an elevation of 133.83 feet above sea level and at a compaction of between 90-95%) and the site shall be free of any and all substructures, debris, etc.

l. <u>Hazardous Materials</u>: Such building pad will be free of all Hazardous Materials upon delivery to Tenant as provided in the Lease.

Tenant agrees to reimburse Landlord for certain costs incurred by Landlord upon the substantial completion of Landlord's Work and Landlord's written request therefor, in an amount equal to Seventy-Nine Thousand One Hundred Forty-Two and No/100 Dollars (\$79,142.00) within thirty (30) days following substantial completion of Landlord's Work and Landlord's written request therefor. Tenant will have the right to withhold up to ten percent (10%) of the aforementioned amount to be paid to Landlord to assure prompt completion of the remaining items as shown on a "punch-list" relating to any uncompleted Landlord's Work.

TENANT'S WORK

Tenant agrees that following the later to occur of (A) the Tender Date, or (B) upon Tenant's receipt of necessary permits and approvals for Tenant's Work, Tenant shall, at Tenant's sole expense, proceed with reasonable diligence to (i) perform all fixturing work required to prepare the Premises for the conduct of Tenant's business therein (collectively "Tenant's Work"). Tenant shall have the reasonable right of access to the Common Areas (as defined in Section 12.A.) of the Shopping Center (including, but not limited to, the reasonable right to excavate in the portions of the Common Areas adjacent or nearby the Premises and do related work) for the purpose of constructing Tenant's Work. Tenant's Work and any alteration or addition, together with all repairs required to be made by Tenant pursuant to this Lease, shall be made in a good and workmanlike manner and in compliance with all applicable federal, state and local codes and ordinances. Tenant agrees that it shall use reasonable efforts to construct Tenant's Work in such a manner as to reasonably minimize disturbance to other tenants and occupants of the Shopping Center.

It is understood and agreed that upon Tenant's or its employees, agents or contractors entering such building pad prior to the Lease Commencement Date, for any purpose, including without limitation, the construction of Tenant's Work, all of the covenants and conditions of this Lease shall apply to the parties as if the Lease Term had begun at such time with the exception of those provisions as to Minimum Rent, Additional Rent and any other charges payable by Tenant, which shall go into effect as of the Lease Commencement Date, even if the Tenant's Work is not completed; provided, however, Tenant shall not be responsible for payment of Minimum Rent, Additional Rent or any other charges payable by Tenant until completion of Tenant's Work to the extent of any delay in completion of the same is caused by the actions or inactions of Landlord.

In the event a lien is filed against such building pad or Shopping Center by reason of Tenant's Work or any alteration, addition or repair to the such building pad made by or at the order of Tenant, Tenant shall be allowed to contest such lien; provided, however, Tenant shall cause such lien to be discharged or bonded within thirty (30) days after such lien is filed, and Tenant hereby agrees to hold Landlord harmless from and against any and all claims and demands by contractors or other third parties against such building pad or Shopping Center relating to or arising out of such work, alteration, addition or repair.

Tenant's Work and any alteration, addition or improvement to such building pad (except Tenant's stock in trade, furniture, equipment, trade fixtures and personal property) shall become part of the realty and belong to Landlord at the Expiration Date or earlier termination of this Lease, but until such time shall be owned by Tenant and Tenant alone shall be entitled to deduct all depreciation on Tenant's income tax return in relation thereto. Any damages caused by the removal of any trade fixture shall be immediately repaired by Tenant at its sole cost and expense.

Construction of Tenant's Work.

Upon the Tender Date, Tenant shall commence and thereafter, at its sole cost and expense, diligently prosecute to lien-free completion, using licensed contractors, the construction and installation of Tenant's Work. Tenant shall, at Tenant's expense, procure all permits and licenses and make all contracts necessary for the construction of the Tenant's Work.

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Tenant's Work shall be performed only by licensed contractors. Tenant's Work shall conform to all applicable statutes, ordinances, regulations, and codes (including, but not limited to, the Americans with Disabilities Act) and shall be in accordance and compliance with the Working Drawings and Specifications approved by Landlord.

No later than the expiration of the Plan and Permit Termination Option, Tenant shall furnish to Landlord in writing a schedule setting forth projected completion dates and showing deadlines for any actions required to be taken by Landlord and Tenant during such construction. Tenant agrees to update and revise the schedule during the course of construction, to the extent of any material changes therein, and to promptly deliver each revised schedule to Landlord.

Plans and Specifications

Within ten (10) days of the execution and delivery of this Lease, and based on the approved building design for the building of which the Premises are a part, and the nature of Landlord's Work, Tenant shall cause to be prepared and submitted to Landlord, a complete set of elevation drawings, preliminary floor plans, and such other specifications and documents as may be reasonably required for Landlord to obtain approval for Landlord's Work (as set forth in this Exhibit).

Within sixty (60) days of the execution and delivery of this Lease, and Tenant's receipt of the building design for the building of which the Premises are a part, Tenant shall cause to be prepared and submitted to both Landlord and the applicable governmental authorities, a complete set of architectural plans and specifications suitable in all respects for Tenant to complete construction of the Premises, which Plans shall be in accordance with all applicable federal, state and local laws, regulations, codes and ordinances (collectively referred to as "Plans"). The Plans shall be subject to Landlord's review and approval, which review and approval shall be based on and shall be consistent with Landlord's overall design and construction standards for the Shopping Center. Landlord's approval of the Plans shall not be unreasonably withheld or delayed and shall be deemed to have been given unless objection is made thereto within fifteen (15) days of submission by Tenant to Landlord of the Plans, together with a written notice to Landlord stating in bold and all capital letters the following: "LANDLORD IS DEEMED TO HAVE APPROVED THE PLANS SUBMITTED BY TENANT CONCURRENTLY HEREWITH IF LANDLORD FAILS TO OBJECT THERETO WITHIN FIFTEEN (15) DAYS FROM THE FOLLOWING SUBMISSION DATE: {insert delivery date}."

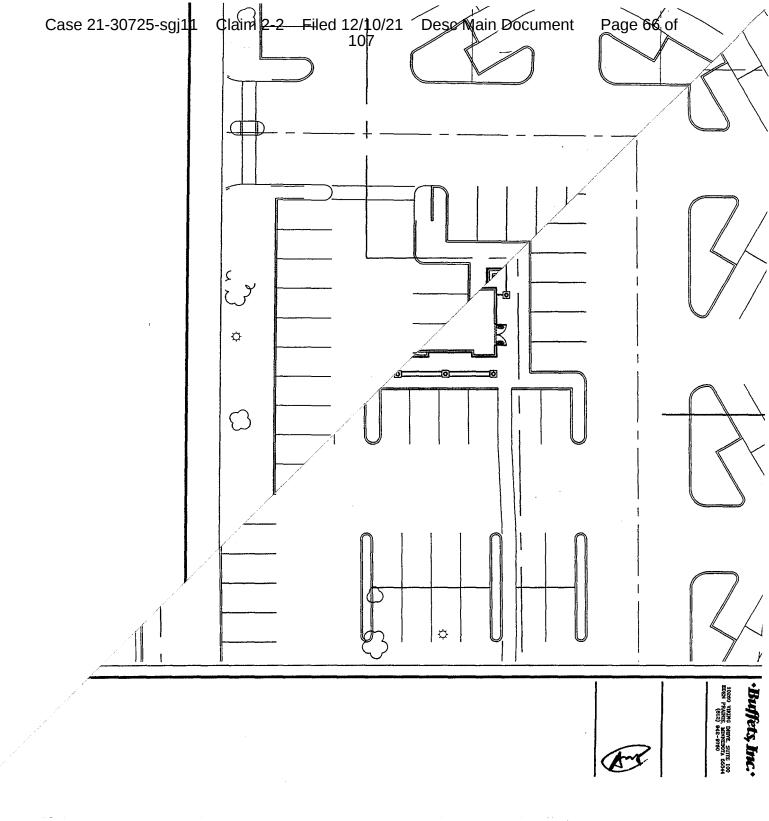
Tenant shall not be required to submit Plans to Landlord until such time as Landlord and Tenant have mutually executed a Non-Disclosure Agreement in the form attached hereto as Exhibit K. Landlord specifically approves of the Premises elevations and Premises signage design as set forth on Exhibit I. If any portion of the Plans are disapproved by Landlord, Landlord shall specify in detail the reasons for such disapproval and of any modifications requested by Landlord. Tenant shall make the revisions requested by Landlord and resubmit to Landlord the revised Plans within fifteen (15) days after receipt of Landlord's comments and requested revisions. Such process shall continue until the Plans have been approved by Landlord. Tenant's Work shall conform to the approved Plans and any changes thereto approved in writing by Landlord. All revisions and any notice of disapproval after the initial submission of Plans by Tenant and initial comments thereon by Landlord shall be given within fifteen (15) days after receipt thereof. Tenant shall be solely responsible for the cost and expense of the preparation of the Plans and all changes made thereto (the "Plan Costs"), and shall further be solely responsible for compliance with all city, county, state, and federal laws and ordinances applicable to the improvements to be constructed as a part of the Premises. Tenant shall cause to be made any changes to the Plans necessary to obtain the building permit. The costs of constructing any change or changes required by the applicable governmental authorities to be made to the Plans shall be paid by Tenant.

Construction debris removal must be performed as reasonably necessary. Tenant or Tenant's contractor is responsible for providing debris boxes as necessary, exercising care and diligence to avoid littering or damaging the Common Areas of the Shopping Center.

Upon substantial completion of Tenant's Work, Tenant shall give Landlord written notice thereof.

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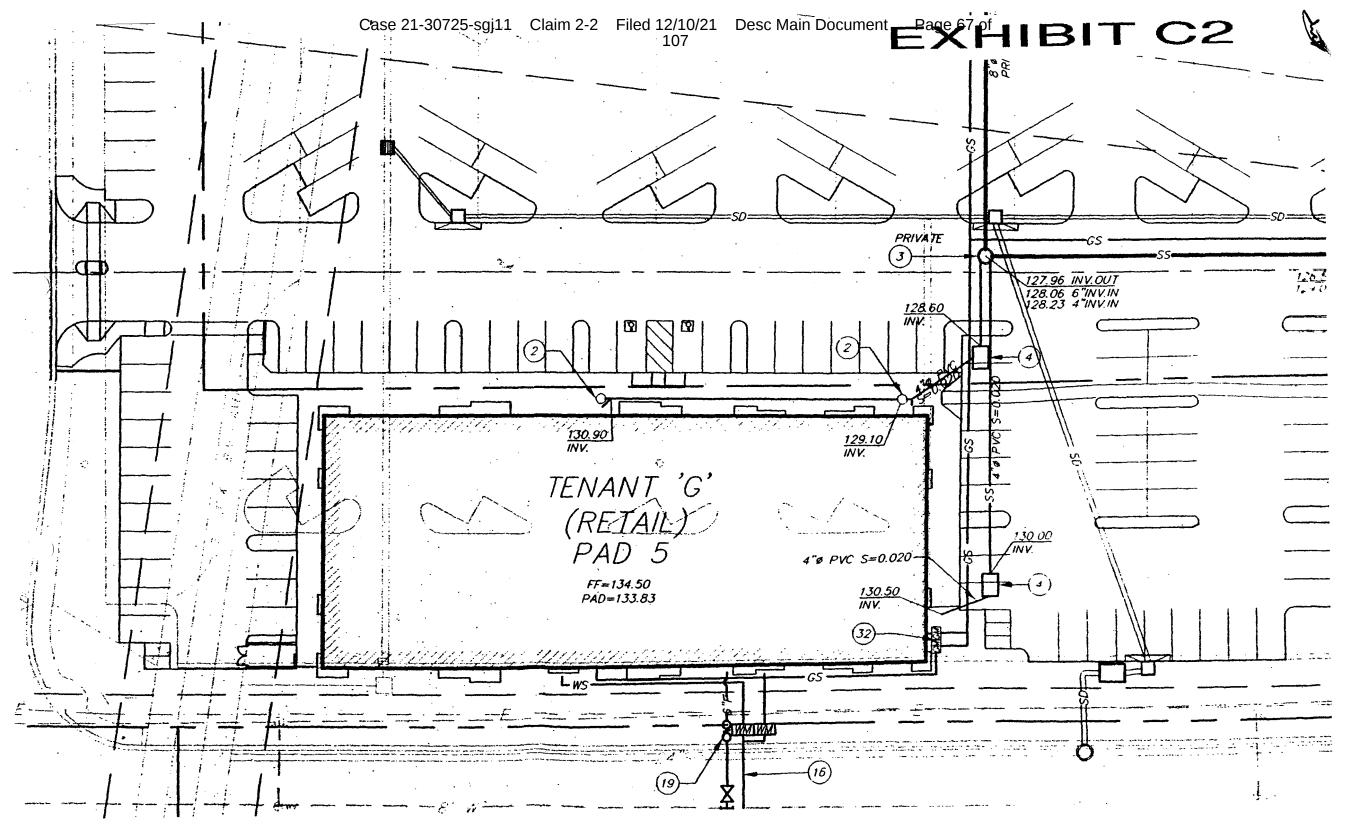


EXHIBIT D COMMENCEMENT VERIFICATION

This Commencement Verification is made and edby and between MBK Southern California Ltd., a Joe's, Inc., a Delaware corporation. ("Tenant").	entered into this day of, 20, California limited partnership ("Landlord") and Tahoe
WITN	ESSETH:
	hat certain Lease dated March, 2000, under 'SLO Promenade" (f/k/a "Central Coast Mall"); and
WHEREAS, the exact Lease Commencemen determined.	t Date was not specified in the Lease, but now has been
NOW THEREFORE, in consideration of the Landlord and Tenant hereby agree as follows	ne Lease and the mutual covenants contained therein,
1. Landlord and Tenant hereby clarify said L	ease by establishing the Lease Commencement Date as
change, alter, amplify, interpret or supersede any of things control.	s Commencement Verification does not amend, modify, the terms and provisions of the Lease, which shall in all tant have caused this Commencement Verification to be
"LANDLORD"	"TENANT"
MBK SOUTHERN CALIFORNIA LTD., a California limited partnership,	TAHOE JOE'S, INC., a Delaware corporation
By: MBK Southern California, Inc., a California corporation, its sole general partner	
By: Print: Its:	By: Print: Its:
By: Michael H. Voss	By: Print:



Its:

Chairman

EXHIBIT E RENT SCHEDULE

Minimum Annual Rent (and the monthly installments thereof) shall be increased at the beginning of the sixth full Lease Year and on each fifth anniversary thereafter based on, and shall be payable in accordance with, the following schedule:

Years

Annual Minimum Rent

First Partial Lease Year and Lease Years 1 through 5	7,083.33 1/15/2001 - 12/31/2002 - 12/31/2002 - 12/31/2002 - 12/31/2002
Lease Years 6 through 10	\$93,500.00 1/1/2007=12/31/201
Lease Vears 11 through 15	\$102.850.00
First Extended Term (Lease Years 16 through 20)	\$113,135.00
Second Extended Term (Lease Years 21 through 25)	\$124.449.00 11/2022 - 13/1202
Third Extended Term (Lease Vears 26 through 20)	\$136 804 00 1/1/2027 - 13/1/203
Fourth Extended Term (Lease Years 31 through 35)	\$150,583.00 1/1/2032 -12/31/203



EXHIBIT F RULES AND REGULATIONS

In the case of any conflict between these rules and regulations and the Ground Lease, by and between MBK Southern California Ltd., a California limited partnership, as Landlord, and Tahoe Joe's, Inc., a Delaware corporation, as Tenant (the "Lease"), the Lease shall be controlling. All capitalized terms herein shall have the same meaning as defined in the Lease, unless otherwise expressly provided herein.

- 1. No tenant, or its agents or employees, shall loiter in the Common Areas of the Shopping Center, nor shall they in any way obstruct the sidewalks, entry passageways, driveways, entrances and exits to the Shopping Center, and they shall use the same only as passageways to and from their respective premises. Each such tenant and its agents or employees shall comply with all regulations with respect to the Common Areas, including but not by way of limitation, posted speed limits, directional markings and parking stall markings. Landlord reserves the right to exclude or expel from the Shopping Center any person who, in the judgment of Landlord, is intoxicated or under the influence of liquor or drugs, or who shall in any manner do any act in violation of the rules and regulations of the Shopping Center.
- 2. Water closets and urinals shall not be used for any purpose other than those for which they were constructed and no rubbish, newspapers or other substances of any kind shall be thrown into them. No tenant, or its agents or employees, shall throw or discard cigar or cigarette butts or other substances or litter of any kind in or about the Shopping Center, except in receptacles placed therein for such purposes by Landlord or governmental authorities. All garbage, including wet garbage, refuse and trash shall be place by each tenant in the receptacles provided by Landlord for that purpose. No tenant, or its agents or employees, shall place in any trash receptacle within the Shopping Center any material which cannot be disposed of in the ordinary and customary manner of trash and garbage disposal.
- 3. All trash, refuse and waste materials shall be regularly removed from the premises of each tenant, and until removal shall be stored (a) in adequate containers, which such containers shall be located so as not to be visible to the general public shopping in the Shopping Center, and (b) so as not to constitute any health or fire hazard or nuisance to any occupant of the Shopping Center. No tenant, or its agents or employees, shall sweep or throw or permit to be swept or thrown from such tenant's respective premises any dirt or other substance out of the doors or windows of such tenant's respective building, and each such tenant shall not use, keep or permit to be used or kept any foul or noxious gas or substance in each such premises, or permit or suffer such premises to be occupied or used in a manner offensive or objectionable to Landlord, or other occupants of the Shopping Center by reason of noise, odors and/or vibrations, or interfere in any way with other tenants or those having business therein, nor shall any animals, firearms or birds be kept in or about the Shopping Center.
- 4. No tenant shall do anything within their respective premises or the Shopping Center, or bring or keep anything therein, which will in any way increase or tend to increase the risk of fire or the rate of fire insurance or which shall conflict with applicable law, rules or regulations established by any governmental body or official having jurisdiction, the regulations of the fire department or the provisions of requirements of any insurance policy on such premises or any part thereof.

Landlord shall have the right, in order to conduct such fire drills as may be required by applicable governmental authorities and/or insurance requirements, to cause tenants and/or occupants of the Shopping Center to vacate the same for such period as is required, and such tenants shall cause their employees, agents, contractors and invitees to cooperate in connection therewith.

- 5. No tenant, or its agents or employees, shall place a load upon any floor which exceeds the load per square foot as allowed by law.
- 6. No tenant, or its agents or employees, shall make or permit any loud, unusual or improper noises in the Shopping Center, nor interfere in any way with other tenants or those having business with them, nor bring into nor keep within the Shopping Center any animal or bird, or any bicycle or other vehicle (in each case except and to the extent the same constitutes merchandise), except such vehicles as tenants are permitted to park in the Shopping Center parking lot, and each such tenant and its agents and employees shall park only in the areas designated from time to time for employee parking generally.
- 7. No tenant, or its agents or employees, shall install, maintain or operate in any Common Areas under the exclusive control of Landlord any vending machines (other than for newspapers) or video games without Landlord's prior written consent. No tenant, or its agents or employees, shall engage in the sale of tickets or coupons for any lottery or other games of chance.
 - 8. No portion of the Shopping Center shall be used for lodging purposes.

Control of the second

- 9. No person shall use any utility area, truck and trash facility or other area reserved for use in connection with the conduct of business, except for the specific purposes for which it is intended.
- 10. No person shall use any roadway, walkway or mall, except as a means of egress from or ingress to any store and automobile parking area within the Shopping Center, or adjacent public street. Such use shall be in an orderly manner, in accordance with the directional or other signs or guides. Roadways shall not be used at a speed in excess of twenty (20) miles per hour and shall not be used for parking or stopping, except for the immediate loading or unloading of passengers or goods.
- 11. No person shall use any automobile parking area except for the parking of motor vehicles during the period of time such person or the occupants of such vehicle are customers or business invitees of the retail, service and restaurant establishments within the Shopping Center. All motor vehicles shall be parked in an orderly manner within the painted lines defining the individual parking places. With the exception of any parking spaces within the Protected Parking Area (as such term is defined in Article 24 of the Lease), during peak business periods of business activity, reasonable limitations may be imposed as to the length of time for parking use within specified areas.
- 12. No person, without the prior written consent of Landlord, shall in or on any part of the common area:
- (i) Vend, peddle or solicit orders for sale or distribution of any merchandise, device, service, periodical, book, pamphlet or other matter whatsoever;
 - (ii) Exhibit any sign, placard, banner, notice or other written material:
 - (iii) Distribute any circular, booklet, handbill, placard or other material;
- (iv) Solicit membership in any organization, group or association or any contribution for any purpose;
- (v) Parade, rally, patrol, picket, demonstrate or engage in any conduct that might tend to interfere with or impede the use of any of the common area by any permittee, create a disturbance, attract attention or harass, annoy, disparage or be detrimental to the interest of any of the retail, service or restaurant establishments within the Shopping Center;
- (vi) Use any common area for any purpose when none of the establishments within the Shopping Center is open for business or employment;
- (vii) Throw, dispose, discard or deposit any paper, glass, garbage, refuse or extraneous matter of any kind except in designated receptacles, or create litter or hazards of any kind; and
- (viii) Deface, damage or demolish any sign, light standard or fixture, landscaping material or other improvement within the Shopping Center, or the property of customers, business invitees or employees situated within the Shopping Center.
- 13. With respect to Landlord's maintenance of the Common Areas of the Shopping Center, Section 11.A. of the Lease shall control.
- 14. Landlord reserves the right to close and keep locked any and all gates, closing the parking areas within the Shopping Center at any time in an emergency, and otherwise during such hours outside normal business hours of the tenants as Landlord may reasonably and in good faith deem to be advisable for the adequate protection of the Shopping Center; provided, however, except in an emergency situation, tenants and their agents and employees shall be provided access to parking for the Shopping Center and or merchandise deliveries.
- 15. In the event a premises, or any portion thereof, within the Shopping Center is being used for the preparation, handling or selling of any food whatsoever, then the tenant leasing such premises shall, at its own cost, retain a licensed, bonded professional pest and sanitation control service to perform inspections of the Premises, the building thereon, and such portions thereof as reasonably necessary, not less frequently than once each ninety (90) days for the purpose of controlling infestation by insects, rodents and vermin and shall promptly cause any corrective or extermination work recommended by such service to be performed. If such tenant fails to perform this obligation, Landlord may, at its option and after five (5) days' written notice to such non-performing tenant, cause such inspection to be performed and any necessary corrective or extermination work which is recommended to be done, and the cost of such inspection and corrective and extermination work, together with an additional charge of ten percent (10%) to cover Landlord's administrative and overhead expenses incurred in conducting such activity, shall be paid by such non-performing tenant to Landlord within five (5) business days upon written demand thereof.

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- 16. Each of Landlord's tenants is hereby informed and acknowledges that Health Department requirements may require that such tenant install a grease trap in the floor drain of any kitchen located within such tenant's respective premises. Each of such tenants agrees that if such grease trap has not been installed as required, then such tenant, at its sole cost and expense, shall install or cause to be installed such required grease trap and shall clean and maintain or cause to be cleaned and maintained such grease trap in such manner as may be required by the Health Department or other applicable governmental authorities having jurisdiction.
- 17. In an emergency, and subject to the terms and conditions of the Lease, each tenant shall abide by any additional rules or regulations which are ordered by any governmental or military authority, whether the same are implemented by such authority or by Landlord. Each tenant shall be responsible for the observance of these rules and any such rules by its employees and agents.
- 18. Landlord agrees to use reasonable efforts to enforce these rules. The rules shall be uniformly enforced in a non-discriminatory manner. These rules shall not be construed to create any rights or remedies in any tenant, occupant or invitee.

Landlord may waive any one or more of these rules for the benefit of any particular tenant or tenants of Landlord, but no such waiver by Landlord shall be construed a waiver of such rules in favor of any other tenant or tenants, nor prevent Landlord from thereafter enforcing any such rules against any or all of the tenants of the Landlord's Parcel. No waiver of any rule or regulation by Landlord shall be effective unless in writing and signed by Landlord. A copy of these rules and regulations shall be attached to and form a part of each tenant lease within the Shopping Center.



EXHIBIT G

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (the "Agreement"), dated this day of, 200_, by and among Tahoe Joe's, Inc., a Delaware
corporation ("Tenant"),, a
("Landlord"), and, a
("Lender").
RECITALS
WHEREAS, Lender is the current holder of a [mortgage/deed of trust] made by Landlord in Lender's favor
dated,, and filed in the Office of County, as
(the "[Mortgage/Deed of Trust]"); and
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WHEREAS, the [Mortgage/Deed of Trust] relates to that certain shopping center development, located in the City of San Luis Obispo, County of San Luis Obispo, California, known as SLO Promenade (f/k/a "Central Coast Mall"), a portion of which is owned by Landlord and is legally described on Exhibit A attached hereto and incorporated herein by this reference (the "Shopping Center"); and
WHEREAS, Tenant is the tenant, and Landlord is the landlord, under that certain Lease dated March , 2000 (the "Lease"), relating to a certain portion of the Shopping Center more particularly described in the Lease (the "Premises"); and
WHEREAS, Lender, Landlord and Tenant have requested of and granted to each other the agreements hereinafter stated and desire to evidence said agreements in writing.
NOW, THEREFORE, For good and valuable consideration paid by each to the other, the receipt and sufficiency of which is hereby acknowledged, Landlord, Tenant and Lender hereby agree as follows:
1. <u>Subordination</u> . Except as otherwise provided herein, the Lease is now and shall at all times continue to be, subject and subordinate in each and every respect to the lien of and security interest created by the [Mortgage/Deed of Trust], and to any and all renewals, extensions, modifications, substitutions or replacements thereof, subject to the terms and conditions of this Agreement.
2. <u>Non-disturbance</u> . So long as Tenant is not in default, beyond any applicable cure periods provided in the Lease, in the payment of the rental reserved in the Lease, or in the observance or performance of any of the other terms, covenants or conditions contained in the Lease or in this Agreement on Tenant's part to be observed and performed:
(a) Tenant's possession of the Premises and Tenant's rights and privileges under the Lease shall not be terminated, canceled or in any way disturbed, diminished or interfered with by the Lender during the Term of the Lease (as defined in the Lease) and any extension or renewal thereof, whether or not the [Mortgage/Deed of Trust] is in default and whether or not Lender acquires Landlord's interest in the Lease by foreclosure or deed in lieu of foreclosure, or otherwise.
(b) Lender will not join Tenant as a party defendant in any action or proceeding for the purpose of terminating Tenant's interest and estate under the Lease as a result of any default under the [Mortgage/Deed of Trust]; provided, however, Lender may join Tenant in a foreclosure action if such joinder is necessary for the purpose of foreclosing the [Mortgage/Deed of Trust] against Landlord, but then only for such purpose and not for the purpose of terminating the Lease.
(c) If Lender has control of any funds or allowances owed Tenant by Landlord, Lender shall release the funds or allowances pursuant to the terms of the Lease.
Attornment. If the interests of Landlord shall be transferred to and owned by Lender by reason of foreclosure or other proceedings brought by it in lieu of or pursuant to a foreclosure, or by any other manner, and Lender succeeds to the interest of the Landlord under the Lease, Tenant shall be bound to Lender under all of the terms, covenants, and conditions of the Lease for the balance of the Term thereof remaining and any extensions or renewals thereof which may be effected in accordance with any option therefor in the Lease, with the same force and effect as if Lender were the landlord under the Lease, and Tenant does hereby attorn to Lender as its landlord, said attornment to be effective and self-operative immediately upon Lender succeeding to the interest of Landlord under the Lease without the execution of any further instruments on the part of any of the parties hereto; provided, however, that Tenant shall be under no obligation to pay rent to Lender until Tenant receives written notice from Lender that it has succeeded to the interest of the Landlord under the Lease. The parties hereto agree that the respective rights and obligations of Tenant and Lender upon such attornment, to the extent of the then remaining balance of the Term of the Lease and any such extensions and renewals, shall be and are the same as now set forth therein; it being the intention of the parties for this purpose to incorporate the Lease in this Agreement by reference with the same force

and effect as if set forth at length in this Agreement.

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- 4. Representations and Warranties of Landlord. Landlord represents and warrants to Tenant that as of the date of this Agreement the [Mortgage/Deed of Trust] is the only mortgage/deed of trust encumbrance on the Shopping Center or on the Premises and that the interest of Tenant under the Lease is not subordinate to any other lien or interest.
- 5. Rental Payment. Landlord and Lender agree that upon receipt of written notice from Lender that Lender has succeeded to the interest of Landlord under the Lease, that Tenant may pay all rental and other charges reserved under the Lease directly to Lender. Landlord and Lender further agree that any such payments shall be credited by both Lender and Landlord against Tenant's rental and other obligations under the Lease, regardless of whether Lender had the right to make such demand and regardless of any contrary demands which may be made by Landlord.
- 6. Successors and Assigns: Binding Effect. This Agreement shall be binding upon Landlord, its successors and assigns, shall be binding upon and inure to the benefit of Tenant, its successors, assigns and sublessees and shall be binding upon and inure to the benefit of Lender, its successors and assigns who acquired title thereto from or through Lender.
- 7. Entire Agreement. This Agreement contains the whole agreement between the parties hereto as to the [Mortgage/Deed of Trust] and the priority thereof, herein described, and there are no agreements, written or oral, outside or separate from this Agreement, and all prior negotiations, if any, are merged into this Agreement.
- 8. Relationship Between Parties. The subordination of the Lease to the [Mortgage/Deed of Trust] will not be construed to give Lender, or its successors and assigns, any interest in casualty insurance maintained by Tenant or proceeds to which Tenant is entitled under the Lease, nor will it be construed to modify any of the provisions of the Lease or of the parties' obligations under the Lease.
- 9. <u>Notices</u>. Any notices required or permitted hereunder may be given in the manner and at the addresses for Tenant and Landlord as provided in Section 29 of the Lease. Lender's address for notice purposes is as set forth below.
- 10. <u>Governing Law</u>. This Agreement will be governed and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first shown above. TAHÒE JOE'S, INC. Tenant: By: Print: MBK SOUTHERN CALIFORNIA LTD., Landlord: a California limited partnership MBK SOUTHERN CALIFORNIA, INC., By: a California corporation, sole general partner By: Print: Its:

Lender:

By: _____

Address for Lender for notice purposes:

[Each party attach appropriate California notary block]



EXHIBIT H MEMORANDUM OF GROUND LEASE

THIS MEMORANDUM OF GROUND LEASE, is made and entered into as of this	day of March, 2000, by
and between MBK SOUTHERN CALIFORNIA LTD., a California limited partnership ("Landlord"), and Tahoe Joe's, Inc.,
a Delaware corporation ("Tenant").	,

RECITALS

WHEREAS, Landlord and Tenant entered into that certain Ground Lease dated March _______, 2000 (the "Lease"), relating to certain leased land (the "Premises") which is a part of the shopping center development known as SLO Promenade (f/k/a "Central Coast Mall") (the "Shopping Center"), situated on certain real property in the City of San Luis Obispo, County of San Luis Obispo, California, which Shopping Center is legally described on Exhibit A attached hereto; and

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

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

- 1. Landlord and Tenant are parties to the Lease to demise and let the Premises, upon the terms and conditions more particularly set forth in the Lease.
- 2. The term of the Lease shall be for an initial term of fifteen (15) full Lease Years and any Partial Lease Year (as such terms are defined in the Lease), commencing pursuant to the terms of the Lease (the "Commencement Date"), and anticipated to expire on December 31, 2015.
- 3. Subject to the terms and conditions more particularly set forth in the Lease, Tenant has the option to extend the term of the Lease for four (4) additional periods of five (5) years each, such periods to commence at the expiration of the initial term or preceding extended term of the Lease, as the case may be.
- 4. Subject to the terms and conditions more particularly set forth in the Lease, and except for certain excluded tenants specified in the Lease, Tenant shall have the exclusive right to operate a full-service or self-service restaurant selling primarily steaks or steak products (with the exclusion of hamburgers), ribs and prime rib in the Shopping Center. Landlord covenants and agrees not to lease any space in, or ground lease or sell any parcel or portion of the Shopping Center to any other tenant or person whose primary business conducted in any space that is occupied by it (or any tenant or subtenant of it) at the Shopping Center is for the operation of a full-service or self-service restaurant selling primarily steaks or steak products (with the exclusion of hamburgers), ribs and prime rib, nor shall Landlord hereafter permit with respect to the Shopping Center, or consent with respect to the Project, to the operation of a full-service or self-service restaurant selling primarily steaks or steak products (with the exclusion of hamburgers), ribs and prime rib, other than at the Premises. Tenant's Exclusive Use commitment will be binding on Landlord, its successors and assigns, and any tenants of Landlord or its successors of the Shopping Center.
- 5. Reference is made to the Lease for a full statement of the terms and conditions of the Lease, all of which are hereby incorporated by reference.
- 6. Nothing in this Memorandum of Ground Lease shall be construed to amend, modify, change, alter, amplify, interpret or supersede any of the terms and provisions of the Lease, which shall in all things control.

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

of the day and year first above written.	
Witness:	LANDLORD:
	MBK SOUTHERN CALIFORNIA LTD.,
Print	a California limited partnership
	By: MBK SOUTHERN CALIFORNIA, INC.,
	a California corporation, sole general partner
	By:
	Print:
	Its:
	By
	Print: Michael H. Voss
	Its: Chairman
Witness:	TENANT:
	TAHOE JOE'S, INC.,
Print	a Delaware corporation
	Ву:
	Print:
	Its:
,	Ву:
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	Its:





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- Ledger Stone -Culture State-Fag



san luis obispo, california



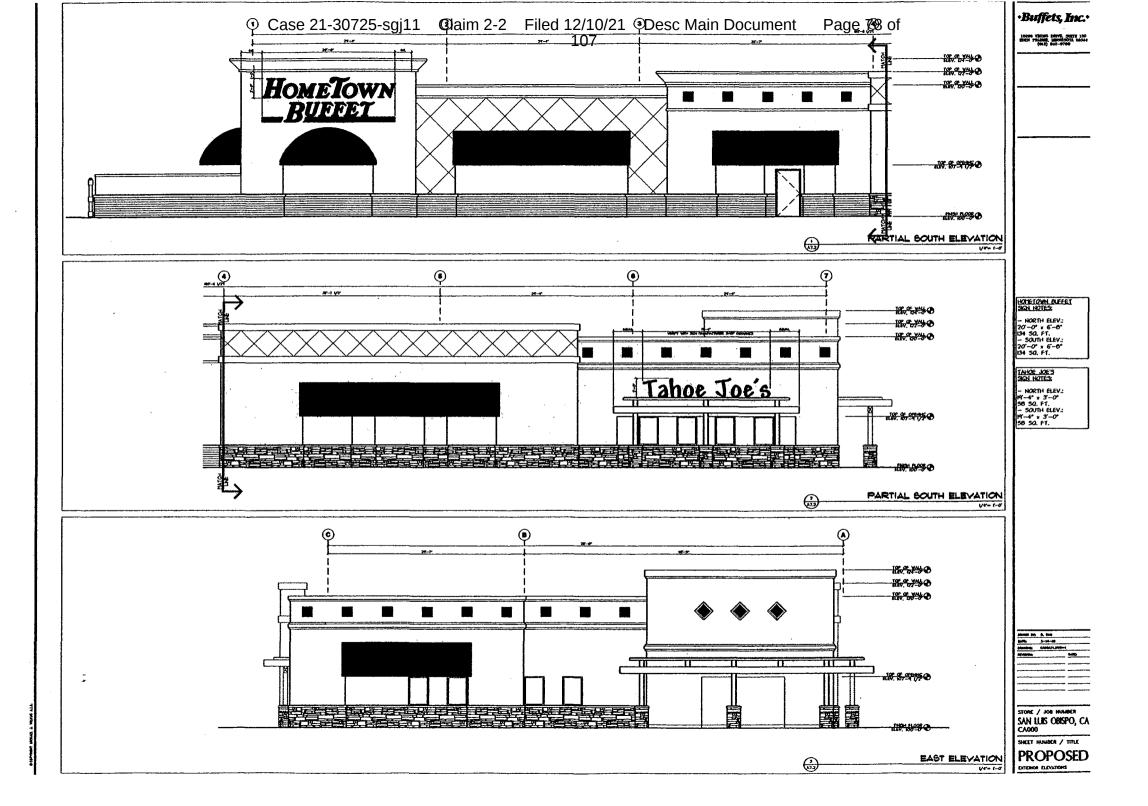
NORTH ELEVATION



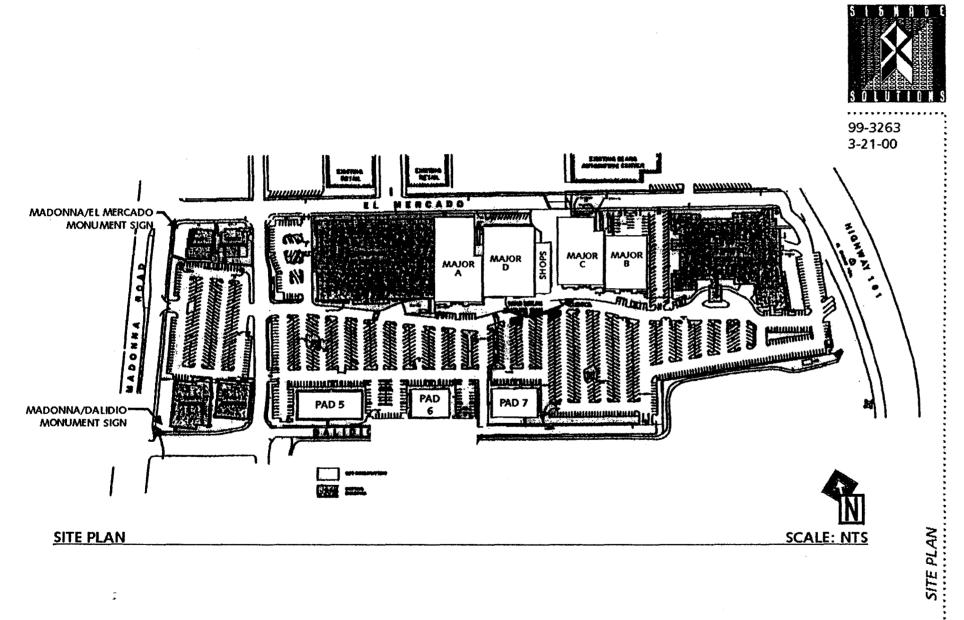
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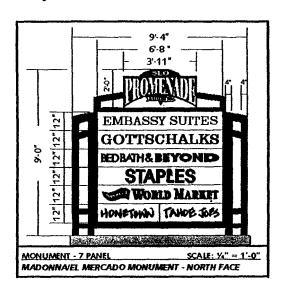




Page 3



PROJECT/TENANT MONUMENT



EMBASSY SUITES

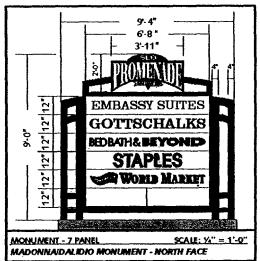
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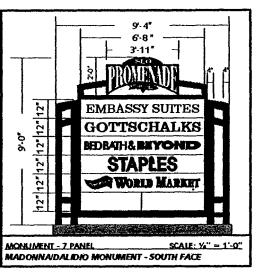
STAPLES

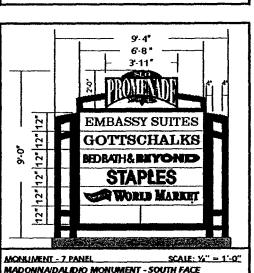
MADONNAIEL MERCADO MONUMENT - SOUTH FACE

SCALE: 1/4" = 1'-0"

MONUMENT - 7 PANEL











Master Sign Program

City of San Luis Obispo

December 6, 1999

Modified on December 9, 1999 to meet ARC conditions of approval

Prepared by:



RRM DESIGNGROUP

Architecture • Planning • Engineering • Surveying • Interiors • Landscape Architecture

M

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SLO Promenade MASTER SIGN PROGRAM

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I. Introduction

n. Tenant Signs

Sign Approval Procedures General Guidelines

Major Tenant Identification

Pad and Shop Building Tenant Identification

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Pylon Sign

Monument Sign(s)

El Mercado Street Gateway Sign Entrance Sign at Pad Seven

Wind Break Feature Sign

IV. **Prohibited Signs**

v. **Definitions**

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- 1 Site Key Plan
- 2 Typical Major Tenant Sign
- 3 Typical Pad and Shop Building Sign
- 4 Channel Letter Section
- 5 Pylon Sign
- 6 El Mercado Gateway Sign
- Entrance Sign at Pad 7
- 8 Wind Break Feature Sign
- 9c Monument Sign 7 Panel
- 9d Monument Sign 9 Panel

RRM Design Group

8055434609



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SLO Promenade MASTER SIGN PROGRAM

I. Introduction

The intent of the SLO Promenade Master Sign Program is to provide the guidelines necessary to achieve a visually coordinated, balanced and attractive sign environment for the entire project, in accordance with the City of San Luis Obispo and its adopted sign requirements.

Performance of this sign criteria shall be strictly enforced by the City of San Luis Obispo. Any nonconforming or illegally installed signs shall be removed by the tenant or his sign contractor at their expense, upon demand by the City.

All signs meeting the requirements of the SLO Promenade Sign Program shall be administratively approved by the Planning Department.

RRM Design Group

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SLO Promenade Master SIGN PROGRAM

II. Tenant Signs

Sign Approval Procedures

- 1. All tenant storefront identification signs shall be subject to approval, in writing, from the owner. The tenant shall submit preliminary sign drawings to the owner for his review at the time of preliminary store design review.
- 2. The tenant shall submit to the owner, for written approval, three (3) copies of the final scaled shop drawings of the proposed sign showing materials, colors, finishes and dimensions. These drawings shall indicate conformance with the sign criteria herein outlined and one copy shall be in full color.

Send to:

MBK Southern California Ltd. 1801 Century Park East, Suite 1040

Los Angeles, CA 90067

- 3. The tenant shall submit drawings, approved and stamped by the owner, to the City of San Luis Obispo Planning Department for approval prior to obtaining a sign permit from the Building Department.
- 4. The tenant shall pay for all signs, their installation (including final connection, transformers and all other labor and materials) and maintenance.
- 5. The tenant shall obtain all necessary permits.
- 6. Future major tenants unable to conform with the approved sign criteria herein outlined in this document shall return to the San Luis Obispo Architectural Review Commission for review and approval.

General Guidelines

- 1. All signs will be limited to tenant's trade name and logo. The use of brand names or brand name logos will not be allowed on the sign unless it is specifically included in the tenant's Doing Business As.
- 2. Any tenant with registered trademarks or recognized logos shall be permitted to use them subject to approval by the City of San Luis Obispo Planning Department. The area of said trademark or logo shall be calculated within the total sign area permitted for such tenant.

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SLO Promenade MASTER SIGN PROGRAM

- 3. All signs and sign structures, as well as the immediate premises surrounding them, shall be well maintained by the tenant and MBK Southern California Ltd. The illumination must be maintained from dusk to closure of business. Signs shall not be illuminated after 10:00 p.m. or close of business, whichever is later.
- 4. All wall signs shall be constructed as one of the following sign types:
 - A. Internally illuminated individual channel letters with acrylic plastic faces with a minimum thickness of 1/4". See Exhibit 4 for more information. Internal illumination is to be 60 mili-amp neon, installed and labeled in accordance with the "National Board of Fire Underwriters Specifications."
 - B. Internally illuminated sign 'cans' shall be permitted as secondary features and only in the event that they represent a company logo.
 - C. Externally illuminated so that illumination is indirect and utilizes focused light fixtures that do not allow light or glare to shine above the horizontal plane of the top of the sign or onto any public right-of-way or adjoining property.
 - D. Background elements for signs, either through the use of color or material shall be permitted. The area of said background shall be calculated within the total sign area permitted for such sign.
- 5. Each sign shall be designed so that illumination does not exceed 100 luxes (10 candlepower) at a distance of 10 feet from the sign. Illumination must be of uniform intensity and well maintained for all letters and/or symbols. Lighting for signs shall not create a hazardous glare for pedestrians or vehicles.
- 6. All signs and installation of signs shall conform to the appropriate building and electrical codes; PK housings shall be used on all channel letters. Letters shall have disconnecting switches, and bear the U.L. label. Each tenant shall be fully responsible for the operations of their sign contractor.
- 7. All conduits, raceway, transformers, junction boxes, openings in building surfaces, etc., shall be concealed. Exposed hardware shall be finished in a manner consistent with quality fabrication practices. All finished signs shall be pegged from the wall.
- 8. It is the responsibility of the tenant's sign company to verify all conduit and transformer locations and service prior to fabrication.
- 9. Then tenant shall supply electrical stubs at fascia for approved internally illuminated channelized letter signs. Electrical service to tenant signs shall extend to the house panel of each building.
- 10. Upon notice by either the City of San Luis Obispo or MBK Southern California Ltd., a tenant shall be required to repair or refurbish any sign structure, acrylic plastic face and/or sign illumination within seven (7) days.

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SLO Promenade MASTER SIGN PROGRAM

- 11. In the event of a tenant vacancy, the tenant shall remove all wall signs. All holes left by the sign shall be repaired and painted to match exterior building color. Any sign faces located on the El Mercado Gateway, Pylon and/ or Monument signs shall be removed and replaced with a solid piece of acrylic plastic matching the background color of the sign face.
- 12. No sign or sign structure shall be erected at any location where, by reason of this position, shape, size, or color, it may obstruct or interfere with the view of any traffic control device or directional sign. Vehicle STOP signs shall be painted on pavement, stop pole signs and handicap-accessible parking signs shall be installed as per City of San Luis Obispo Public Works Department standards.
- 13. Banner signs are subject to Section IV.C of this Master Sign Program document.
- 14. Window Signs shall be permitted to obscure no more than twenty-five percent (25%) of the total window area. All window signs may remain for a period no longer than thirty (30) days.
- 15. All signs existing on property as of the date of this Master Sign Program shall continue to be allowed.

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SLO Promenade Master Sign Program

Major Tenant Identification

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Permitted Signs and Requirements

- 1. Each major tenant shall be allowed two (2) wall signs. See table below for specific sign requirements.
- 2. The primary wall sign shall be located over the front entrance and the secondary wall sign shall be located on the rear wall facing El Mercado Street.
- 3. Signs shall be centered top to bottom and end to end on tenant's storefront fascia. See Exhibit 2.
- 4. Signs shall not be less than (1) one foot from the edge of a tenant's storefront fascia or any architectural feature. See Exhibit 2.
- 5. No more than two rows of letters are permitted, provided their maximum total height does not exceed the maximum sign height allowed.

Major Tenant Primary Wall Signs

	Maximum Letter Height	Maximum Sign Length	Maximum Sign Height	Maximum Sign Area
Major A	36"	40' - 0"	3' - 0"	120 S.F.
Major B	42"	40' - 0"	4' - 6"	180 S.F.
Major C	42"	52, - 0	8' - 0"	180 S.F.
Major D	42"	28' - 0"	7' - 6 *	200 S.F.

Major Tenant Secondary Wall Signs

	Maximum Letter Height	Maximum Sign Length	Maximum Sign Height	Maximum Sign Area
Major A	No Sign Proposed			
Major B	36*	34' - 0"	4' - 0"	125 S.F.
Major C	42"	22' - 0"	5' - 6"	125 S.F.
Major D	36"	23' - 6"	6' - 4"	125 S.F.

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SLO Promenade Master Sign Program

Pad and Shop Building Tenant Identification Permitted Signs and Requirements

- 1. Each pad or shop tenant shall be allowed one wall sign per leased building face. No tenant shall have more than one wall sign on a single building face.
- 2. Pad or shop tenant wall signs shall have a maximum letter height of thirty (30) inches except for the first letter of each word which shall have a maximum letter height of thirty six (36) inches. No more than two rows of letters shall be permitted per sign. See Exhibit 3.
- 3. Pad or shop tenant wall signs shall have a maximum length of seventy (70) percent of the leasehold width. See Exhibit 3.
- 4. Total wall sign area to be allocated to a pad or shop tenant shall not exceed two hundred (200) square feet.
- 5. The total area of wall, window, and awning signs on the same wall may not exceed one hundred (100) square feet or fifteen (15) percent of the tenant's building face, whichever is less.

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SLO Promenade Master Sign Program

III. Project Sign Information

Pylon Sign

One (1) freeway pylon sign shall be permitted to replace the existing freeway sign and shall be located approximately at the location of the existing freeway sign. See Exhibit 1 for sign locations. The sign shall contain the project name, logo, and up to five (5) tenant names. Individual tenant panels shall be constructed of plexiglass with raised letters. The panel background colors shall be dark and opaque, and illumination shall be limited to the letters themselves. See Exhibit 5 for sign dimensions.

Monument Sign(s)

One (1) monument sign shall be permitted on the corner Madonna Road and El Mercado Street. See Exhibit 1 for sign location. The sign shall be double faced and contain the project name, logo, and up to nine (9) tenant names. See Exhibit 9d for sign dimensions.

OR

Subject to the removal of the existing monument sign near the corner of Dalidio Drive and Madonna Road, two (2) monument signs shall permitted. One shall replace the existing monument sign, and one shall be located on the corner of Madonna Road and El Mercado Street. See Exhibit 1 for sign locations. The signs shall be double faced and contain the project name, logo, and up to seven (7) tenant names each. See Exhibit 9c for sign dimensions.

E! Mercado Street Gateway Sign

One (1) Gateway Sign located between the Shops and Major Tenant 'C' facing El Mercado Street shall be permitted. The sign shall be single faced and include the project name and logo. See Exhibit 1 for sign location and Exhibit 6 for sign dimensions.

Entrance Sign at Pad Seven

One (1) Entrance Sign located on the wall of Pad '7' shall be permitted. The sign shall contain the project name and logo. See Exhibit 1 for sign location and Exhibit 7 for sign dimensions.

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SLO Promenade MASTER SIGN PROGRAM

Wind Break Feature Sign

One (1) Wind Break Feature Sign located between the Shops and Major Tenant 'C' shall be permitted. See Exhibit 1 for sign location. The sign shall contain the project name and logo on the side facing the parking lot. Directional signs containing the names of tenants and the hotel shall be located on both faces of the sign. See Exhibit 8 for sign dimensions.

RRM Design Group

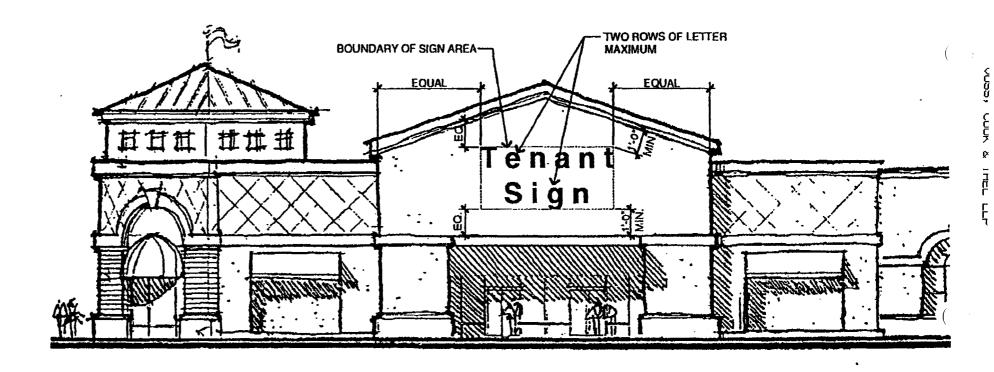
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EXHIBIT 1 - Site Key Plan

SLO Promenade Master Sign Program





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EXHIBIT 2 - Typical Major Tenant Primary Sign

SLO Promenade Master Sign Program



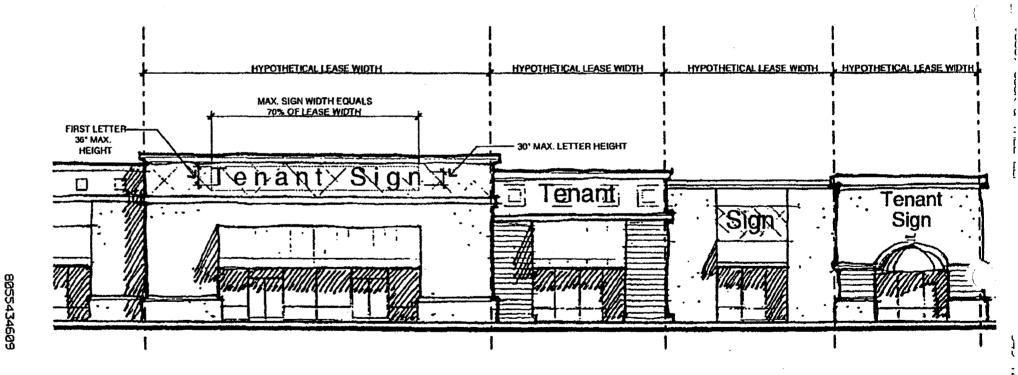


EXHIBIT 3 - Pad and Shop Building Signs

SLO Promenade Master Sign Program



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

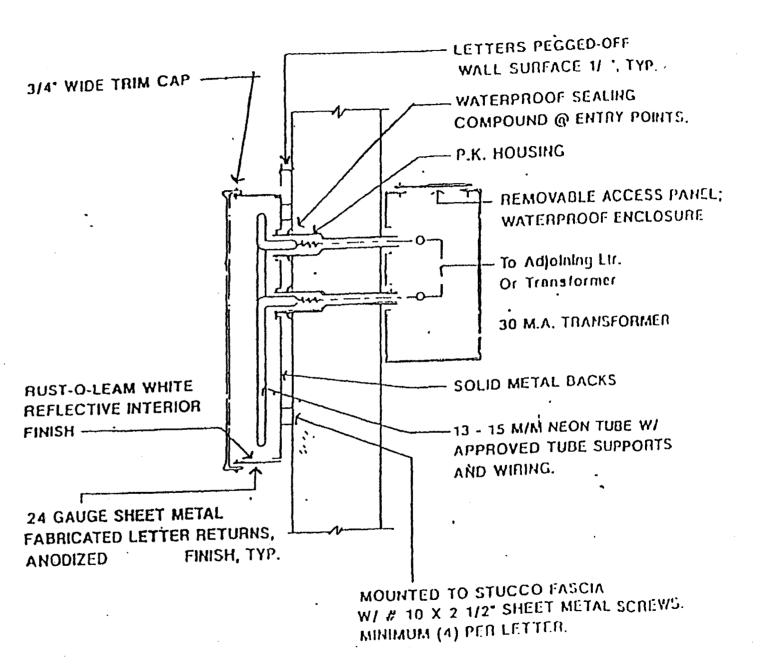
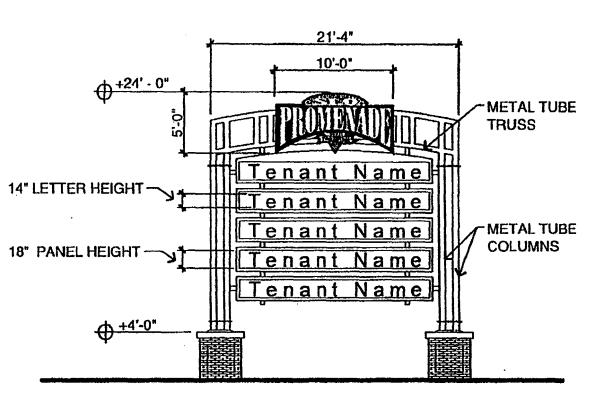


EXHIBIT 4 - Channel Letter Section

Central Coast Mall Signage Program

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FRONT ELEVATION

EXHIBIT 5 - Freeway Pylon Sign

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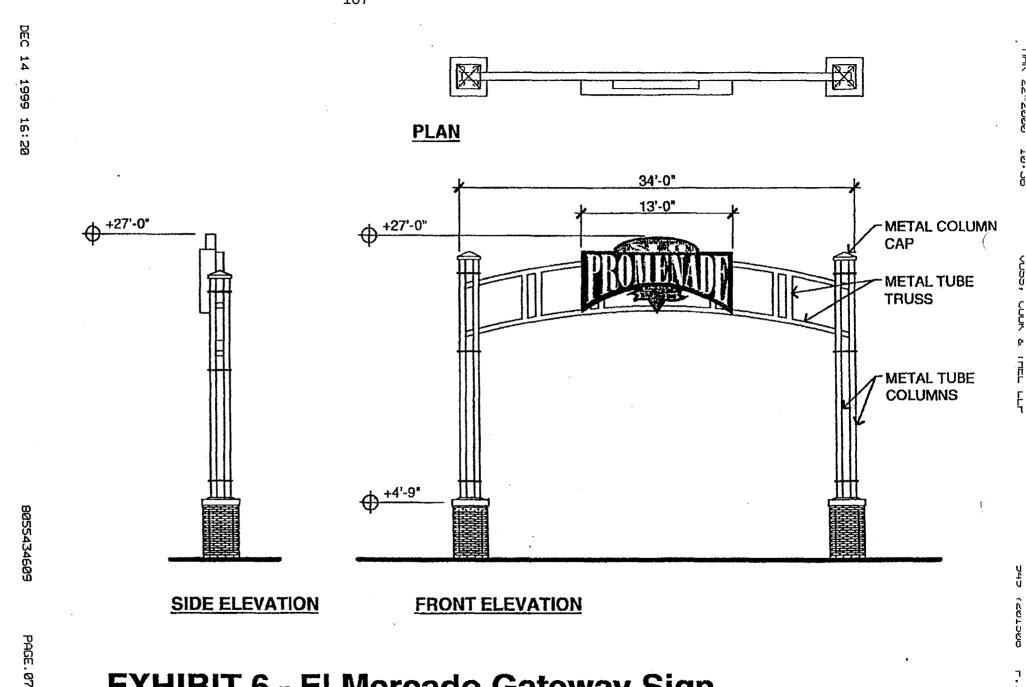


EXHIBIT 6 - El Mercado Gateway Sign

FRONT ELEVATION

EXHIBIT 7 - Entrance Sign at Pad 7

SLO Promenade Master Sign Program

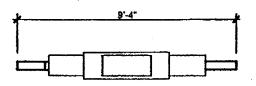
SCALE: 1/8" = 1'-0"

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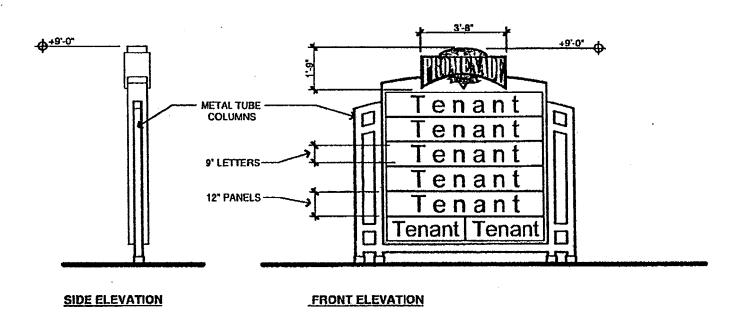


EXHIBIT 8 - Wind Break Feature Sign





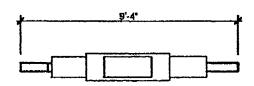
PLAN



PAGE. 10



Seven Panels



PLAN

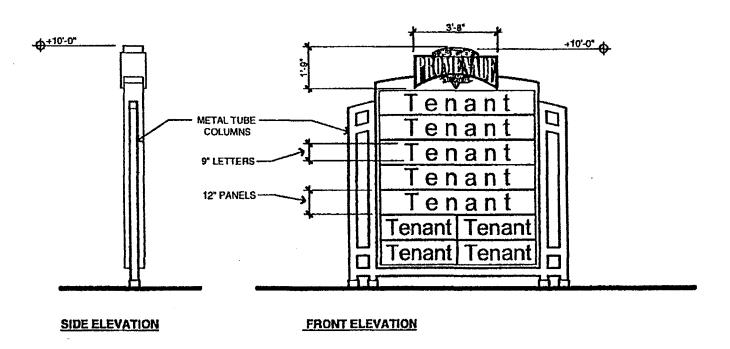


EXHIBIT 9d - Monument Sign

Nine Panels

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Central Coast Mall Master Sign Program

EXHIBIT J LEGAL DESCRIPTION OF THE SHOPPING CENTER

LAST AMERICA.

SLO-934115A NP

ALTA Extended Owners Commitment Form 1344-A (1982)

PARCEL 1:

Lots 1, 2, 7 and 9 of Tract No. 1268, in the City of San Luis Obispo, in the County of San Luis Obispo, State of California, according to map filed for record August 27, 1986 in Book 13, Page 46 of Maps, in the office of the County Recorder of said County.

PARCEL 2:

A portion of Lot 10 of Tract No 1268, in the City of San Luis Obispo, in the County of San Luis Obispo, State of California, according to map recorded August 27, 1986 in Book 13, Page 46 of Maps, in the office of the County Recorder of said County, described as follows:

Beginning at the Northerly most corner of Lot 3;

Thence along the Northwesterly line of said Lot 10 as shown on said map, North 50° 10' 16" E. 290.70 feet to a point on the Southwesterly corner of Lot 1 as shown on said map;

Thence along the Southwesterly line of Lots 1 and 2, as shown on said map, South 46° 04' 00" East, 227.94 feet to the Southerly most corner of said Lot 2;

Thence along the Southeasterly line of said Lot 2, North 43° 56' 00" East, 127.00 feet to the Northeasterly line of said Lot 10;

Thence along said Northeasterly line of Lot 10, South 46° 04' 00". East, 37.07 feet to the most Northerly corner of Lot 9 as shown on said map;

Thence along the Northwesterly line of said Lot 9, South 43° 56' 00" West, 229.00 feet;

Thence South 46° 04' 00" East, 45.00 feet;

Thence South 43° 56' 00" West, 235.00 feet to the Westerly most corner of said Lot 9;

Thence along Southwesterly line of said Lot 9, South 46° 04' 00" East, 437.00 feet to the Southerly most corner of said Lot 9;

Page 1



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SLO-934115A NP

ALTA Extended Owners Commitment Form 1344-A (1982)

Thence along the Southeasterly line of said Lot 9, North 43° 56' 00" East, 193.00 feet to the Westerly most corner of Lot 7 as shown on said map;

Thence along the Southwesterly line of said Lot 7, South 46° 04' 00" East 591.04 feet to the Easterly most corner of said Lot 10;

Thence South 43° 56' 00" West, 130.00 feet;

Thence North 46 04' 00" West, 88.69 feet;

Thence South 43° 56' 00" West, 173.73 feet to the Southerly most corner of said Lot 10;

Thence South 44° 21' 51" West, 32.00 feet, to a point on the Southwesterly line of Dalidio Raod;

Thence North 45° 38' 09" West, along said Southwesterly line of Dalidio Road, 1030.72 feet;

Thence North 44° 21' 51" East, 32.00 feet, to the Southerly most corner of Lot 4, as shown on said map;

Thence along the Southeasterly line of said Lot 4 and continuing along the Northeasterly prolongation thereof, North 50° 10' 16" East, 122.92 feet;

Thence North 39° 49' 44" West, 265.18 feet to the point of beginning.

PARCEL 3:

A portion of Lot 3 of Tract No. 1268, in the City of San Luis Obispo, in the County of San Luis Obispo, State of California, according to a map recorded August 27, 1986 in Book 13, Page 46 of Maps, in the office of the County Recorder of said County, described as follows:

Beginning at the Southerly most corner of said Lot 3;

Thence along the Southeasterly line of said Lot 3, North 50°10'16" East, 73.13 feet;

Page 2



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SLO-934115A NP

ALTA Extended Owners Commitment Form 1344-A (1982)

Thence North 39'49'44" West, 5.00 feet;

Thence parallel to the Southeasterly line of said Lot 3 and 5.00 feet distant therefrom. North 50°10'16" East, 73.04 feet to a point on the Northeasterly line of said Lot 3;

Thence along said line, North 39°49'44" West, 150.18 feet to the Northerly most corner of said Lot 3;

Thence along the Northwesterly line of said Lot 3, South 50° 10' 16" West, 139.81 feet to the beginning of a tangent curve having a radius of 20.00 feet;

Thence southwesterly along said curve an arc length of 33.44 feeet through a central angle of 95° 48' 25" to a point on the Southwesterly line of said Lot 3;

Thence along the Southwesterly line of Lot 3, South 45° 38' 09" East, 133.84 feet to the point of beginning.

PARCEL 4:

Lot 4 and a portion of Lot 3 and Lot 10 of Tract No. 1268, in the City of San Luis Obispo, in the County of San Luis Obispo, State of California, according to a map recorded August 27, 1986 in Book 13, Page 46 of Maps, in the office of the County Recorder of said County, described as follows:

Beginning at the Southerly most corner of said Lot 4:

Thence along the Southeasterly line thereof and continuing along the Northeasterly prolongation thereof North 50°10'16" East, 122.92 feet;

Thence parallel to the Northeasterly line of said lot and 12.00 feet distant therefrom North 39°49'44" West, 115.00 feet to a point on the Northeasterly line of said Lot 3;

Thence parallel to the Southeasterly line of said Lot 3 and 5.00 feet distant therefrom South 50°10'16" West, 73.04 feet;

Thence South 39°49'44" East, 5.00 feet to the Southeasterly line of said Lot 3;

Page 3



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SLO-934115A NP

ALTA Extended Owners Commitment Form 1344-A (1982)

Thence along the Southeasterly line thereof South 50°10'16" West, 73.13 feet to the Southerly most corner of said Lot 3, as shown on said map;

Thence along the Southwesterly line of said Lot 4, South 45° 38' 09" East, 5.57 feet to the beginning of a tangent curve having a radius of 190.00 feet;

Thence continuing along said Southwesterly line of said Lot 4 to the left, an arc length of 33.16 feet through a central angle of 10° 00' 00";

Thence continuing along said Southwesterly line of Lot 4, South 55° 38' 09" East, 52.48 feet;

Thence South 45° 38' 09" East, 21.54 feet to the point of beginning.

EXHIBIT K

NON-DISCLOSURE AGREEMENT

THIS NON-DISCLOSURE AGREEMENT is made and entered into this _____ day of March, 2000 by and between TAHOE JOE'S, INC., a Delaware corporation ("Tenant"), and MBK SOUTHERN CALIFORNIA LTD., a California limited partnership ("Landlord").

WHEREAS, the purpose of this Agreement is to set forth terms and conditions under which Tenant and/or Landlord may disclose to each other certain information that is confidential and proprietary to such party for the purpose of furthering the business relationship between Tenant and Landlord. For purposes of this Agreement, the "disclosing party" shall refer to that party, either Tenant or Landlord, which discloses confidential and proprietary information to the other party, which other party shall be referred to as the "non-disclosing party."

NOW THEREFORE, Tenant and Landlord hereby agree as follows:

- I. <u>Confidential Information</u>. "Confidential Information" of Tenant or Landlord means any information which is not made generally available to others by such party. Confidential Information may be oral or written, or recorded on electronic or other storage media. Confidential Information may include (but is not limited to) sales and profitability information, methods, processes, procedures, techniques, recipes, formulas, floorplans, designs, drawings, blueprints, computer programs, know-how, specifications, new product and service ideas, product development plans, marketing plans, strategies, and identities of other suppliers, vendors or contractors with which Tenant or Landlord deals. However, Confidential Information shall not include information which the non-disclosing party can demonstrate by means of prior written records or other clear and convincing circumstances (a) was or becomes generally available to the public other than as a result of a disclosure by such non-disclosing party or by its directors, officers, employees, agents, contractors, subcontractors, representatives, or lenders (collectively, the "Representatives"), or (b) was or becomes known to such non-disclosing party on a non-confidential basis from a source other than the disclosing party, provided that such source (and if applicable, its sources) is not bound by a confidentiality agreement with the disclosing party.
- II. <u>Confidentiality</u>. Tenant and Landlord agree, at all times during and after the existence of the commercial relationship between Tenant and Landlord, to protect and hold the Confidential Information of the other party strictly secret and confidential, to use such Confidential Information only for the purpose(s) for which it is disclosed, and not to directly or indirectly disclose, publish, reproduce or use (or cause or permit the disclosure, publication, reproduction or use of) such Confidential Information for any other purpose. The non-disclosing party will disclose the Confidential Information only to such of non-disclosing party's Representatives, mortgagees and ground lessors on an as-need-to-know basis in order to carry out the activities and purposes for which such Confidential Information was disclosed by the disclosing party.
- III. Return of Confidential Information. At such time as the non-disclosing party no longer needs to retain such Confidential Information to carry out the purposes and activities for which it was disclosed, the non-disclosing party shall, as well as instruct its Representative to, promptly return to the disclosing party or, if so instructed by the same, destroy all tangible material containing or reflecting such Confidential Information, and will not retain any copies, extracts, summaries or other reproductions in whole or in part of such tangible material, and such return/destruction shall be certified in writing to the disclosing party.
- IV. <u>Successors and Assigns</u>. This Agreement shall be binding upon the parties hereto, their respective Representatives, and their heirs, successors and assigns. Each party shall take reasonable precautions to ensure that its Representatives comply with the provisions of this Agreement, and shall indemnify and hold harmless the disclosing party against any breaches hereof by the non-disclosing party and its Representatives. Each party agrees to identify, upon request, all persons to whom any Confidential Information may have been disclosed.
- V. <u>Severability; Remedies</u>. If any provision or application of this Agreement is held unlawful or unenforceable in any respect, such illegality or unenforceability shall not affect other provisions or applications which can be given effect, and this Agreement shall be construed as if the unlawful or unenforceable provision or application had not been contained herein. Each party acknowledges that the disclosing party may not have an adequate remedy at law in the event of any unauthorized use or disclosure of Confidential Information by the non-disclosing party or its Representatives, and that the disclosing party shall therefore be entitled, in addition to any other remedies that may be available, to injunctive and/or other equitable relief to prevent or remedy any such unauthorized use or disclosure.
 - VI. Governing Law. This Agreement shall be construed and enforced in accordance with the

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laws of the State of California.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands as of the day and year first above written.

LANDLORD:

MBK SOUTHERN CALIFORNIA LTD.,

a California limited partnership,

By MBK Southern California, Inc. a California corporation, its sole general partner

By:

Print: Its:

By: M

Its: Chair

TENANT:

TAHOE JOE'S, INC., a Delaware corporation.

By:

Print: H. Thomas Mitchell

Its: Secretary

By:

Print: Clark C. Grant

Its: Chief Financial Officer



EXHIBIT L

USE RESTRICTIONS (PROHIBITIVES AND EXCLUSIVES)

- 1. No use or operation will be made, conducted or permitted on or with respect to all or any part of the Shopping Center, which use or operation is obnoxious to or out of harmony with the development or operation of the Shopping Center, including, but not limited to, the following:
 - (i) Any noise, litter or other activity which may constitute a public or private nuisance;
- (ii) Any noise or sound that is objectionable due to excessive intermittence, beat, frequency, shrillness or loudness;
 - (iii) Any obnoxious odor (excluding those odors normally associated with a restaurant);
 - (iv) Any noxious, toxic, caustic or corrosive fuel or gas;
 - (v) Any dust, dirt or fly ash in excessive quantities;
- (vi) Any unusual fire, explosion or other damaging or dangerous hazard, including the storage, display or sale of explosives or fireworks;
 - (vii) Any drilling for and/or removal of subsurface substances; and
 - (viii) Any dumping of garbage or refuse.
- 2. Tenant shall not use or cause to be used any portion of its respective premises or the Shopping Center for the following purposes or activities:
- (i) Displaying and/or selling of gourmet foods, beer and/or wine for off-premises consumption, and/or products made from wicker and/or rattan within an aggregate of five hundred square feet or more of Tenant's Premises.
- (ii) Selling and/or leasing of office equipment (including computers), office furniture or office supplies or providing copying, printing or other office services then provided by Staples, unless such selling and/or leasing is incidental to such tenant's primary business and is conducted within no more than an aggregate of five percent (5%) of such tenant's sales floor area.
- (iii) Conducting the primary business of retail, rental or sale of video software merchandise (such restriction is not applicable to any store whose business is the sale of computer hardware and computer systems), pre-recorded music and/or blank tapes. The term "primary business" as used herein means twenty-five percent (25%) of annual gross sales as to computer software, and fifteen percent (15%) of annual gross sales as to video and audio software.
- (iv) Selling, renting and/or distributing, either singly or in any combination, of items contained in any of the following respective categories of merchandise: (a) linens and domestics; (b) bathroom items; (c) housewares; (d) frames and poster quality wall art; (e) window treatments; and/or (f) closet, shelving and storage items (which items, either singly or in any combination, are hereinafter referred to as the "Exclusive Items"), unless such selling, renting and/or distributing is conducted within an aggregate area (which shall include an allocable portion of the aisle space adjacent to such sales, rental and/or distribution area) not to exceed the lesser of either five percent (5%) or two thousand (2,000) square feet of Floor Area within such tenant's premises.
 - (v) Operating an espresso bar similar to a "Starbucks" or "Coffee Bean and Tea Leaf" store.
- (vi) Operating an open-stock, name-brand footwear store, unless such tenant occupies freestanding facilities or other facilities within the Shopping Center containing floor area in excess of eighteen thousand (18,000) square feet.
- (vii) Selling or displaying (for this purpose display shall not include electronic equipment used in Tenant's day to day business) of electronic equipment and components, including, but not limited to, all types of telecommunication and transmitting equipment, computers and related accessories, and audio/video equipment and accessories, unless such tenant's premises is located east of that certain street thoroughfare running north/south, cutting through the Shopping Center, connecting Dalidio Drive with El Mercado, within the Shopping Center.
- 3. No merchandise and/or services shall be displayed, sold, leased, stored, advertised or offered for sale or lease by Tenant within the Shopping Center unless within the physical limits of the leaseable area of Tenant's Premises, except for occasional promotions established or permitted from time to time by Landlord, subject to the terms and conditions of the REA; and provided further, subject to the foregoing proviso, Tenant acknowledges that the consent of the Hotel (which Hotel may withhold in its sole and absolute discretion) is required for any proposed sale of merchandise and/or services within the automobile parking area located east of the easterly wall of the existing Gottschalks store.



Northern District of Texas Claims Register

21-30725-sgj11 Tahoe Joe's Inc.

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: (19499165) Claim No: 2 Status: SLO Promenade DE, LLC Original Filed Filed by: CR

8080 Park Lane, Suite 700 Date: 08/27/2021 Entered by: J. Seth Moore

Dallas, Texas 75231 Original Entered Modified:

Date: 08/27/2021 Last Amendment Filed: 12/10/2021 Last Amendment Entered: 12/10/2021

Amount claimed: \$160991.31

History:

Details 2-1 08/27/2021 Claim #2 filed by SLO Promenade DE, LLC, Amount claimed: \$122562.96 (Moore, J.)

Details 2-2 12/10/2021 Amended Claim #2 filed by SLO Promenade DE, LLC, Amount claimed: \$160991.31

(Moore, J.)

Description: (2-1) lease

(2-2) Lease *Remarks:*

Claims Register Summary

Case Name: Tahoe Joe's Inc. Case Number: 21-30725-sgj11

Chapter: 11

Date Filed: 04/20/2021 **Total Number Of Claims:** 1

Total Amount Claimed*	\$160991.31
Total Amount Allowed*	

^{*}Includes general unsecured claims

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

	Claimed	Allowed
Secured		
Priority		
Administrative		

Fill in this information to identify the case:	RECEIVED
Debtor 1 Tahoe Joe's Inc.	AUG 3 0 2021
Debtor 2 (Spouse, if filing)	BMC GROUP
United States Bankruptcy Court for the: Northern District of Texas	DIVIC CITCOI
Case sumber 21-30725	

Official Form 410

Proof of Claim

04/16

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.

P	Part 1: Identify the C	laim		
1.	Who is the current creditor?	SLO PROMENADE DE, LLC Name of the current creditor (the person or entity to be paid for this cl Other names the creditor used with the debtor		
2.	Has this claim been acquired from someone else?	☑ No ☐ Yes. From whom?		
3.	Where should notices and payments to the creditor be sent? Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	Where should notices to the creditor be sent? J. Seth Moore Name 8080 Park Lane, Suite 700 Number Street Dallas, Texas 75231 City State ZIP Code	Where should different) Name Number City	Street State ZIP Code
		Contact phone 214-265-3852 Contact email Smoore@condontobin.com Uniform claim identifier for electronic payments in chapter 13 (if you up a second on the	Contact phone Contact email use one):	
4.	Does this claim amend one already filed?	☑ No ☐ Yes. Claim number on court claims registry (if known) _		Filed on MM / DD / YYYY
5.	Do you know if anyone else has filed a proof of claim for this claim?	☑ No ☐ Yes. Who made the earlier filing?		

FRESH POC 00396

ŀ	art 2: Give Inforn	ation About the Claim as of the Date the Case Was Filed
6.	Do you have any nur you use to identify the debtor?	
7.	How much is the clai	m? \$ 122,562.96. 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 t	he 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. Lease
9.	Is all or part of the cl secured?	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 unsecured: \$(The sum of the secured and unsecured amounts should match the amount in line 7.) Amount necessary to cure any default as of the date of the petition: \$ Annual Interest Rate (when case was filed)% Fixed Variable
10	. Is this claim based o lease?	n a □ No ✓ Yes. Amount necessary to cure any default as of the date of the petition. \$122,562.96
11	. Is this claim subject right of setoff?	o a ☑ No ☐ Yes. Identify the property:

Official Form 410 Proof of Claim page 2

12. Is all or part of the claim entitled to priority under	☑ No			٠			
11 U.S.C. § 507(a)?	Yes. Check	one:		Amount entitled to priority			
A claim may be partly priority and partly		ic support obligations (including alimony and child support obligations (including alimony and child support \mathbb{C} , \S 507(a)(1)(A) or (a)(1)(B).	pport) under	\$			
nonpriority. For example, in some categories, the law limits the amount entitled to priority.		Up to \$2,850* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).					
onales to promy.	bankrup	salaries, or commissions (up to \$12,850*) earned wit toy petition is filed or the debtor's business ends, whi C. § 507(a)(4).		\$			
	☐ Taxes o	r penalties owed to governmental units. 11 U.S.C. §	507(a)(8) .	\$			
	☐ Contribu	utions to an employee benefit plan. 11 U.S.C. § 507(a	n)(5).	\$			
	Other. S	Specify subsection of 11 U.S.C. § 507(a)() that app	lies.	\$			
	* Amounts a	ere subject to adjustment on 4/01/19 and every 3 years after	that for cases begun on or af	ter the date of adjustment.			
Part 3: Sign Below							
Part 3: Sign Below				···			
The person completing this proof of claim must	Check the appro	priate box:					
sign and date it.	I am the cre						
FRBP 9011(b).	_	ditor's attorney or authorized agent.					
If you file this claim electronically, FRBP	_	stee, or the debtor, or their authorized agent. Bankrup	•				
5005(a)(2) authorizes courts	I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.						
to establish local rules specifying what a signature is. I understand that an authorized signature on this <i>Proof of Claim</i> serves as an acknowledgment that when calculation amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.							
A person who files a	amount of the claim, the decitor gave the debtor cledit for any payments received toward the debt.						
fraudulent claim could be fined up to \$500,000, imprisoned for up to 5	I have examined the information in this <i>Proof of Claim</i> and have a reasonable belief that the information is true and correct.						
years, or both. 18 U.S.C. §§ 152, 157, and	I declare under penalty of perjury that the foregoing is true and correct.						
3571.	Executed on dat	e 08/27/2021 MM / DD / YYYY					
	/s/ J. Seth	n Moore					
	Print the name	of the person who is completing and signing this	claim:				
	Name	James Seth Moore					
	Name	First name Middle name	Last name				
	Title	Partner					
	Company	Condon Tobin Sladek Thornton Nerenbe					
		Identify the corporate servicer as the company if the author	orized agent is a servicer.				
	Address	8080 Park Lane, Suite 700					
		Number Street					
		Dallas, TX 75231					
		City	State ZIP Code				
	Contact phone	214-265-3852	Email smoore@cond	lontobin.com			

Official Form 410 Proof of Claim page 3

TENANT ESTOPPEL

To:

SLO Promenade L.P.; JM Wilson Promenade Properties, LLC; Merrill Promenade Properties, LLC; and

Erskine Promenade Properties, LLC

(as owners in common, collectively, "Buyer")

c/o Investec Commercial, Inc. 200 East Carrillo Street, Suite 200 Santa Barbara, CA 93101 Attn: Mr. Kenneth P. Slaught

and

MBK Southern California Ltd. ("Landlord") 1801 Century Park East, Suit 1040 Los Angeles, California 90067

Attention: Mr. Andrew M. Trachman

and

Bear, Stearns Funding, Inc., ("Lender") its successors and/or assigns 383 Madison Avenue New York, NY 10179

Attn: Mr. J. Christopher Hoeffel

Re: Tahoe Joe's, Inc., a Delaware corporation ("Tenant")
485 Madonna Road, Suite 2 of Pad 5 (the "Premises")
located in SLO Promenade (formerly "Central Coast Mall")

Ladies and Gentlemen:

The undersigned is the Tenant under that certain ground lease for the Premises dated as of March 30, 2000, as amended, modified and/or supplemented by that certain First Amendment to Lease dated December 21, 2000, that certain Nondisclosure Agreement dated March 30, 2000, that certain Memorandum of Ground Lease dated March 30, 2000, that certain Guaranty of Lease by Buffets, Inc. dated March 24, 2000, that certain Letter dated November 15, 2000 relating to billboard signage, that certain Commencement Verification dated February 16, 2001, and that certain Subordination, Nondisturbance and Attornment Agreement dated April 12, 2000, a true and correct copy of which, together with any amendments, modifications or supplements thereto, are attached hereto (collectively, the "Lease") covering approximately 7,143 square feet in that certain shopping center commonly known as SLO Promenade, City of San Luis Obispo, County of San Luis Obispo, State of California (the "Property"); made with MBK Southern California Ltd., a California limited partnership, as the Landlord. The undersigned hereby certifies, at the date hereof, as follows:

- 1. The Lease sets forth the entire agreement between Tenant and Landlord with respect to the leasing of the Premises and there are no other agreements, written or oral, which affect Tenant's occupancy of the Property.
- 2. The Lease has been duly authorized, executed and delivered by Tenant, is in full force and effect, and is binding on the undersigned, and has not been modified, changed, altered or amended except as expressly described above.
- 3. Tenant is in possession of and occupies those Premises for purposes permitted under the Lease. To Tenant's knowledge, Tenant has all governmental permits, licenses, and consents required for the activities and operations being conducted or to be conducted by it in or around the Premises.
 - 4. The rent commencement date under the Lease was January 15, 2001.
- 5. The term of the Lease is for approximately fifteen (15) years, which shall expire on December 31, 2016, subject to the terms of the Lease. Tenant has no: (i) rights to renew or extend the term of the Lease or any expansion rights under the Lease, except as follows: four (4) options to extend for a period of five (5) years each; (ii) any option or preferential right to purchase all or any part of the Property or all or any part of the building of which the Premises are a part; or (iii) right, title or interest with respect to the Property other than as Tenant under the Lease.
 - 6. Tenant has deposited with Landlord the sum of \$0.00

- 7. No rents or charges have been paid in advance.
- 8. The current base monthly rental is Seven Thousand Eighty-three and 33/100 Dollars (\$7,083.33).
- 9. To Tenant's knowledge, Tenant is not the subject of any pending bankruptcy, insolvency, debtor's relief, reorganization, receivership, or similar proceedings, nor the subject of a ruling with respect to any of the foregoing.
- 10. Tenant has made no agreement with Landlord or any agent, representative or employee of Landlord concerning free rent, partial rent, rebate of rental payments or any other similar rent concession unless the same is set forth in the Lease. Landlord and Tenant are reviewing certain additional rent charges and Tenant's proportionate share related thereto. Until such time as the parties have resolved the same, Tenant is unable to verify any shortages or overages relating thereto. Tenant is not exercising any credit against any rent or other charge or rent concession under the Lease; provided, however, Tenant may have said rights as set forth in the Lease.
- 11. To Tenant's knowledge, all insurance required of Tenant under the Lease has been provided by Tenant and all premiums have been paid.
 - 12. The interest of Tenant in the Lease has not been assigned, sublet or encumbered.
- 13. To the best of undersigned's knowledge, there are no uncured defaults by Landlord or Tenant under the Lease and the undersigned knows of no events or conditions which with the passage of time or notice or both, would constitute a default by Landlord or Tenant under the Lease or any of the related agreements described above. Pursuant to the Lease, Landlord is required to provide Tenant with executed non-disturbance agreements from any and all future mortgagees, holders of deeds of trust, and any other parties holding an interest in the Shopping Center or Premises, within thirty (30) days after the date said parties obtain such an interest. Failure to do so will constitute a Landlord default under the Lease. To the best of undersigned's knowledge, there are no unpaid construction allowances or incentive payments outstanding under the Lease payable by Landlord to Tenant. To Tenant's knowledge, Tenant has no defenses, offsets, claims or credits against the enforcement of the Lease by the Landlord.
- 14. The undersigned represents that the improvements and space required to be furnished according to the Lease have been duly delivered by Landlord and accepted by Tenant and the Premises are in good condition and repair as of the date of this Certificate.
- 15. To Tenant's knowledge, Tenant has not begun any action, or given or received any notice, for the purpose of termination of the Lease.
 - 16. It is understood that you are relying on the statements contained in this Certificate.
- 17. This Estoppel Certificate does not cover facts or conditions not within the Tenant's actual knowledge at the time of execution.

Dated as of June 7, 2002.

"Tenant"

TAHOE JOE'S, INC., a Delaware corporation

Name: Damon S. Fraser

Title: Secretary



VIA FEDERAL EXPRESS November 15, 2000

RECEIVED

Mr. David Fansler Tahoe Joes, Inc. 2718 W. Shaw Avenue Fresno, CA 93711

Re:

Billboard Sign SLO Promenade

San Luis Obispo, California

Dear David:

This letter shall serve to formalize our previous agreement regarding your participation in the billboard sign. Tahoe Joes, Inc. shall be required to pay the sum of \$321.88 monthly. This rate shall be in effect for the months November 2000 through October 2001 for participation by eight (8) tenants as indicated in the enclosed photograph of the billboard. As discussed in my letter dated August 25, 2000, the cost of the billboard will increase by three percent (3%) annually, every November.

We have also enclosed an invoice for November 2000 billing and appreciate your prompt payment. Please note that all payments regarding the billboard shall be directed to:

> MBK Southern California Ltd. Attention: Mr. Bob Grandstaff 175 Technology Drive Irvine, California 92618

Kindly indicate your agreement with the terms of this letter by causing it to be executed below and returning a copy to my attention. Should you have any questions, please do not hesitate to contact me. Thank you for your assistance in this matter.

truly yours.

Sary D. Scott Vice President

Enclosures

Mr. Bob Grandstaff cc:

Mr. Andrew Trachman

Agreed and Accepted:

Tahod Joes. Inc

Bv:

Name:

Its:

Date:

MEMORANDUM OF GROUND LEASE

THIS MEMORANDUM OF GROUND LEASE, is made and entered into as of this day of March, 2000, by and between MBK SOUTHERN CALIFORNIA LTD., a California limited partnership ("Landlord"), and Tahoe Joe's, Inc., a Delaware corporation ("Tenant").

RECITALS

WHEREAS, Landlord and Tenant entered into that certain Ground Lease dated March 2000 (the "Lease"), relating to certain leased land (the "Premises") which is a part of the shopping center development known as SLO Promenade (f/k/a "Central Coast Mall") (the "Shopping Center"), situated on certain real property in the City of San Luis Obispo, County of San Luis Obispo, California, which Shopping Center is legally described on Exhibit A attached hereto; and

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

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

- 1. Landlord and Tenant are parties to the Lease to demise and let the Premises, upon the terms and conditions more particularly set forth in the Lease.
- 2. The term of the Lease shall be for an initial term of fifteen (15) full Lease Years and any Partial Lease Year (as such terms are defined in the Lease), commencing pursuant to the terms of the Lease (the "Commencement Date"), and anticipated to expire on December 31, 2015.
- 3. Subject to the terms and conditions more particularly set forth in the Lease, Tenant has the option to extend the term of the Lease for four (4) additional periods of five (5) years each, such periods to commence at the expiration of the initial term or preceding extended term of the Lease, as the case may be.
- 4. Subject to the terms and conditions more particularly set forth in the Lease, and except for certain excluded tenants specified in the Lease, Tenant shall have the exclusive right to operate a full-service or self-service restaurant selling primarily steaks or steak products (with the exclusion of hamburgers), ribs and prime rib in the Shopping Center. Landlord covenants and agrees not to lease any space in, or ground lease or sell any parcel or portion of the Shopping Center to any other tenant or person whose primary business conducted in any space that is occupied by it (or any tenant or subtenant of it) at the Shopping Center is for the operation of a full-service or self-service restaurant selling primarily steaks or steak products (with the exclusion of hamburgers), ribs and prime rib, nor shall Landlord hereafter permit with respect to the Shopping Center, or consent with respect to the Project, to the operation of a full-service or self-service restaurant selling primarily steaks or steak products (with the exclusion of hamburgers), ribs and prime rib, other than at the Premises. Tenant's Exclusive Use commitment will be binding on Landlord, its successors and assigns, and any tenants of Landlord or its successors of the Shopping Center.
- 5. Reference is made to the Lease for a full statement of the terms and conditions of the Lease, all of which are hereby incorporated by reference.



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

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

Witness:

LANDLORD:

MBK SOUTHERN CALIFORNIA LTD., a California limited partnership

By:

MBK SOUTHERN CALIFORNIA, INC., a California corporation, sole general partner

Its:

Its: Ohairman

Witness:

TENANT:

TAHOE JOE'S, INC., a Delaware corporation

By:

Print: H. THOMAS MITCHELL

Its:

By: Print:

Its:

CFO

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California	
County of Orange	
On 3-30-00 before me	e, Michale M. Faring, Notary Public, Name and Title of Officer (e.g., "Jane Doe, Notary Public)
Personally appeared Michael 14. I	loss
personally known to me - OR - proved to MICHELLE M. FARINA Commission # 1220717 Notary Public - California Orange County My Comm. Expires May 22, 2003	o me on the basis of satisfactory evidence to be the person(%) whose name(\$) (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(\$) on instrument the person(\$), or the entity upon behalf of which the person(\$) acted, executed the document. WITNESS my hand and official seal.
	My chelle M. Laura Signature of Notary Public
Description of Attached Document Title or Type of Document:	um of Ground Lease
Document Date:	Number of Pages: 2
Signer(s) Other Than Named Above:	
Capacity(ies) Claimed by Signer(s)	
Signer's Name: Michael H. Voss	Signer's Name:
☐ Individual ☐ Corporate Officer Title(s):	☐ Individual ☐ Corporate Officer Title(s):
☐ Partner ─ ☐ Limited ☐ General ☐ Attorney-in-Fact ☐ Trustee ☐ Guardian or Conservator ☐ Other: Of SIGNER Top of thumb here	Partner - Limited General Attorney-in-Fact Trustee Guardian or Conservator Of Signer Top of thumb here

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of	
County of <u>Dakota</u>	
On March 24 7000 before me,	Name and Title of Officer (e.g., "Jane Doe, Notary Public)
Personally appeared H. Thomas Mitche Name(s) of Sign	ell and Clark C. Grant
personally known to me - OR - proved to JULIE SAUSER NOTARY PUBLIC - MINNESOTA My Commission Expires 1-31-2006	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 instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the document.
	WITNESS my hand and official seal.
	Vulu Saus
OPT	Signature of Notary Public
	ove valuable to persons relying on the document and could prevent ment of this form to another document.
Description of Attached Document	
Title or Type of Document: Memorandun	of Ground Lease
Document Date:	Number of Pages: \(\frac{\frac{1}{2}}{2} \)
Signer(s) Other Than Named Above:	
Capacity(ies) Claimed by Signer(s)	
Signer's Name: H. Thomas Mitchell	Signer's Name: Clark C. Grant
Individual Corporate Officer Title(s): Partner — Limited General Attorney-in-Fact Trustee Guardian or Conservator Of Signer Top of thumb here	Individual Corporate Officer Title(s): Partner - Limited General Attorney-in-Fact Trustee Guardian or Conservator Of SIGNER Top of thumb here
Signer Is Representing:	Signer Is Representing:



California All-Purpose	CERTIFICATE OF ACKNOWLEDGMENT
------------------------	-------------------------------

State of CAL, FORNIA
County of Los ANGELES

On April 4, 2000 before me, ROSLYN 1 KRAMIR NOVAM PUBLC

Name, title e.g., John Doe, Notary Public

personally appeared ANDY M TRACH MAN

Name(s) of Signers(s)

Personally known to me *OR*

Proved 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 instrument.



Witness my hand and official seal.

Signature of Notary

Print Notary's Name, County in which Commissioned and Commission Expiration Date

Seal



Exhibit A

SLO-934115A NP

ALTA Extended Owners Commitment Form 1344-A (1982)

PARCEL 1:

Lots 1, 2, 7 and 9 of Tract No. 1268, in the City of San Luis Obispo, in the County of San Luis Obispo, State of California, according to map filed for record August 27, 1986 in Book 13, Page 46 of Maps, in the office of the County Recorder of said County.

PARCEL 2:

A portion of Lot 10 of Tract No 1268, in the City of San Luis Obispo, in the County of San Luis Obispo, State of California, according to map recorded August 27, 1986 in Book 13, Page 46 of Maps, in the office of the County Recorder of said County, described as follows:

Beginning at the Northerly most corner of Lot 3;

Thence along the Northwesterly line of said Lot 10 as shown on said map, North 50° 10' 16" E, 290.70 feet to a point on the Southwesterly corner of Lot 1 as shown on said map;

Thence along the Southwesterly line of Lots 1 and 2, as shown on said map, South 46° 04' 00" East, 227.94 feet to the Southerly most corner of said Lot 2;

Thence along the Southeasterly line of said Lot 2, North 43° 56' 00" East, 127.00 feet to the Northeasterly line of said Lot 10;

Thence along said Northeasterly line of Lot 10, South 46° 04' 00". East, 37.07 feet to the most Northerly corner of Lot 9 as shown on said map;

Thence along the Northwesterly line of said Lot 9, South 43° 56' 00" West, 229.00 feet;

Thence South 46° 04' 00" East, 45.00 feet;

Thence South 43° 56' 00" West, 235.00 feet to the Westerly most corner of said Lot 9;

Thence along Southwesterly line of said Lot 9, South 46° 04' 00" East, 437.00 feet to the Southerly most corner of said Lot 9;

Page 1



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SLO-934115A NP

ALTA Extended Owners Commitment Form 1344-A (1982)

Thence along the Southeasterly line of said Lot 9, North 43° 56' 00" East, 193.00 feet to the Westerly most corner of Lot 7 as shown on said map;

Thence along the Southwesterly line of said Lot 7, South 46° 04' 00" East 591.04 feet to the Easterly most corner of said Lot 10;

Thence South 43° 56' 00" West, 130.00 feet;

Thence North 46 04' 00" West, 88.69 feet;

Thence South 43° 56' 00" West, 173.73 feet to the Southerly most corner of said Lot 10;

Thence South 44° 21' 51" West, 32.00 feet, to a point on the Southwesterly line of Dalidio Raod;

Thence North 45° 38' 09" West, along said Southwesterly line of Dalidio Road, 1030.72 feet:

Thence North 44° 21' 51" East, 32.00 feet, to the Southerly most corner of Lot 4, as shown on said map;

Thence along the Southeasterly line of said Lot 4 and continuing along the Northeasterly prolongation thereof, North 50° 10' 16" East, 122.92 feet;

Thence North 39° 49' 44" West, 265.18 feet to the point of beginning.

PARCEL 3:

A portion of Lot 3 of Tract No. 1268, in the City of San Luis Obispo, in the County of San Luis Obispo, State of California, according to a map recorded August 27, 1986 in Book 13, Page 46 of Maps, in the office of the County Recorder of said County, described as follows:

Beginning at the Southerly most corner of said Lot 3;

Thence along the Southeasterly line of said Lot 3, North 50°10'16" East, 73.13 feet;



AST AMERICA

SLO-934115A NP

ALTA Extended Owners Commitment Form 1344-A (1982)

Thence North 39'49'44" West, 5.00 feet;

Thence parallel to the Southeasterly line of said Lot 3 and 5.00 feet distant therefrom, North 50°10'16" East, 73.04 feet to a point on the Northeasterly line of said Lot 3;

Thence along said line, North 39°49'44" West, 150.18 feet to the Northerly most corner of said Lot 3:

Thence along the Northwesterly line of said Lot 3, South 50° 10' 16" West, 139.81 feet to the beginning of a tangent curve having a radius of 20.00 feet;

Thence southwesterly along said curve an arc length of 33.44 feeet through a central angle of 95° 48' 25" to a point on the Southwesterly line of said Lot 3;

Thence along the Southwesterly line of Lot 3, South 45° 38' 09" East, 133.84 feet to the point of beginning.

PARCEL 4:

Lot 4 and a portion of Lot 3 and Lot 10 of Tract No. 1268, in the City of San Luis Obispo, in the County of San Luis Obispo, State of California, according to a map recorded August 27, 1986 in Book 13, Page 46 of Maps, in the office of the County Recorder of said County, described as follows:

Beginning at the Southerly most corner of said Lot 4;

Thence along the Southeasterly line thereof and continuing along the Northeasterly prolongation thereof North 50°10'16" East, 122.92 feet;

Thence parallel to the Northeasterly line of said lot and 12.00 feet distant therefrom North 39°49'44" West, 115.00 feet to a point on the Northeasterly line of said Lot 3;

Thence parallel to the Southeasterly line of said Lot 3 and 5.00 feet distant therefrom South 50°10'16" West, 73.04 feet;

Thence South 39°49'44" East, 5.00 feet to the Southeasterly line of said Lot 3;



AST AMERICA.

SLO-934115A NP

ALTA Extended Owners Commitment Form 1344-A (1982)

Thence along the Southeasterly line thereof South 50°10'16" West, 73.13 feet to the Southerly most corner of said Lot 3, as shown on said map;

Thence along the Southwesterly line of said Lot 4, South 45° 38' 09" East, 5.57 feet to the beginning of a tangent curve having a radius of 190.00 feet;

Thence continuing along said Southwesterly line of said Lot 4 to the left, an arc length of 33.16 feet through a central angle of 10° 00' 00";

Thence continuing along said Southwesterly line of Lot 4, South 55° 38' 09" East, 52.48 feet;

Thence South 45° 38' 09" East, 21.54 feet to the point of beginning.

NON-DISCLOSURE AGREEMENT

THIS NON-DISCLOSURE AGREEMENT is made and entered into this day of March, 2000 by and between TAHOE JOE'S, INC., a Delaware corporation ("Tenant"), and MBK SOUTHERN CALIFORNIA LTD., a California limited partnership ("Landlord").

WHEREAS, the purpose of this Agreement is to set forth terms and conditions under which Tenant and/or Landlord may disclose to each other certain information that is confidential and proprietary to such party for the purpose of furthering the business relationship between Tenant and Landlord. For purposes of this Agreement, the "disclosing party" shall refer to that party, either Tenant or Landlord, which discloses confidential and proprietary information to the other party, which other party shall be referred to as the "non-disclosing party."

NOW THEREFORE, Tenant and Landlord hereby agree as follows:

- I. <u>Confidential Information</u>. "Confidential Information" of Tenant or Landlord means any information which is not made generally available to others by such party. Confidential Information may be oral or written, or recorded on electronic or other storage media. Confidential Information may include (but is not limited to) sales and profitability information, methods, processes, procedures, techniques, recipes, formulas, floorplans, designs, drawings, blueprints, computer programs, know-how, specifications, new product and service ideas, product development plans, marketing plans, strategies, and identities of other suppliers, vendors or contractors with which Tenant or Landlord deals. However, Confidential Information shall not include information which the non-disclosing party can demonstrate by means of prior written records or other clear and convincing circumstances (a) was or becomes generally available to the public other than as a result of a disclosure by such non-disclosing party or by its directors, officers, employees, agents, contractors, subcontractors, representatives, or lenders (collectively, the "Representatives"), or (b) was or becomes known to such non-disclosing party on a non-confidential basis from a source other than the disclosing party, provided that such source (and if applicable, its sources) is not bound by a confidentiality agreement with the disclosing party.
- II. <u>Confidentiality</u>. Tenant and Landlord agree, at all times during and after the existence of the commercial relationship between Tenant and Landlord, to protect and hold the Confidential Information of the other party strictly secret and confidential, to use such Confidential Information only for the purpose(s) for which it is disclosed, and not to directly or indirectly disclose, publish, reproduce or use (or cause or permit the disclosure, publication, reproduction or use of) such Confidential Information for any other purpose. The non-disclosing party will disclose the Confidential Information only to such of non-disclosing party's Representatives, mortgagees and ground lessors on an as-need-to-know basis in order to carry out the activities and purposes for which such Confidential Information was disclosed by the disclosing party.
- III. Return of Confidential Information. At such time as the non-disclosing party no longer needs to retain such Confidential Information to carry out the purposes and activities for which it was disclosed, the non-disclosing party shall, as well as instruct its Representative to, promptly return to the disclosing party or, if so instructed by the same, destroy all tangible material containing or reflecting such Confidential Information, and will not retain any copies, extracts, summaries or other reproductions in whole or in part of such tangible material, and such return/destruction shall be certified in writing to the disclosing party.



- IV. <u>Successors and Assigns</u>. This Agreement shall be binding upon the parties hereto, their respective Representatives, and their heirs, successors and assigns. Each party shall take reasonable precautions to ensure that its Representatives comply with the provisions of this Agreement, and shall indemnify and hold harmless the disclosing party against any breaches hereof by the non-disclosing party and its Representatives. Each party agrees to identify, upon request, all persons to whom any Confidential Information may have been disclosed.
- V. <u>Severability: Remedies</u>. If any provision or application of this Agreement is held unlawful or unenforceable in any respect, such illegality or unenforceability shall not affect other provisions or applications which can be given effect, and this Agreement shall be construed as if the unlawful or unenforceable provision or application had not been contained herein. Each party acknowledges that the disclosing party may not have an adequate remedy at law in the event of any unauthorized use or disclosure of Confidential Information by the non-disclosing party or its Representatives, and that the disclosing party shall therefore be entitled, in addition to any other remedies that may be available, to injunctive and/or other equitable relief to prevent or remedy any such unauthorized use or disclosure.
- VI. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands as of the day and year first above written.

LANDLORD:

MBK SOUTHERN CALIFORNIA LTD., a California limited partnership,

By MBK Southern California, Inc. a California corporation, its sole general partner

> By: Print:

Its:

By:

Print: Its:

Michael H. Voss

Chairman

TENANT:

TAHOE JOE'S, INC., a Delaware corporation.

By: ____

Print: H. Thomas Mitchell

Its:

Secretary

By:

Clark C. Grant

Print: Its:

Chief Financial Officer



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EXHIBIT D COMMENCEMENT VERIFICATION

This Commencement Verification is made and entered into this _____ day of February, 2001, by and between MBK Southern California Ltd., a California limited partnership ("Landlord") and Tahoe Joe's, Inc., a Delaware corporation ("Tenant").

WITNESSETH:

WHEREAS, Landlord and Tenant entered that certain Lease dated March 30, 2000, under which Landlord ground leased to Tenant a pad in "SLO Promenade" (f/k/a "Central Coast Mall"); and

WHEREAS, the exact Lease Commencement Date was not specified in the Lease, but now has been determined.

NOW THEREFORE, in consideration of the Lease and the mutual covenants contained therein, Landlord and Tenant hereby agree as follows

- 1. Landlord and Tenant hereby clarify said Lease by establishing the Lease Commencement Date as January 15, 2001.
- 2. Except for stipulating the aforesaid date, this Commencement Verification does not amend, modify, change, alter, amplify, interpret or supersede any of the terms and provisions of the Lease, which shall in all things control.

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

"LANDLORD"

"TENANT"

MBK SOUTHERN CALIFORNIA LTD., a California limited partnership,

TAHOE JOE'S, INC. a Delaware corporation

By: MBK Southern California, Inc., a California corporation, its sole general partner

By: ADDREW J. TRACHJAN

Its: PLESDENT

Print: Damon S. Fraser

Its: Secretary

GUARANTY OF LEASE

(California)

The undersigned, BUFFETS INC., a Minnesota corporation ("Guarantor"), as a material inducement to and in consideration of MBK SOUTHERN CALIFORNIA LTD., a California limited partnership ("Landlord") entering into a written lease (the "Lease") with TAHOE JOE'S, INC., a Delaware corporation ("Tenant"), of even date herewith, for the lease of that certain real property located in the Central Cost Mall, San Luis Obispo, California, as more fully described in the Lease (the "Premises"), hereby jointly, severally and unconditionally guarantee and promise to and for the benefit of Landlord and its successors and assigns the full payment and performance of each and all of the terms, covenants and conditions of the Lease by Tenant, all as more specifically set forth hereinafter, and do hereby further jointly and severally agree as follows:

ARTICLE 1. GUARANTOR'S DUTIES

- Section 1.01 <u>Guaranty of Tenant's Performance</u>. Guarantor hereby unconditionally guaranties to Landlord the full and complete performance of each and all of the terms, covenants and conditions of the Lease as required to be performed by Tenant, including, but not limited to, the payment of all rent, property taxes, insurance premiums, and any and all other charges or sums, or any portion thereof, to accrue or become due from Tenant to Landlord pursuant to the terms of the Lease (collectively the "<u>Obligations</u>"). Guarantor understands and agrees that this Guaranty is unconditional and continuing and is a guaranty of payment and performance and not of collection.
- Section 1.02 <u>Tenant's Failure to Perform</u>. In the event that Tenant shall fail to pay rent, property taxes, insurance premiums, or any other sums or charges, or any portion thereof, accrued or due pursuant to the terms of the Lease, then, upon written notice to Guarantor by Landlord as herein provided, Guarantor shall pay to Landlord, or Landlord's designated agent, any and all such amounts as may be due and owing from Tenant to Landlord by reason of Tenant's failure to perform.
- Section 1.03 Other Provisions. In the event that Tenant shall fail to perform any covenant, term or condition of the Lease as required to be performed by Tenant, other than as provided for in Section 1.02 above, then upon written notice to Guarantor by Landlord, as provided herein, Guarantor shall commence and complete performance of such condition, covenant or term within five (5) business days after the date of Landlord's notice to Guarantor of such failure by Tenant to so perform, and in the event such performance by Guarantor cannot be completed within said five (5) business days, Guarantor shall commence performance within said time and diligently pursue completion thereof within a reasonable time thereafter.
- Section 1.04 <u>Interest and Additional Damages</u>. In addition to the obligations of Guarantor set forth in Sections 1.02 and 1.03 above, Guarantor agrees to pay to Landlord any and all reasonable and necessary incidental damages and expenses incurred by Landlord as a direct and proximate result of Tenant's failure to perform. Guarantor further agrees to pay to Landlord interest on any and all sums due and owing Landlord, by reason of Tenant's failure to pay same, at the Default Rate set forth in the Lease.
- Section 1.05 <u>Review of Documents</u>. Guarantor hereby acknowledges that it has copies of and is fully familiar with each and every document executed and delivered to Landlord by Tenant including, without limitation, the Lease.

ARTICLE 2. GUARANTY

- Section 2.01 Nature of Guaranty. The liability of Guarantor hereunder is independent of the obligation of Tenant and a separate action or separate actions may be brought and prosecuted against Guarantor whether or not any action is brought or prosecuted against Tenant or whether Tenant is joined in any such action or actions. The liability of Guarantor hereunder is independent of and not in consideration of or contingent upon the liability of any other person under any similar instrument and the release of, or cancellation by, any signer of a similar instrument shall not act to release or otherwise affect the liability of Guarantor hereunder.
- Section 2.02 <u>Guarantor's Waivers</u>. Except as specifically provided for in this Guaranty, Guarantor hereby waives:
 - (a) any and all notices, presentments, notice of nonpayment or nonperformance;
 - (b) all defenses by reason of any disability of Tenant, or based on the termination of Tenant's liability from any cause, or on any statute of limitations respecting obligations accruing under the Lease or this Guaranty including Section 359.5 of the California Code of Civil Procedure;



- (c) any and all rights it may have now or in the future to require or demand that Landlord pursue any right or remedy Landlord may have against Tenant or any other third party;
- (d) any and all rights it may have to enforce any remedies available to the Landlord now or in the future, against Tenant;
- (e) any and all right to participate in any security held by Landlord now or in the future;
- (f) the right to require Landlord to (i) proceed against Tenant, (ii) proceed against or exhaust any security which Landlord now holds or may hold in the future from Tenant, (iii) pursue any other right or remedy available to Landlord, or (iv) have the property of Tenant first applied to the discharge of the Obligations; and
- (g) any defense arising as a result of Guarantor's election of the application of Section 1111(b)(2) of the Bankruptcy Code or based on any borrowing or grant of a security interest under Section 364 of the Bankruptcy Code; and
- (h) the provisions of Sections 2809, 2810, 2819, 2845, 2849, 2850, 2855 and 3433 of the California Civil Code.

Notwithstanding any modification, discharge or extension of the indebtedness or any amendment, modification, stay or cure of Landlord's rights which may occur in any bankruptcy or reorganization case or proceeding concerning Tenant whether permanent or temporary, and whether assented to by Landlord, Guarantor hereby agrees that it shall be obligated hereunder to pay and perform the Obligations in accordance with the terms of the Lease and the terms of this Guaranty. Guarantor understands and acknowledges that by virtue of this Guaranty, Guarantor has specifically assumed any and all risks of a bankruptcy or reorganization case or proceeding with respect to Tenant.

ARTICLE 3. <u>ALTERATION. MODIFICATION OR ASSIGNMENT</u>

- Section 3.01 <u>Effect of Extension. Modification. or Alteration of Lease</u>. Guarantor understands and agrees that the obligations of Guarantor under this Guaranty shall in no way be affected by any extension, modification or alteration of the Lease, including, but not limited to, Tenant entering into any sublease thereunder, or Tenant's obligation under the Lease and each of its provisions, and any such extension, modification or alteration of the Lease, including Tenant entering into any sublease thereunder, shall in no way release or discharge Guarantor from any obligations accruing under this Guaranty. The term "Lease" shall include all amendments, modifications, alterations and extensions of the Lease.
- Section 3.02 <u>Assignment</u>. Guarantor understands and agrees that any assignment of the Lease, or any rights or obligations accruing thereunder, shall in no way affect Guarantor's obligations under this Guaranty until such time as Tenant hereunder is released in accordance with the provisions of the Lease.
- Section 3.03 <u>Delay in Enforcement</u>. Guarantor understands and agrees that any failure or delay of Landlord to enforce any of its rights under the Lease or this Guaranty shall in no way affect Guarantor's obligations under this Guaranty.

ARTICLE 4. MISCELLANEOUS

- Section 4.01 <u>Notices</u>. Any and all notices required under this Guaranty shall be in writing and may be personally served or sent by mail and, if sent by mail, shall be deemed to have been received when two (2) business days have elapsed from the date of deposit in the mail, registered, with postage prepaid to the party who is designated to receive such notice at the address set forth after their respective signatures on this Guaranty or such other address as shall have been specified by said party upon written notice from time to time.
- Section 4.02 <u>Severability.</u> In case any provision of this Guaranty shall be invalid, illegal or unenforceable, such provisions shall be severable from the rest of this Guaranty and the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
- Section 4.03 <u>Applicable Law.</u> This Guaranty and the rights and obligations of the parties hereto shall be governed by and construed and enforced in accordance with the laws of the State of California.
- Section 4.04 <u>Assignability</u>. This Guaranty may be assigned in whole or in part by Landlord upon written notice to Guarantor.

Section 4.05 <u>Successors and Assigns</u>. This Guaranty shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto.

Section 4.06 <u>Attorneys' Fees</u>. Guarantor hereby agrees to be responsible for and to pay all costs and expenses, including, without limitation, reasonable attorneys' fees and expenses incurred by Landlord in connection with the collection of all sums guarantied hereunder and the defense or enforcement of any of Landlord's rights hereunder, whether or not suit is filed, and whether such collection be from Tenant or from Guarantor.

Section 4.07 <u>Release.</u> Guarantor shall be released of its obligations hereunder on and after the date that Tenant's obligations under the Lease terminate pursuant to those provisions of the Lease granting Tenant termination rights, including as the result of a permitted assignment under the Lease wherein Tenant is released from further performance. Guarantor shall not be released as a result of Tenant's bankruptcy or liquidation.

Section 4.08 Governing Law. This Guaranty shall be construed and enforced in accordance with the laws of the State of California.

IN WITNESS WHEREOF, this Guaranty has been executed as of the 34 day of March, 2000.

"GUARANTOR"

BUFFETS, INC., a Minnesota corporation

By: ______ Print: Roe H. Hatlen

Its: Chief Executive Officer

Address: 1460 Buffet Way Eagan, MN 55121

ACKNOWLEDGED AND AGREED AS OF March 27, 2000

LANDLORD:

MBK SOUTHERN CALIFORNIA LTD., a California limited partnership,

By:

MBK Southern California, Inc. a California corporation, its sole general partner

Print:

íts:

Address:

1801 Century Park East, Suite 1040 Los Angeles, CA 90067

GROUND LEASE

For Real Property In

SLO PROMENADE

(f/k/a "CENTRAL COAST MALL")

By and Between

MBK SOUTHERN CALIFORNIA LTD.,

a California limited partnership

Landlord

and

TAHOE JOE'S, INC. a Delaware corporation,

Tenant



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GUARANTY



GROUND LEASE FOR SLO PROMENADE (f/k/a "CENTRAL COAST MALL")

This summary of the basic lease provisions (the "Basic Lease Provisions") of the attached Ground Lease (the "Lease") is entered into by and between Landlord and Tenant as of March ________, 2000, for the purpose of convenience in discussing the terms and conditions of the Lease, and is hereby made a part of the Lease. In the event of any conflict, inconsistency or ambiguity between the Basic Lease Provisions and the attached Lease, the Basic Lease Provisions shall govern.

BASIC LEASE PROVISIONS

- 1. "Landlord" means MBK Southern California Ltd., a California limited partnership.
- 2. "Tenant" means Tahoe Joe's, Inc., a Delaware corporation.
- 3. "<u>Tenant's Trade Name</u>" means "Tahoe Joe's Famous Steakhouse" except in instances more fully set forth in Section 8.A. of the Lease.
- 4. "Project" means the Shopping Center (as defined below), owned by Landlord, as well as those adjacent properties improved with a hotel and a Gottschalks store, owned by third parties (collectively, the "Adjacent Property"). The property improved with a hotel shall be referred to as the "Hotel Property," and the property improved with a Gottschalks store shall be referred to herein as the "Gottschalks Property."
- 5. "Shopping Center" means that certain real property owned by Landlord, being developed as a shopping center, located on the east side of Dalidio Drive, south of Madonna Road, in the City of San Luis Obispo, County of San Luis Obispo, State of California, as more particularly depicted on the site plan attached to the Lease as Exhibit A and incorporated herein by this reference, and described by the Legal Description attached to the Lease as Exhibit J and incorporated herein by this reference, which was formerly known as "Central Coast Mall," but has been renamed "SLO Promenade."
- 6. "Premises" means that certain space comprised of approximately 7,143 square feet of gross leasable area within the building to be constructed in the Shopping Center and that portion of said building for the use of the Premises, which Premises are crosshatched on the site plan attached to the Lease as Exhibit A.
- 7. "Term" means the First Partial Lease Year beginning on the Lease Commencement Date (defined in Section 3.A of the Lease) and ending on December 31st of the same year, plus fifteen (15) full Lease Years thereafter. (See Section 3.A of the Lease).
- 8. "Target Date" means April 1, 2000.
- 9. "Minimum Annual Rent" or "Minimum Rent" means the Minimum Annual Rent set forth in the Rent Schedule attached to the Lease as Exhibit E and incorporated herein by this reference.
- 10. [Intentionally Deleted.]
- 11. "Security Deposit" means: None.
- 12. "Landlord's Construction Representative" means Andrew Trachman or such other representative as may be designated by Landlord from time to time.
- 13. "<u>Tenant's Construction Representative</u>" means Dave Fansler, or such other representative as may be designated by Tenant from time to time.
- 14. "Permitted Use" means operation of a restaurant which may, at the option of Tenant and subject to applicable laws and government regulation, serve alcohol, as more fully set forth in Section 8.A. of the Lease, subject to such use restrictions as set forth in the Lease and the attached exhibits thereto, and for no other use or purpose.



- 15. "Time to Complete Tenant's Work" means one hundred fifty (150) days after the Tender Date (as defined in Section 2 of the Lease).
- 16. "Broker" means Landlord's broker, Terranomics Retail Services, and Tenant's broker, Colliers Tingey International, the fees of which shall be paid as follows: Landlord shall be responsible for the payment of fees only to Terranomics Retail Services (pursuant to a separate agreement between such broker and Landlord), which broker shall in turn be responsible for the payment of fees to Colliers Tingey International (pursuant to a separate agreement between said brokers).
- 17. "Landlord's Address for Notice" means 1801 Century Park East, Suite 1040, Los Angeles, California 90067, Attention: Mr. Andrew Trachman, with a copy to (i) MBK Real Estate Ltd., 175 Technology, Irvine, California 92618, Attention: Michael Voss, Esq.; and (ii)Voss, Cook & Thel LLP, 840 Newport Center Drive, Suite 700, Newport Beach, California 92660, Attention: David A. Lurker, Esq.
- "Tenant's Address for Notice" means 1460 Buffet Way, Eagan, MN 55121, Attn: Real Estate 18. Officer with a copy to 1460 Buffet Way, Eagan, MN 55121, Attn: General Counsel and with another copy to 2718 W. Shaw Avenue, Fresno, CA 93711, Attn: President
- 19. "Lease Year" means that portion of the Lease Term, and any Option Term consisting of the period from January 1 through December 31. Any portion of the Lease Term, and any Option Term which is less than a Lease Year shall be a "Partial Lease Year." The portion of the Lease Term commencing on the Lease Commencement Date and ending on the following December 31st shall be the "First Partial Lease Year."
- 20. "Tenant's Proportionate Share" means the percentage determined pursuant to Section 12.A(4) of the Lease.
- 21. "Guarantor" means Buffets, Inc., a Minnesota corporation.

"LANDLORD"

"TENANT"

MBK SOUTHERN CALIFORNIA LTD., a California limited partnership,

TAHOE JOE'S, INC., a Delaware corporation

By: MBK Southern California, Inc., a California corporation, its sole general partner

By:

Print: Its:

By: Print:

H. Thomas Mitchell

Its: Secretary

By: Print:

Its:

By: Print:

Its:

Chief Financial Officer



GROUND LEASE

1. PROPERTY LEASED

A. Premises

Subject to the terms and conditions of this Lease, Landlord leases to Tenant and Tenant leases from Landlord the Premises as defined in the Basic Lease Provisions, located in the City of San Luis Obispo (the "City"), County of San Luis Obispo, State of California. The Premises is a part of the Shopping Center, which when completed, will consist of approximately one hundred eighty thousand (180,000) square feet of gross leasable building area exclusive of the Premises.

The Premises shall also include (i) all improvements for the exclusive use of the Premises hereafter erected on the building pad upon which the Premises are located pursuant to Section 3.D. of this Lease or otherwise, and (ii) the following non-exclusive rights, easements and appurtenances in favor of Tenant and its agents, contractors, employees, and invitees: (A) all of Landlord's rights, privileges, easements, and appurtenances in, over and upon adjoining and adjacent public and private land, highways, roads and streets, including, without limitation, the Adjacent Property within the Project, as the same may be reasonably required for access and ingress and egress between the Shopping Center and such adjoining and adjacent land, and (B) the use of and ingress and egress through the Common Areas (as defined in Section 12.A.1. below) and other common areas and facilities of the Project that Landlord has rights and privileges to, including, without limitation, all easements for vehicular and pedestrian ingress, egress and parking, installation, repair, replacement and use of utilities, construction and surface water and storm water drainage, all with respect to the Project, subject to those certain documents related to the Project and recorded in the official records of the San Luis Obispo County Recorder's Office, including, but not limited to that certain Amended and Restated Construction, Operation and Reciprocal Easement Agreement dated July 30, 1999, and recorded as Document No. 1999-055874 in said county recorder's office (the "REA") (collectively, the "CC&Rs"). Landlord represents and warrants with respect to the CC&Rs that they do not and will not conflict with or materially limit Tenant's intended use of the Premises as set forth in Section 8 hereof.

For purposes of this Lease, (i) gross leasable area shall be computed by measuring from the outside face of exterior walls to the outside face of exterior walls and from the center line to center line of demising walls, with no deduction or exclusion in the computation of gross leasable area by reason of interior partitions or other interior construction or equipment, and (ii) the gross leasable area of the Shopping Center shall be the sum of the leasable areas of all leasable or occupiable portions of the Shopping Center, regardless of whether or not actually occupied. In the event Tenant at its election or as required by applicable law utilizes an enclosed garbage area located outside of the building of which the Premises are a part, such area shall not be considered a portion of the leasable area of the Premises and rent shall not be payable thereon.

B. Common Areas

Tenant and its agents, employees, customers and invitees shall have the nonexclusive right in common with Landlord and all others to whom Landlord has or may hereafter grant rights, to use such sidewalks, roadways, and parking facilities and other common areas and facilities (as described more particularly in Section 12 below) that are generally available to all occupants of the Shopping Center as may from time to time exist within the Shopping Center and, to the extent allowed under the CC&R's, with the Adjacent Property.

2. DELIVERY OF POSSESSION

This Lease will be effective upon its execution by the last of the parties to so execute and the delivery to each party of a fully executed original.

Landlord shall give Tenant written notice of Landlord's intent to tender possession of the building pad upon which the Premises are located to Tenant with Landlord's Work (as defined in Section 3.D.1.) substantially completed, all prior occupants, if any, lawfully removed, and all contingencies to the effectiveness of this Lease required to be completed by Landlord prior to the Tender Date (as defined in this Section 2, below) satisfied not less than five (5) business days prior to such tender of possession ("Notice of Tender") and the date Landlord so tenders possession of the building pad upon which the Premises are located to Tenant in such condition shall hereinafter be referred to as the "Tender Date." It is presently estimated that Landlord's Work in the building pad upon which the Premises are located will be completed by the Target Date referenced in Item 8 of the Basic Lease Provisions, but such date is merely a target date, and Tenant agrees to accept Landlord's tender of possession when Landlord's Work in the building pad upon which the Premises are located has been completed; provided, however, Tenant shall not be required to accept possession of such building pad prior to such date further provided, however, in the event Landlord

(B)

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has not given Notice of Tender within one hundred twenty (120) days after the Target Date, Tenant may elect to terminate this Lease upon sixty (60) days' prior written notice to Landlord, in which event this Lease shall terminate at the end of such sixty (60) day period unless Landlord gives Tenant the Notice of Tender within such sixty (60) day period. In the event permission is given to Tenant to enter or occupy all or a portion of such building pad prior to the Target Date, such occupancy shall be subject to all of the terms and conditions other than the payment of Minimum Annual Rent and Common Operating Costs. When the Lease Commencement Date has been determined in accordance with Section 3.A. below, the parties shall execute an amendment to this Lease in the form of Exhibit D attached hereto and incorporated herein by this reference, stating the actual Lease Commencement Date and the Expiration Date.

Tenant shall have a period of ninety (90) days (the "Plan and Permit Period"), following the sixty (60) day period as provided in Exhibit C attached hereto for Tenant's preparation and submittal of the Plans to both Landlord and all applicable governmental authorities, to obtain, at Tenant's sole cost and expense, all necessary governmental permits and approvals for the construction of the Improvements and Tenant's Work as set forth in Exhibit C. During such period, Tenant shall expeditiously process such permits and approvals in good faith and with such due diligence as will facilitate the issuance of the permits and approvals prior to the expiration of the Plan and Permit Period. Tenant agrees to make such reasonable modifications to the Plans as may be required by the applicable governmental authorities in a timely manner in order to obtain such permits and approvals prior to the end of the Plan and Permit Period. No later than thirty (30) days prior to the expiration of the Plan and Permit Period, if Tenant has not obtained all such governmental permits and approvals, Tenant shall immediately notify Landlord of the same, whereupon Landlord may, at its sole discretion, but is not obligated to, cooperate with Tenant and assist Tenant in its efforts to acquire such governmental permits and approvals still outstanding, provided that in connection with such cooperation, Landlord shall have no liability or obligation to successfully obtain such governmental permits and approvals for Tenant, and Tenant shall continue in good faith and use due diligence to cooperate with Landlord to pursue the obtainment of such governmental permits and approvals.

In the event, upon the expiration of the Plan and Permit Period, Tenant has not obtained all of such governmental permits and approvals, the Plan and Permit Period shall be extended day by day until the same occurs (but in no event shall such extension be for more than sixty (60) days from the expiration of the Plan and Permit Period (the "Extension Period"), during which time Tenant shall continue in good faith and use due diligence, and cooperate with Landlord if Landlord has chosen to assist Tenant, to pursue the successful obtainment of the remainder of such permits and approvals. Upon the expiration of the Extension Period, if Tenant still has not obtained all of such governmental permits and approvals, then, unless the parties mutually agree otherwise in writing, this Lease shall automatically terminate, whereupon neither party shall have any further rights or obligations under this Lease, except for such matters which expressly survive the termination of this Lease as provided herein.

Provided further, it shall be understood that the Plan and Permit Period shall be extended by one (1) day for each day that Tenant is delayed in obtaining all necessary governmental permits and approvals as a result of Tenant not yet having completed the authorities retrofit requirement as it relates to plumbing fixtures (which requirement Tenant agrees to use commercially reasonable diligence to complete); and further provided that no such extension shall apply as a result of any Tenant caused delays not relating to the retrofit plumbing fixture program.

3. TERM

A. . Initial Term

This Lease shall be for a term of fifteen (15) full Lease Years and the First Partial Lease Year, if any, commencing on the earlier to occur of: (i) one hundred fifty (150) days after the last to occur of: (a) substantial completion of Landlord's Work; (b) subject to Tenant delivering Tenant's Plans to Landlord within the time periods permitted in Exhibit C hereto, the date Landlord approves Tenant's Plans; (c) the occurrence of the Tender Date whereupon Landlord tenders possession of the building plan upon which the Premises are located to Tenant; and (d) the date Tenant obtains all necessary governmental permits and approvals concerning the construction of Tenant's restaurant, or (ii) the date Tenant opens the Premises for business (the "Lease Commencement Date"), and ending fifteen (15) Lease Years after the last day of the First Partial Lease Year of the Term (the "Expiration Date") (the period commencing on the Lease Commencement Date and expiring on the Expiration Date shall be referred to herein as the "Lease Term" or "Term"). It shall be understood that the Lease Commencement Date shall be extended by one (1) day for each day that Tenant is delayed in opening for business to the public as a result of Tenant not being able to obtain its certificate of occupancy for the Premises due to Tenant not yet having completed the authorities retrofit requirement as it relates to plumbing fixtures (which requirement Tenant agrees to use commercially reasonable diligence to complete); provided Tenant shall be deemed to have received a certificate of occupancy of Tenant obtains or is able to obtain a temporary certificate of occupancy by the applicable authority; and further provided that no such extension shall apply as a result of any Tenant caused delays not relating to the retrofit plumbing fixture program. The foregoing one hundred fifty (150) day period shall be extended by one (1) day for each day that Tenant is delayed in performance of Tenant's Work by any "force majeure" event described in Section 32.L. below; provided, that unless the "force majeure" event is a building moratorium, the extension of the Lease Commencement Date pursuant to this sentence will not in any event cause the 150-day period referenced above to be extended for more than a total of sixty (60) days.

B. Acceptance and Suitability

Tenant acknowledges that neither Landlord, nor any agent, employee or servant of Landlord, has made any representation with respect to the building pad upon which the Premises are located, the Premises, or the Shopping Center, or with respect to the suitability of them to the conduct of Tenant's business, nor has Landlord agreed to undertake any modifications, alterations, or improvements of such building pad, except as specifically provided in this Lease. Landlord warrants the good, sound and workmanlike condition of Landlord's Work for a period of one (1) year after the Lease Commencement Date. Landlord shall make, at Landlord's sole cost and expense, all necessary repairs and replacements thereto required in order to remedy any defects in workmanship, equipment or material therein. Following the expiration of Landlord's warranty, Landlord shall assign to Tenant all warranties that Landlord had received from manufacturers, contractors or others with respect to such building pad or any part thereof.

C. Options to Extend

Landlord hereby grants to Tenant the options (the "Options") to extend the initial Term (the "Initial Term") of the Lease for four (4) additional terms of five (5) years each (the "First Option Term," "Second Option Term," "Third Option Term" and "Fourth Option Term" respectively), upon and subject to the terms and conditions set forth herein. Each Option Term shall be exercised, if at all, by written notice to Landlord on or before the date that is nine (9) months prior to the Expiration Date of the prior Term. In the event Tenant exercises either or all of the Options, each of the terms, covenants and conditions of the Lease shall apply during the applicable Option Term as though the Expiration Date of the Option Term was the date originally set forth herein as the Expiration Date of the prior Term except that the Minimum Annual Rent during the applicable Option Term shall be the amount set forth on Exhibit E hereto. The Option for the Second Option Term cannot be exercised if Tenant does not exercise the Option for the First Option Term in accordance with this Section 3.C. The Option Term in accordance with this Section 3.C. The Option Term in accordance with this Section 3.C.

Anything contained herein to the contrary notwithstanding, if Tenant is in material default beyond any applicable period to cure such existing default, under any of the terms, covenants or conditions of this Lease either at the time Tenant exercises an Option or any time thereafter prior to the commencement date of the Option Term, Landlord shall have, in addition to all of Landlord's other rights and remedies provided in the Lease, the right to terminate the Option upon notice to Tenant, in which event the Expiration Date of this Lease shall be and remain the Expiration Date of the prior Term.

In order to prevent the inadvertent failure of Tenant to exercise any Option Term provided for in this Lease within the time frames called for herein, it is agreed that Landlord may not terminate this Lease until and unless Landlord notifies Tenant in writing and points out that the option to extend or to further extend, as the case may be, has not been exercised. Tenant's ability to elect the Option Term, in each instance, shall continue for a period of fifteen (15) days after receipt of such notice from Landlord; but if Tenant does not during such period send notice of the exercise to Landlord, Tenant's ability to elect the Option Term shall thereafter terminate. In the event Landlord fails to give Tenant the notice provided for in this paragraph prior to the expiration of the original Term or of any Option Term, as the case may be, and if Tenant shall remain in possession of the Premises after the expiration of the then current Term, then Tenant shall remain in possession as a tenant from month to month as provided in Section 19 below, subject to the provisions of this Lease insofar as the same may be made applicable to a tenant from month to month. If Landlord then gives Tenant such notice and Tenant exercises its option to extend then the effective date of such exercise shall be retroactive to the expiration date of the original Term or the Option Term, whichever is applicable.

D. Tenant Improvements

(1) Landlord's Work

By the Tender Date, Landlord at its sole cost and expense shall cause substantial completion of the work designated as Landlord's obligation in Exhibit C attached hereto and the building pad upon which the Premises are located to be rough-graded in a manner as set forth in Exhibit C; the foregoing referred to as "Landlord's Work." Except with respect to Landlord's Work, Landlord will not be required to perform any construction work with respect to Tenant's initial occupancy of the Premises, all such work being the sole responsibility of Tenant.

The term "Substantial Completion of Landlord's Work" is defined when Landlord's Work (as required to be completed by the date in question) is substantially complete except for such work as (i) Landlord cannot complete until Tenant performs portions of Tenant's Work, or (ii) that can be completed by Landlord without unreasonable interference with Tenant's Work or increasing the



cost of Tenant's Work. As used in this paragraph, the phrase "increasing the cost of Tenant's Work," shall mean a cost which results, due to the actions and/or inactions of Landlord, in a change order to a contract for Tenant resulting in a cost increase to Tenant's Work of ten percent (10%) or more from the original contract amount. Rather than waiting until the date of completion of all of Landlord's Work, Landlord or its agent or architect may notify Tenant of the date of Substantial Completion of Landlord's Work. Not later than seven (7) days after Tenant's receipt of such notice, the parties will do a joint walk-through of the building pad upon which the Premises are located in order to reasonably determine, by mutual agreement and in good faith, whether Substantial Completion of Landlord's Work has occurred and whether the uncompleted items of Landlord's Work can be finished without interference with Tenant's Work. If the parties reach such agreement, then Tenant will be deemed to have accepted such building pad for purposes of the prior paragraph, and Landlord will promptly proceed to cause the uncompleted items to be completed with reasonable diligence and in a manner designed to avoid any interference with Tenant's Work.

Exhibit C defines what Landlord's Work must be completed (or for which there is Substantial Completion of Landlord's Work, in accordance with the conditions and requirements of the preceding paragraph) by the Tender Date or as otherwise specified therein. If any such items are not completed by that date, then Landlord will be in default of this Lease (subject to Section 17.C. below). Tenant shall have the option, but not the obligation, to perform the required action to cure the default and complete Landlord's Work, in which event Landlord shall reimburse Tenant for the reasonable out-of pocket costs of Tenant completing Landlord's Work for Landlord. If Landlord does not reimburse Tenant within ten (10) days after written request therefor, Tenant shall provide Landlord with an additional ten (10) day prior written notice that Tenant will deduct such amount from the rents thereafter to become due under this Lease, together with interest thereon at the annual rate of two percent (2%) over the rate then announced by Chase Manhattan Bank as its base or prime rate from the date such amount was due. No provision of this Section will be construed to require Landlord to deliver, or require Tenant to accept, the building pad upon which the Premises are located as of the date of Substantial Completion of Landlord's Work, rather than the date of completion of Landlord's Work, as the delivery date pursuant to the paragraph above.

If Landlord gives permission for Tenant to enter prior to Substantial Completion of Landlord's Work and Tenant is willing to enter early to commence its work, the parties will, to the extent possible, coordinate such work to avoid interference between Landlord's contractor(s) and Tenant's contractor(s).

(2) Tenant's Work

Tenant agrees to construct, at Tenant's sole expense, but subject to the limitations set forth in Exhibit C, the work described as "Tenant's Work" in Exhibit C attached hereto and incorporated herein by this reference, pursuant to the terms of such Exhibit C. In no event shall the Lease Commencement Date occur until two out of three of the retail stores labeled Major Tenant 'B', Major Tenant 'C' and Major Tenant 'D' (shown on Exhibit A attached hereto and incorporated herein by this reference) have fully opened for business to the public.

4. RENT

A. Basic Rent

(1) Monthly Rental

Commencing on the Lease Commencement Date and subject to the increases set forth on the "Rent Schedule" attached hereto as Exhibit E, Tenant shall pay to Landlord during the Term, Minimum Annual Rent in the amount set forth in Item 9. of the Basic Lease Provisions, which amount shall be payable by Tenant on or before the first day of each month, in advance, at the address specified for Landlord in Item 17. of the Basic Lease Provisions, or such other place as Landlord shall designate in writing, without any prior demand therefor and without any abatement, deduction or setoff whatsoever, except as specifically permitted by law and in this Lease. Payment of the monthly installment of Minimum Annual Rent for the first month or portion of it shall be made upon the Lease Commencement Date. If the Lease Commencement Date should occur on a day other than the first day of a calendar month, or the Term, or applicable Option Term should expire on a day other than the last day of a calendar month, then the rental for such fractional month shall be prorated on a daily basis based upon a thirty (30) day calendar month.

(2) Increases in Minimum Annual Rent

The Minimum Annual Rent payable by Tenant under this Section 4 shall be increased upon the expiration of the fifth (5th) full Lease Year of the Term and upon the expiration of each five (5)

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Lease Years thereafter as set forth on Exhibit E attached hereto and incorporated herein by this reference.

B. Additional Rent.

Tenant shall pay to Landlord, as additional rent ("Additional Rent"), during the Term and any extensions thereof, its allocated share of Taxes (as defined in Section 10 below) and Tenant's Proportionate Share of Common Operating Costs (as defined in Section 12 below). Tenant shall pay all sums required to be paid as Additional Rent directly to Landlord at the place where the Minimum Rent is payable, without deduction or setoff except as provided in this Lease.

C. Proration

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

5. **SECURITY DEPOSIT** [Intentionally Omitted]

6. INSURANCE

A. Tenant

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

- (i) Property insurance against loss by fire and other hazards covered by the so-called "all-risk" form of policy in an amount equal to the full replacement value of the Premises, Tenant's Work, alterations and improvements made by Tenant to the building pad upon which the Premises are located;
- (ii) Commercial general liability insurance (on an Insurance Services Office form or equivalent) covering all acts of Tenant, its employees, agents, representatives and guests on or about the Premises, in a combined single limit amount of not less than Five Million and No/100 Dollars (\$5,000,000.00), and providing coverage on an "occurrence" rather than a "claims made" basis, which policy shall include, but not be limited to, coverage for Bodily Injury, Property Damage, Personal Liability and Contractual Liability (applying to this Lease);
- (iii) Worker's compensation insurance, with coverage as required by the State of California;
- (iv) Liquor liability insurance with coverage of at least One Million Dollars (\$1,000,000.00), if Tenant elects to serve or sell liquor in the Premises;
- (v) Vehicle liability insurance with respect to any owned vehicles used in connection with the operation of business at the Premises, and hired and non-owned vehicle liability insurance with coverage of at least One Million Dollars (\$1,000,000.00).
- (vi) Such fire and extended coverage or other property/casualty insurance on Tenant's equipment, stock in trade, fixtures, furnishings and other personal property located, leased or stored by Tenant within the Premises, in an amount equal to the full value of such items.

Tenant may self insure with respect to plate glass. Where applicable, Tenant may maintain reasonable deductibles on the insurance required by this Section 6A. Tenant's insurance required in Section 6(a)(ii) shall name Landlord and Landlord's mortgagee as an additional insured to the extent of Tenant's indemnity obligations set forth in Section 7. All of Tenant's insurance shall provide for thirty (30) days written notice to Landlord prior to cancellation, material change or non-renewal. Certificates of all such insurance shall be delivered to Landlord prior to occupancy of the Premises by Tenant and at least thirty (30) days prior to the termination date of any existing policy. If Tenant fails to comply with the requirements of this Section 6.A., Landlord may, but shall not be obligated to, obtain such insurance and keep the same in effect, and Tenant shall pay Landlord the reasonable premiums therefore upon demand.

B. Landlord

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Landlord shall, during the Term, and applicable Option Terms hereof, keep or cause to be kept, in full force and effect the following insurance:

- (i) Property insurance against loss by fire and other hazards covered by the so-called "all risk" form of policy covering the Shopping Center (including the portions of the building pad upon which the Premises are located other than Tenant's Work) in an amount equal to the full replacement value thereof. Said insurance shall include "Contingent Liability from the Operation of Building Laws", demolition and increased cost to rebuild coverages. If the Shopping Center includes steam or other equipment excluded from coverage pursuant to a boiler and machinery exclusion, boiler and machinery insurance in commercially reasonable amounts. If the Shopping Center or any part thereof is located in a designated official flood-hazardous area, flood insurance, insuring the Shopping Center to the maximum limit made available with respect to such buildings and improvements under the Federal Flood Disaster Protection Act of 1973, as amended, and the regulations issued thereunder;
- (ii) Commercial general liability insurance (on an Insurance Services Office form or equivalent) covering the Shopping Center, in a combined single limit amount of not less than Five Million and No/100 Dollars (\$5,000,000.00), and providing coverage on an "occurrence" rather than a "claims made" basis, which policy shall include, but not be limited to, coverage for Bodily Injury, Property Damage, Personal Liability, Contractual Liability (relating to this Lease) and Employer Liability, naming Tenant as an additional insured; and
- (iii) Such other insurance as prudent Landlords in comparable shopping centers elect to purchase.

Landlord will provide Tenant with evidence of the insurance required by this Section 6.B. upon written request by Tenant.

C. General.

If any insurance required hereunder ceases to be available, or is available on terms so unacceptable that prudent landlords or tenants, as the case may be, generally do not carry such insurance, then in lieu of such insurance the pertinent party may carry the most comparable insurance which is available and generally carried by prudent parties. All policies of insurance required under this Section 6 may be in the form of blanket or umbrella policies so long as the Shopping Center or the Premises are specifically designated therein, it being understood that the policy limits provided herein apply individually to each of the Premises or Shopping Center, as the case may be. Further, all insurance required hereunder shall be issued by financially responsible insurers. An insurer with a current A.M. Best Company rating of at least A:X shall be conclusively deemed to be acceptable.

7. INDEMNITY

Tenant agrees to indemnify, defend and hold Landlord and Landlord's officers, directors, partners, agents and employees entirely harmless from and against all liabilities, losses, demands, actions, expenses or claims, including attorney's fees and court costs, for injury to or death of any person or for damages to any property arising out of or in any manner connected with (i) the use, occupancy or enjoyment of the Project and Premises by Tenant or Tenant's agents, employees or contractors (the "Tenant's Agents") or any work, activity or other things allowed or suffered by Tenant or Tenant's Agents to be done in or about the Project and Premises, (ii) any breach or default in the performance of any obligation of Tenant under this Lease and (iii) any act or failure to act, whether negligent or otherwise tortious, by Tenant or Tenant's Agents on or about the Premises or Project. Notwithstanding the foregoing, Tenant shall not be liable to the extent that damage or injury is ultimately determined to be caused by the active negligence or willful misconduct of Landlord.

Landlord agrees to indemnify, defend and hold Tenant and Tenant's officers, directors, partners, agents and employees entirely harmless from and against all liabilities, losses, demands, actions, expenses or claims, including reasonable attorney's fees and court costs, for injury to or death of any person or for damages to any property arising out of or in any manner connected with (i) the use, occupancy or enjoyment of the Project and Premises by Landlord or Landlord's agents, employees, invitees or contractors (the "Landlord's Agents") or any work, activity or other things allowed or suffered by Landlord or Landlord's Agents to be done in or about the Project and Premises, (ii) any breach or default in the performance of any obligation of Landlord under this Lease and (iii) any act or failure to act, whether negligent or otherwise tortious, by Landlord or Landlord's Agents on or about the Premises or Project. Notwithstanding the foregoing, Landlord shall not be liable to the extent that damage or injury is ultimately determined to be caused by the active negligence or willful misconduct of Tenant. The provisions of this Section 7 shall survive the termination or expiration of this Lease.



8. USE OF PREMISES

A. Permitted Uses; Exclusive Use

Subject to applicable laws and ordinances, from and after the date Tenant initially opens for business in the Premises, Tenant shall cause business to be conducted at the Premises for the use permitted by this Lease, continuously and uninterruptedly at all times consistent with prudent business practices and the other terms and provisions of this Lease, and will keep the Premises fully staffed with employees and adequately stocked to service and supply the usual and ordinary needs of Tenant's customers.

Tenant shall use the Premises solely for the Permitted Use and under the Trade Name specified in Items 14. and 3., respectively, of the Basic Lease Provisions or any other name used by a majority of Tenant's restaurants in California; except in instances of a permitted assignment or sublease, or upon the written consent of Landlord which consent shall not be unreasonably withheld or unduly delayed. In addition to the rules and regulations attached hereto as Exhibit F and the use restrictions attached hereto as Exhibit L, which exhibits are incorporated herein by this reference, Tenant shall not do or permit anything to be done in or about the Premises which will in any way obstruct the use of the Common Areas of the Shopping Center or allow the Premises to be used for any immoral or unlawful purpose, nor shall Tenant cause, maintain or permit any nuisance in, on or about the Premises. Tenant shall not commit or suffer to be committed any waste in or upon the Premises. (The ordinary operation of a restaurant, including odors, parking load and traffic, for example, however, shall not be deemed a violation of the foregoing.) Tenant will not suffer or permit any person or persons to use the Premises or any part thereof for conducting therein a second-hand store, auction, distress or fire sale or bankruptcy or going-out-of-business sale. Tenant agrees that the Premises shall not be used for the operation of a bowling alley, amusement center of any kind (including, without limitation, pinball and other game parlors), massage parlor, or adult book store.

Tenant shall have the exclusive right to operate a full-service or self-service restaurant selling primarily steaks or steak products (with the exclusion of hamburgers), ribs and prime rib (the "Exclusive Use"). Landlord covenants and agrees not to lease any space in, or ground lease or sell any parcel or portion of the Shopping Center to any other tenant or person whose primary business conducted in any space that is occupied by it (or any tenant or subtenant of it) at the Shopping Center is for the operation of a full-service or self-service restaurant selling primarily steaks or steak products (with the exclusion of hamburgers), ribs and prime rib, nor shall Landlord hereafter permit with respect to the Shopping Center, or consent with respect to the Project, to the operation of a full-service or self-service restaurant selling primarily steaks or steak products (with the exclusion of hamburgers), ribs and prime rib, other than at the Premises; provided, however, that Landlord will not be deemed to be in default of its obligations under this exclusivity commitment in the event the following tenants (the "Excluded Tenants") operate as the Exclusive Use within the space currently leased or occupied by them at the Shopping Center: Gottschalks Inc., Cost Plus, Inc., Staples the Office Superstore, Inc., Wherehouse Entertainment, Inc., WCM California LLC, a limited liability corporation, dba "Applebees Neighborhood Grill & Bar," and Bed Bath and Beyond, Inc. (whose leases do not or may not permit Landlord to deny consent to operation of the Exclusive Use); and further provided that Landlord agrees not to enter into any new Shopping Center leases (or agree to any (i) consent to a change of use to permit a tenant or person to operate as the Exclusive Use, (ii) renewals, or (iii) amendments extending the existing term of such lease, unless Landlord is obligated to do so pursuant to the provisions of such lease) without including a provision (if none exists) which would prevent said tenants or persons from operating as the Exclusive Use at the Shopping Center. Tenant's Exclusive Use commitment will be binding on Landlord, its successors and assigns, and any tenants of Landlord or its successors of the Shopping Center.

If requested by Tenant, Landlord shall provide for the recording of a memorandum of this Lease, in a form substantially similar to Exhibit H attached hereto and incorporated herein by this reference, which will include the exclusive right to operate a full-service or self-service restaurant selling primarily steaks or steak products, ribs and prime rib as granted by this Section 8.A. In the event Landlord fails to enforce the Exclusive Use commitment made to Tenant, Tenant shall have the right to enforce such Exclusive Use commitment upon thirty (30) days prior written notice to Landlord.. During any period of the Term or any Option Term during which there shall be a violation of the Exclusive Use (the "Exclusive Violation Period"), in addition to Tenant's other remedies available at law or in equity, Tenant, at its option exercised by delivering written notice to Landlord, shall be entitled to pay Landlord, in lieu of Minimum Rent and Additional Rent during such Exclusive Violation Period a monthly gross rental for the Premises equal to two percent (2%) of Tenant's Gross Sales (as such term is defined below) during any such Exclusive Violation Period ("Gross Rental") commencing thirty (30) days after Tenant notifies Landlord of such violation unless the violation is cured during such thirty (30) day period. Tenant shall pay any such Gross Rental to Landlord monthly, on or before the fifteenth (15th) day of the month following each calendar month, or part thereof, occurring during an Exclusive Violation Period. Tenant shall deliver to Landlord a monthly statement of Tenant's Gross Sales with respect to any Exclusive Violation Period concurrent with the Gross Rental. The



Gross Sales statement shall be signed by an authorized accounting employee of Tenant to be correct. Any right of setoff, abatement or deduction in favor of Tenant with respect to Minimum Rent and Additional Rent as provided in this Lease shall similarly apply to any Gross Rental payable by Tenant.

As used in this Lease, the term "Gross Sales" means the gross amount received by Tenant from all orders placed and filled, and all sales and services made or rendered, in, at or from the Premises, whether for cash or credit. There shall be no exclusion from Gross Sales except for the following exclusions: (a) Receipts from vending machines, coin-operated amusement devices and pay telephones; (b) Receipts from the sale of gift certificates until such are redeemed at the Premises, whereupon Tenant shall pay to Landlord accordingly the Gross Rental thereon; (c) Any sale to, or the value of any meals consumed by, employees of Tenant which are provided as a benefit of employment, not to exceed three percent (3%) of Gross Sales; (d) The value of any complimentary meals provided as a customer service or as part of Tenant's community marketing efforts, not to exceed two percent (2%) of Gross Sales; (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 Premises, but filled elsewhere; (h) Bad debts and "non-sufficient funds" checks, unless and until such amounts, or portions thereof, are paid to Tenant at a later date whereupon Tenant shall pay to Landlord accordingly the Gross Rental thereon; (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; and (k) Insurance recoveries or other proceeds not directly related to sales or services from the Premises.

For the purpose of ascertaining the amount of reportable sales and revenue and any amounts payable as Gross Rental within any Exclusive Violation Period, Tenant agrees to maintain its records in accordance with Generally Accepted Accounting Principles ("GAAP") and to record each and every sale at the time of the transaction on either a cash register having a sealed, continuous, cash register tape with cumulative totals, which numbers, records, and duplicates each transaction entered into the register on serially prenumbered sales slips or on a technically equivalent basis given current point-of-sale technology.

Landlord, at any time within two (2) years after receipt from Tenant of any statement of Gross Sales with respect to any Exclusive Violation Period, may cause an audit to be made of all such books and records for the purpose of investigating and verifying the accuracy of any statement of Gross Sales with respect to any such Exclusive Violation Period. Tenant shall make available to Landlord for the audit all such books and records at Tenant's corporate offices. If an audit or examination by Landlord, or Landlord's representative, discloses that Tenant has failed to accurately report and disclose all reportable Gross Sales with respect to any such Exclusive Violation Period, and that the total amount of the under reported Gross Sales with respect to any such Exclusive Violation Period exceeds three percent (3%), or the total amount of the under-reported Gross Sales with respect to any such Exclusive Violation Period results in Tenant owing additional Gross Rental in excess of Five Hundred Dollars (\$500.00), Tenant agrees to reimburse Landlord for all reasonable expenses incurred by Landlord in performing the examination, in addition to all additional Gross Rentals found to be owed by Tenant, if any. Such additional rentals will bear interest at the Default Rate (as defined in Section 26.A.) from the date that said obligation was discovered by audit until paid in full. If an examination by Landlord or Landlord's representative discloses that Tenant has over-reported Gross Sales with respect to any Exclusive Violation Period and that as a result of the over-reporting Tenant has overpaid rentals, Landlord shall give Tenant a refund of the balance of such overpaid rentals and interest at the Default Rate.

B. Operation

Except as otherwise provided below, from and after the date Tenant initially opens for business in the Premises, Tenant shall keep the Premises fully staffed with employees and adequately stocked with merchandise and trade fixtures to service and supply the usual and ordinary requirements of Tenant's customers. Except as otherwise provided below, Tenant shall keep the Premises continuously open for business during at least the following hours: 4:00 p.m. to 9:00 p.m. daily, except Thanksgiving Day, Christmas Eve, Christmas Day, New Years Day, Superbowl Sunday, and Easter Day (during which Tenant may be open at Tenant's option). Tenant shall have Tenant's window displays, exterior signs and any exterior advertising displays permitted under this Lease adequately illuminated continuously during those hours and days that the Premises are required to be open for business to the public.

However, Tenant will not be obligated to open for business: (i) during temporary closures not exceeding one hundred twenty (120) days in connection with a sale, assignment, sublease or other transfer which is permitted under this Lease or otherwise approved by Landlord, where such closure is necessary to consummate the transaction and allow the transferee to re-fixture the Premises for its intended use; (ii) during temporary closures not exceeding seventy-five (75) days in connection with a major remodeling or reconstruction or redevelopment of the Shopping Center or Premises, to the extent it is not reasonably practical to continue to operate the Premises during such major remodeling or reconstruction or redevelopment (during which Tenant may be open for business at its option); (iii) during temporary closures in connection with repair of casualty or alteration after a partial taking by condemnation, during which period



the parties will promptly perform their respective obligations under this Lease with respect to repair of such casualty or alteration after condemnation to permit continuation of business at the Premises; or (iv) during periods of unusually inclement weather in which there is reasonable threat to personal safety (such events are, collectively, "Permitted Closure(s)"). Tenant may extend its hours of operation at its option and in such event, Tenant shall not be responsible for the cost of any excess services during such extended hours; provided, however, in the event Tenant extends such hours of operation beyond 11:00 p.m. or prior to 7:00 a.m. or during the above-listed holiday dates, Tenant shall pay its proportionate share of the reasonable cost of any excess services along with any other tenants or occupants of the Shopping Center operating during such extended hours. During periods of suspended operations in excess of twenty-four (24) hours that are not otherwise permitted by this Section (including following expiration of periods for Permitted Closures), Tenant shall not be deemed in default of this Lease if, at Tenant's election, it pays a temporary surcharge equal to five percent (5%) of the Minimum Rent due during the pendency of the suspended operations in addition to all other amounts due herein. If there are suspended operations in excess of twenty-four (24) hours that are not otherwise permitted by this Section, and if Tenant does not pay such surcharge upon demand, Tenant shall be deemed in default of this Lease and Landlord may exercise any right or remedy for default permitted by this Lease.

In the event Tenant closes its restaurant on the Premises, the following will apply: (i) Tenant will cause the Premises to be secured against vandalism and will continue to maintain the Premises as described in this Lease; and (ii) Tenant will continue to be responsible for paying Minimum Rent, Additional Rent and other charges to Tenant under this Lease and performing the other obligations of Tenant under this Lease. If Tenant fails to occupy and operate the restaurant on the Premises for a continuous period of twelve (12) months or more (including Permitted Closures), Landlord may elect in its discretion, by thirty (30) days' written notice delivered to Tenant (unless Tenant within such thirty (30) day period re-opens and operates its restaurant on the Premises), to exercise its right to recapture the Premises and acquire Tenant's interest in the Building and improvements constructed thereon (the "Leasehold Interests"), in which event the following will apply:

- (i) <u>Notice of Election by Landlord</u> Landlord's notice (the "<u>Notice of Exercise</u>") will constitute a binding contract for Landlord's purchase of such Leasehold Interests at their fair market value, as set forth below;
- (ii) Purchase Price for Tenant's Leasehold Interests the purchase price for the Leasehold Interests will be their fair market value as of the date of exercise by Landlord of its right to purchase. Landlord's notice to Tenant electing to purchase the Leasehold Interests will include a statement of Landlord's determination of such fair market value. Tenant may (but will not be required) to accept Landlord's determination as the final purchase price. If Tenant does not agree with Landlord's determination, then the parties will promptly discuss and attempt to resolve, by good faith negotiations and mutual agreement, the fair market value of the Leasehold Interests. If the parties have not mutually approved such fair market value within twenty (20) days of the date Landlord notifies Tenant that Landlord is exercising its right to purchase, then either party at any time thereafter may require that the disagreement concerning the fair market value be resolved, using the arbitration mechanism in subparagraph (iv) below;
- (iii) <u>Fair Market Value of Leasehold Interests</u> The fair market value of the Leasehold Interests will exclude inventory and items that Tenant is removing (subject to the restrictions set forth in this Lease) in connection with the surrender of the Premises.
- (iv) Arbitration Procedure if Parties do not Mutually Agree on Fair Market Value If arbitration is required, the arbitrator will be an independent (i.e., not affiliated with or having prior contractual dealings with or employment by either party) real estate broker or appraiser, with at least five (5) years experience in real estate in the State of California, that is reasonably acceptable to the parties (or if the parties cannot agree, then either party may petition any court in the County in which the Shopping Center is located to appoint as arbitrator a person having such qualifications);

Each party will submit to each other and to the arbitrator, within ten (10) days after selection of the arbitrator, the party's written statement of the fair market value of the Leasehold Interests (each party's statement is its "Position"). There will be no oral argument or proceeding in front of the arbitrator. The arbitrator will review the parties' statements of Position and such other information as the arbitrator may deem relevant to its decision, may ask questions (if it has any) of the parties in the presence of representatives of both parties, and will render its determination, in writing, to both parties within thirty (30) days after date of his/her appointment as arbitrator. The arbitrator's determination will be limited to the decision as to whether Landlord's Position or Tenant's Position is closer to the fair market value of the Leasehold Interests. The party whose Position was not selected by the arbitrator will pay the costs and fee of the arbitrator and will reimburse the other party for its reasonable, out-of-pocket expenses (including, without limitation, reasonable attorneys' fees) in connection with the arbitration.

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- (v) Tenant's Right to Remove Certain Items Owned by Tenant Tenant may remove from the Premises its signage, food and beverage inventory and trademarked personal property and other items, subject to the restrictions of Section 11(c) below. Tenant may remove its dishes, glassware, pots, pans, and utensils, but if Tenant fails to do so, title to them will automatically pass to Landlord upon closing of the purchase and Landlord may use the same without being required to pay Tenant any amount for such dishes, glassware, pots, pans, or utensils;
- (vi) Closing of Transfer of Leasehold Interests: Surrender: Payment to Tenant The transfer to Landlord will be consummated on a date within forty-five (45) days following the date on which the purchase price for the Leasehold Interests is determined by mutual agreement or within fifteen (15) days if determined by arbitration. At closing, Tenant will assign its Leasehold Interests to Landlord or Landlord's designee or will execute a good and sufficient termination of this Lease, and Tenant will surrender the Premises in a condition as required pursuant to Section 11(c) below. Landlord will pay to Tenant at closing, in cash, the purchase price for the Leasehold Interests. If not paid when due, Tenant will have all rights and remedies in connection with the collection of the payment as is provided in this Lease.
- (vii) <u>Duty of Tenant to Pay Rents to the Closing Date</u> all rents and additional rents accrued and attributable to the time period up to and including the date of closing will be paid to Landlord. Any pre-paid rents or additional rents attributable to any period after the closing will be prorated and refunded to Tenant.
- (viii) Mutual Termination of Obligations neither Tenant nor Landlord will have any further obligation to each other under this Lease from and after the closing date, subject to such obligations which expressly survive the termination of this Lease, and this Lease shall have no further force and effect, in which event both parties will be released from any further duty or obligation to the other party from and after the effective date of termination of this Lease. This paragraph will not be construed to limit any right or remedy for default that Landlord may have under the circumstances referenced in the last sentence of the first paragraph of this Section.

C. Compliance with Laws

Tenant shall not use the Premises in any way (or permit or suffer anything to be done in or about the Premises) which will conflict with any law, statute, ordinance or governmental rule or regulation or any covenant, condition or restriction (whether or not of public record) affecting the Premises, Shopping Center or Project, now in force or which may hereafter be enacted or promulgated, including, but not limited to, the provisions of any city or county zoning codes regulating the use of the Premises. Tenant shall, at Tenant's sole cost and expense, promptly comply with (a) all laws, statutes, ordinances, and governmental rules and regulations, now in force or which may hereafter be in force; (b) all requirements, and other covenants, conditions and restrictions now in force which affect the Premises, Shopping Center or Project, subject to Landlord's representations and warranties as set forth in this Lease; and (c) all requirements (now in force or which may hereafter be in force) of any board of fire underwriters or other similar body now or hereafter constituted relating to or affecting the condition, use or occupancy of the Premises. The judgment of any court of competent jurisdiction or the admission by Tenant in any action against Tenant, whether Landlord be a party thereto or not, that Tenant has violated any law, statute, ordinance, governmental rule or regulation or any requirement, covenant, condition or restriction shall be conclusive of the fact as between Landlord and Tenant. Tenant agrees to fully indemnify Landlord against any liability, claims or damages arising as a result of a breach of the provisions of this Section by Tenant, and against all costs, expenses, fines or other charges arising therefrom, including, without limitation, attorneys fees and related costs incurred by Landlord in connection therewith, which indemnity shall survive the expiration or earlier termination of this Lease.

D. Landlord's Rules and Regulations

Tenant shall, and Tenant agrees to cause Tenant's agents, servants, and employees to observe and comply fully and faithfully with the rules and regulations attached hereto as Exhibit F, the use restrictions attached hereto as Exhibit L, and such rules and regulations which may hereafter be adopted by Landlord for the care, protection, cleanliness, and operation of the Premises and Shopping Center which are consistent with this Lease (collectively, the "Rules"), and any modifications or additions to the Rules adopted by Landlord; provided that, Landlord shall give sixty (60) days prior written notice thereof to Tenant. Landlord shall uniformly apply the Rules in a nondiscriminatory manner. Nothing contained in this Section 8.D. shall affect Tenant's rights under this Lease.

E. [Intentionally Deleted.]



F. Shopping Center Name

Tenant shall not use the name of the Shopping Center for any purpose other than in Tenant's advertising of Tenant's business at the Premises. Landlord retains all property rights in the Shopping Center name and reserves the right, in Landlord's sole discretion, to change such name and logo at any time. The Shopping Center was formerly known as "Central Coast Mall," but has been renamed "SLO Promenade."

G. Hazardous Material

Tenant hereby agrees that neither Tenant, nor Tenant's officers, directors, partners or employees, will engage in any activity in, on or about the Premises or the Project, nor permit others to engage in any such activity, which will result in the Premises or the Project containing any of the following: (a) any oil or "Hazardous Material" as such term is defined below; (b) asbestos in any form which is or could become friable; (c) urea formaldehyde foam insulation; (d) transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls in excess of fifty (50) parts per million; or (e) any other chemical, material, or substance exposure to which is prohibited, limited or regulated by any governmental authority or agency or which may or could pose a hazard to the health and safety of the occupants of the Shopping Center or the owners of property adjacent to the Shopping Center except for immaterial quantities of Hazardous Materials customarily used in the construction, maintenance or operation of like properties which have been and should be used in accordance with applicable laws, statutes, regulations and ordinances then in effect. If at any time it is determined that Tenant, or Tenant's officers, directors, partners or employees, have been responsible for the Premises or the Project containing any of the equipment or substances described in subsections (a) through (e) of this Section 8, then Tenant shall be solely responsible for and shall pay for all costs incurred in connection with the removal of said equipment and/or substances. The obligations on the part of Tenant set forth in this Section 8 shall survive the expiration of the Term of this Lease or the exercise by Landlord of any of Landlord's remedies under this Lease.

Landlord hereby agrees that neither Landlord, nor Landlord's officers, directors, partners or employees, will engage in any activity in, on or about the Premises or the Project, nor permit others to engage in any such activity, which will result in the Premises or the Project containing any of the following: (a) any oil or "Hazardous Material" as such term is defined below; (b) asbestos in any form which is or could become friable; (c) urea formaldehyde foam insulation; (d) transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls in excess of fifty (50) parts per million; or (e) any other chemical, material, or substance exposure to which is prohibited, limited or regulated by any governmental authority or agency or which may or could pose a hazard to the health and safety of the occupants of the Shopping Center or the owners of property adjacent to the Shopping Center except for immaterial quantities of Hazardous Materials customarily used in the construction, maintenance or operation of like properties which have been and should be used in accordance with applicable laws, statutes, regulations and ordinances then in effect. If at any time it is determined that Landlord, or Landlord's officers, directors, partners or employees, have been responsible for the Premises or the Project containing any of the equipment or substances described in subsections (a) through (e) of this Section 8, then Landlord shall be solely responsible for and shall pay for all costs incurred in connection with the removal of said equipment and/or substances. In the event the presence, installation, use, generation or disposal of any Hazardous Materials in or about the Shopping Center or the Premises (a) interferes with Tenant's business in all or part of the Premises and Tenant in Tenant's reasonable opinion is unable to conduct Tenant's business in the Premises, or (b) in the reasonable opinion of Tenant poses a threat to the health and safety of Tenant's agents, employees or invitees, Tenant shall be entitled to terminate the Lease upon delivery of thirty (30) days written notice to Landlord, provided however, that the Hazardous Materials in or about the Shopping Center or the Premises interfering with Tenant's business or posing a health threat were not stored, used, generated, or installed by Tenant. If Landlord lawfully removes all Hazardous Materials within the thirty (30) day notice period, Tenant's notice shall have no effect and this Lease shall remain in full force and effect.

Landlord warrants and covenants that upon Landlord's tender of possession of the building pad upon which the Premises are located to Tenant, such building pad shall be free from all Hazardous Materials, except for immaterial quantities of Hazardous Materials customarily used in the construction, maintenance or operation of like properties which have been and should be used in accordance with applicable laws, statutes, regulations and ordinances then in effect.

Landlord hereby agrees to protect, defend, indemnify and hold Tenant harmless from and against all claims, liabilities, penalties, costs, fines, damages and expenses, including, but not limited to, costs and expenses which Tenant is obligated to incur to correct or remedy the situation, the costs of defending civil enforcement actions, the costs of participating in regulatory proceedings, or any other civil or administrative action, including without limitation, attorneys' and expert fees and disbursements, directly or indirectly incurred by Tenant arising out of: (i) the presence of any Hazardous Materials in or about the Premises or the Shopping Center (except: (X) Hazardous Materials which are stored, used, generated, installed or disposed of by Tenant, and (Y) immaterial quantities of Hazardous Materials customarily used in the

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construction, maintenance or operation of like properties which have been and should be used in accordance with applicable laws, statutes, regulations and ordinances then in effect), or (ii) the inaccuracy of any representation, covenant, or warranty by Landlord in this Section 8.G. Landlord and Tenant agree that it is their intention that Tenant shall have no liability or responsibility for damage or injury to human health, economic losses or damage to the environment or natural resources caused by, or otherwise relating to Hazardous Materials located on or at the Premises or the Shopping Center which were not stored, used, generated, installed or disposed of by Tenant, Tenant's employees, Tenant's agents or Tenant's contractors.

For the purpose of this Lease, Hazardous Material shall include, but not be limited to, substances defined as "hazardous substances," "hazardous materials," or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 et seq. the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq.; and those substances defined as "hazardous wastes" in Section 25117 of the California Health & Safety Code or as "hazardous substances" in Section 25316 of the California Health & Safety Code; and in the regulations adopted and publications promulgated pursuant to said laws.

H. [Intentionally Deleted.]

Control of and Changes to Shopping Center

Landlord reserves the right to change the shape, size, location, number and extent of the improvements shown on Exhibit A or on any other plan, or eliminate or add any improvements or floors to the Shopping Center so long as such changes do not increase the Minimum Rent (per square foot) payable by Tenant and do not otherwise constitute a material or substantial deviation from the representations set forth in Exhibit A. Landlord shall have the exclusive right, in Landlord's sole discretion, without abatement of rent and without limiting Landlord's other rights under applicable law or this Lease, to: (1) expand, suspend, close, eliminate, adjust, alter, improve or replace any portion of the Shopping Center or any facilities, amenities, and services within the Shopping Center; (2) have access through the Premises for any work permitted by this Lease and (3) close entrances, doors, corridors, or other Shopping Center facilities or temporarily abate their operation; provided, however, nothing contained in this Lease or the CC&Rs to the contrary, no such action by Landlord shall adversely impair access to the Premises from Dalidio Drive, Madonna Road or El Mercado, adversely reduce visibility of the Premises or its signs from Dalidio Drive, Madonna Road or El Mercado, materially make the Premises less attractive or materially interfere in any way with Tenant's business in the Premises, cause additional structures to be constructed on top of the Premises, cause the relocation of the Premises, or reduce, interfere, change the use of, or build or construct any improvements (temporary or permanent) upon the Protected Parking Area (as defined in Section 24 below) or reduce the parking ratio of the Shopping Center below the Required Parking Ratio (as defined in Section 24 below). In the event Landlord eliminates or adds square footage to the Shopping Center, Tenant's Proportionate Share, as set forth in Section 20 of the Basic Lease Provisions shall be adjusted accordingly.

All work performed by Landlord and Landlord's contractors in the Shopping Center or in connection with the excavation, construction, repair, or addition to buildings in the Shopping Center shall be done in a manner causing Tenant the least interference and inconvenience reasonably practicable under the circumstances. Provided Landlord undertakes work in this manner, Tenant waives any claim for damages for any interference, injury, or inconvenience to Tenant's business, any loss of occupancy or quiet enjoyment of the Premises, or any other loss occasioned by the performance of such work or by Landlord's entry to the Premises as permitted by this Lease, except as caused by Landlord's or Landlord's agents', employees' or contractors' acts of negligence or willful misconduct. Landlord's entry shall not be deemed a trespass, a forcible or unlawful entry, a detainer of the Premises, or an eviction of Tenant. Tenant, without consideration shall afford to the person(s) causing or authorized to cause such excavation, construction, repair or addition to buildings, the license to enter upon the Premises upon forty-eight (48) hours prior written notice, at reasonable times, except in the event of an emergency, for the purpose of doing all necessary work to preserve the Shopping Center from injury or damage, and for its support.

9. UTILITIES

Tenant agrees to pay all charges for utilities including, but not limited to, gas, water, sewer, electricity, telephone and other utility services supplied to Tenant for which there is a separate meter and/or submeter to the Premises. With respect to those utility services for which there is no separate meter or submeter, Tenant agrees to pay to Landlord Tenant's share of all charges for such utility services supplied to the Premises upon billing by Landlord of Tenant's Proportionate Share (as set forth in Section 20 of the Basic Lease Provisions). Landlord may elect to furnish any utility services to the Premises, in which event Tenant shall pay to Landlord as Additional Rent, in arrears, on the first (1st) day of each month, the amount necessary to reimburse Landlord for the cost of utilities supplied to the Premises. Notwithstanding anything

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to the contrary in this Section 9, in no event shall Tenant be required to pay a rate for any utility service to the Premises that is greater than the market rate charged by the direct third party provider of such utility service. If Landlord discontinues furnishing any of the utilities for any reason, Tenant shall obtain Tenant's own utility service for the Premises. Landlord shall not be liable, in any manner whatsoever, for and Tenant shall not be entitled to an abatement or reduction of rent by reason of Landlord's failure to furnish any of the foregoing utilities when such failure is caused by accidents, breakage, repairs, strikes, brownouts, blackouts, lockouts or other labor disturbances or labor disputes of any character, or by any other cause, similar or dissimilar, beyond the reasonable control of Landlord, nor shall such failure under such circumstances be construed as a constructive or actual eviction of Tenant. Landlord shall not be liable under any circumstances for loss or injury to property or business, however occurring, through or in connection with or incidental to Landlord's failure to furnish any of said services or utilities except those interruptions due to Landlord's negligence or willful misconduct, in which case Tenant shall be entitled to abatement of Minimum Annual Rent and Additional Rent to the extent and for the period Tenant is unable to conduct its business in the Premises. If Tenant fails to pay any charges referred to in this Section 9, when due, Landlord may pay the same, and any amount so paid by Landlord shall thereupon become due to Landlord from Tenant as Additional Rent.

10. TENANT'S TAXES

A. Definition.

The term "Taxes" as used herein shall include, to the extent due and payable during the Term of this Lease to any lawful taxing authority, real estate taxes, assessments (special or otherwise), interest on installment payments of Taxes and any other federal, state or local governmental tax or charge now or hereafter levied or assessed against the Shopping Center, but not including the following ("Excluded Taxes"): (a) any franchise tax or any other taxes measured by Landlord's income or profits from the Shopping Center or the operation thereof (unless the same are imposed in lieu of real estate taxes or assessments), or (b) any penalties for delinquent payments, or (c) any assessments levied in connection with the original construction or any expansion of the Shopping Center other than related specifically to Tenant's Premises. Except for Excluded Taxes, "Taxes" shall also include betterments and special and general assessments currently and in the future levied or imposed against the buildings and/or land located within the Shopping Center, provided that with respect to any such future assessments: (i) any such assessment is paid over the longest period of time permitted by law (assuming that the assessment is bonded or would be payable in installments) or, if not, the amount payable by Tenant in any tax year for such assessment shall be no greater than the amounts that would have been payable by Tenant had such assessment been bonded or been made payable over the longest period of time permitted, and (ii) any such special assessment shall relate to improvements which uniformly benefit the occupants and tenants of the Shopping Center. Taxes shall also mean any personal property taxes imposed upon the equipment of Landlord or machinery of Landlord located at and used in the operation or maintenance of the Shopping Center, and all costs and fees, including reasonable attorneys' and appraisers' fees incurred by Landlord in reasonably contesting Taxes and reasonably negotiating with public authorities as to the same (Landlord hereby agreeing that any reduction in Taxes resulting from any such contest by Landlord will be passed-through to Tenant through a proportionate reduction in Tenant's Tax Expense to the extent that Tenant has previously paid such amount, after first deducting Tenant's Proportionate Share of all expenses, including reasonable attorney's fees incurred by Landlord in obtaining such refund and not otherwise reimbursed to Landlord). In the event that any Taxes may, at the option of the taxpayer, be paid in installments, such Taxes shall be deemed paid in installments over the maximum period permitted by the taxing authority, and Taxes shall include only those installments due and payable during the Term of this Lease. In this connection, Landlord warrants and represents that, except for the assessments for SL Coastal Override and the State Water Project as shown on tax bills for the Shopping Center, neither the Shopping Center nor the Premises are, as of the date of this Lease, subject to any other special assessments. Landlord further warrants and represents to Tenant that the legal description set forth on Exhibit I accurately describes and fully encompasses the Shopping Center and Premises represented schematically on Exhibit A, and that the Shopping Center is a separately identified tax parcel.

The term "Taxes" shall also include any tax (now or hereafter imposed by any governmental entity) applicable to or measured by or on the rents or any other charges payable by Tenant under this Lease, including (but not limited to) any gross income tax, gross receipts tax or excise tax with respect to the receipt of such rent or other charges or the possession leasing or operation, use or occupancy of the Premises, but only to the extent that such taxes are levied in lieu of real property taxes, but not including any net income, franchise, capital stock, estate or inheritance taxes.

Tenant shall also be liable for all taxes levied against the personal property, including movable furniture, fixtures and equipment placed by or for Tenant in, on or about the Premises; and if any such taxes are levied against Landlord or Landlord's property, or if the assessed value of the property is increased (whether by special assessment or otherwise) by the inclusion therein of value placed on such personal property or movable furniture, fixtures and equipment, and Landlord pays any such taxes (which Landlord shall have

the right to do regardless of the validity thereof), Tenant, upon demand, shall fully reimburse Landlord for the taxes so paid by Landlord or for the proportion of such taxes resulting from such increase in any assessment.

B. Payment.

Tenant agrees to pay to Landlord Tenant's Proportionate Share of Taxes which are due and payable during the Term of this Lease or any extension thereof ("<u>Tenant's Tax Expense</u>"). Tenant's Tax Expense shall be determined by multiplying the Taxes by Tenant's Proportionate Share. Landlord's current estimate of Tenant's Tax Expense for the First Partial Lease Year shall be One Dollar (\$1.00) per square foot of gross leasable area in the Premises on an annualized basis.

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

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

For Partial Lease Years or partial lease months, Tenant's Tax Expense shall be prorated as provided in Section 4.C. of this Lease.

Tenant agrees to pay before delinquency any taxes levied or assessed upon Tenant's personal property located in the Premises.

C. [Intentionally Deleted.]

D. Contest of Property Taxes

If Tenant requests that Landlord seek a reduction in Taxes, or otherwise seek a reduction, abatement or exemption of Taxes, Landlord shall, unless Landlord authorizes Tenant to do so, institute the appropriate proceeding in order to contest the amount of Taxes; provided, however, Landlord shall not be required to withhold payment of any Taxes if at any time any part of the buildings, other improvements or land constituting the Shopping Center is in imminent danger of being forfeited or sold because of non-payment of any Taxes, and, in any event, Tenant shall indemnify and hold Landlord harmless from any and all costs, expenses, and liabilities, including reasonable attorney's fees, relating to such proceeding. If Landlord elects not to seek such reduction in Taxes, then Tenant may undertake such action on Tenant's own behalf, in which event Landlord shall reasonably cooperate with Tenant in any such proceeding at no expense to Landlord. If as a result of any such reduction, Landlord shall receive a refund of Taxes, Tenant shall be entitled to a prompt refund of Tenant's Proportionate Share thereof to the extent Tenant has previously paid such amount, after first deducting Tenant's Proportionate Share of all expenses, including reasonable attorney's fees, incurred by Landlord in obtaining such refund and not otherwise reimbursed to Landlord. This provision shall survive the expiration or termination of this Lease.

All reductions, refunds, or rebates of Taxes, less Landlord's reasonable expense in obtaining reductions, refunds or rebates, if any, shall belong to Tenant whether as a consequence of a Landlord proceeding or otherwise.

11. MAINTENANCE AND REPAIRS

A. Landlord's Repair.

Except as required to be performed by Tenant pursuant to Section 11.B. of this Lease, Landlord shall keep and maintain, or cause to be kept and maintained, in good order, condition and repair (i) all portions of the Shopping Center and the Common Areas (subject to the terms of the CC&R's), but excluding the Premises, and (ii) all portions of the building pad upon which the Premises are to be located other than the Premises, including, but not limited to, all mechanical, electrical and utility systems located outside of the Premises (Landlord shall not have any obligation regarding electrical or utility system inside of the Premises) which do not exclusively serve the Premises, sidewalks, roadways, and parking facilities. In the event Tenant, in its reasonable opinion, is unable to conduct its business in all or a part of the Premises for more than forty-eight (48) consecutive hours as a result of necessity of such repairs or maintenance or as a result of any excavation or other building operation by Landlord on the Shopping Center or any land adjoining the Shopping Center, Tenant shall be entitled to an equitable abatement of Minimum Rent and Additional Rent to the extent and for the period Tenant is unable to conduct its business in the Premises as a result thereof. Notwithstanding anything to the contrary contained in this Lease, Landlord shall not be liable for failure to make repairs required to be made by Landlord under the provisions of this Lease unless Tenant has previously notified Landlord in writing of the need for such repairs and Landlord has failed to commence and complete the repairs within a reasonable period of time following receipt of Tenant's written notification. Landlord shall not be required to make any repairs for damage caused by any negligent or intentional act or omission of Tenant or any person claiming through or under Tenant or any of Tenant's employees, subtenants, suppliers or shippers or by reason of Tenant's failure to observe or perform any conditions or agreements contained in this Lease or caused by alterations, additions or improvements made by Tenant or any one claiming under Tenant, in which event, Tenant shall repair such damage at Tenant's sole cost and expense. Landlord shall not be liable for and there shall be no abatement of rent with respect to, any injury to or interference with Tenant's business arising from any repair, maintenance, alteration or improvement in and to any portion of the Shopping Center or the Premises performed in accordance with this Lease, unless Tenant, in Tenant's reasonable opinion, is unable to conduct Tenant's business from the Premises for more than twenty-four (24) hours. Notwithstanding anything to the contrary contained in this Lease, Landlord shall not be liable for failure to make repairs required to be made by Landlord under the provisions of this Lease unless Tenant has previously notified Landlord in writing of the need for such repairs and Landlord has failed to commence and complete the repairs within a reasonable period of time following receipt of Tenant's written notification.

B. Tenant's Repair.

Tenant shall keep and maintain in good condition and repair the Premises and every part thereof, including without limitation, the exterior and interior portion of all windows and window frames; doors and door frames; plate glass; store front; signs; fixtures; mechanical, plumbing, lighting, electrical, sewage, heating, air conditioning and sprinkler systems, equipment and facilities located inside or outside the Premises which exclusively serve the Premises; interior walls and partitions; floors and floor coverings; ceilings; show cases; and that portion of any pipes, lines, ducts, wires or conduits installed by or on behalf of Tenant contained under, above or within and which exclusively serve the Premises, and any garbage area exclusively used by Tenant. Tenant shall, at its expense, repair and replace any and all broken or cracked plate or other glass located in the interior or on the exterior of the Premises with glass of equal quality. Tenant shall keep and maintain the Premises, at its sole cost and expense, in a sanitary and safe condition in accordance with the laws of the State of California and in accordance with all mandatory directions, rules and regulations of the appropriate governmental agencies. If Tenant unreasonably refuses or neglects to promptly repair or properly keep and maintain the Premises, after thirty (30) days written notice to Tenant (unless the need for such repair or maintenance in the reasonable opinion of Landlord constitutes an emergency, in which event Landlord shall provide Tenant with a reasonable period to complete such repairs or maintenance) Landlord may, but shall not be obligated to, make and complete such repairs and maintenance on behalf of Tenant, and Tenant shall pay Landlord the reasonable costs incurred therefor upon demand. Notwithstanding anything in this Section 11.B. apparently to the contrary, after construction of the building of which the Premises are a part, Tenant shall not be required to make any capital improvements to the Premises unless required by applicable governmental authority as a result of Tenant's specific use of the Premises. As it is the parties' intent that the terms of this Lease shall govern the parties' respective rights and obligations to make repairs, with respect to maintenance and repair obligations which are Tenant's pursuant to this Section 11.B., Tenant hereby waives and releases its right to make repairs at Landlord's expense under Sections 1941 and 1942 of the California Civil Code or any similar law, statute or ordinance now or hereafter in effect, and to the extent that such Civil Code provision(s) conflict with any provision of this Lease, this Lease shall prevail.

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C. Condition of Premises Upon Surrender

Tenant shall, upon the expiration or earlier termination of the Term, surrender the Premises to Landlord broom clean, reasonable wear and tear excepted. All trade fixtures, furnishings and equipment shall be removed by Tenant, at Tenant's sole cost and expense, and Tenant shall repair any damage occasioned to the Premises by reason of such removal. Any of Tenant's property not removed from the Premises prior to the expiration of the Term, or applicable Option Terms shall become the property of Landlord and may be removed by Landlord. Any damage to the Premises, including any structural damage, resulting from Tenants use or from the removal of Tenant's fixtures, furnishings and equipment shall be repaired by Tenant at Tenant's expense.

12. REIMBURSEMENT OF COMMON EXPENSES

A. Definitions

- (1) "Common Areas" means all areas, space and equipment within the Project for the common and general use and benefit of the tenants and owners of the Project, and their employees, agents, servants, suppliers, customers and other invitees (subject to the terms and conditions of the CC&Rs), including, by way of illustration, but not limitation, any retaining walls, fences, landscaped areas, parks, curbs, sidewalks, private roads, restrooms, stairways, elevators, lobbies, hallways, patios, service quarters, parking areas, all common areas as designated in any CC&Rs and all other areas within the exterior of the buildings comprising the Shopping Center as shown on the site plan attached to this Lease as Exhibit A.
- (2) "Common Operating Costs" as used herein shall mean all costs and expenses paid or incurred by Landlord in operating, cleaning, equipping, protecting, lighting, insuring (to the extent provided below), repairing and maintaining the non-structural and non-building portions of the Common Areas of the Project, exclusive of the "Allocable Share of Operating Costs" (as defined in the REA) charged to the Gottschalks Property and the Hotel Property as provided under the REA. Common Operating Costs shall include, but not be limited to, the reasonable cost of the following, to the extent each relates to the non-structural and non-building portions of the Common Areas only: illumination and maintenance of Shopping Center identification signs; utilities; supplies; janitorial services; expenses for security services; total employee compensation for on-site non-management employees of Landlord to the extent they provide maintenance and repair services to the non-structural and non-building portions of the Common Areas; garbage, snow and ice removal; providing the liability insurance described in Section 6.B. of this Lease and the property insurance allocable to the Common Areas; maintenance and repairs, including those to any utility, security or lighting system located within and serving the non-structural and non-building portions of the Common Areas; landscaping; painting; lighting; amortization of equipment used in operation and maintenance of the Common Areas; amortization of capital expenditures which reduce the Common Operating Costs of the non-structural and non-building portions of the Common Areas; sealing and striping of parking lots; installation and operation of loudspeaker system and music program services; maintenance and repair of sprinkler systems serving the Common Areas; and an amount equal to fifteen percent (15%) of the aggregate of the above expenses, exclusive of insurance and Taxes, to cover administration, management, bookkeeping and accounting costs, to include but not be limited to, salaries, expenses, fringe benefits and other compensation paid to supervisory, management and upper management personnel.
- (3) "Common Operating Costs" shall not include: any costs associated with structural repairs or capital improvements, additions or alterations to the Common Areas or the Shopping Center (including but not limited to, those relating to the roofs and parking lots) or amortization of any of the foregoing, (except the amortization of any capital improvements made to the non-structural and non-building portions of the Common Areas which as of the date incurred were reasonably intended and expected by Landlord to reduce Common Operating Costs, provided that such costs are amortized over the useful life of the improvement or the applicable tax code depreciation schedule; whichever is longer, and as otherwise provided in the first paragraph of Section 12.B. below); any costs or expenses relating to the structural or building portions of the Shopping Center, including, but not limited to, the operating, equipping, protecting, insuring, repairing and maintaining of the same; costs incurred in connection with the original construction or expansion of the Shopping Center, including any interest or payments on any financing; ground rent, depreciation, amortization or interest on any capital financing or debt with respect to the Common Areas; cost of correcting defects in the initial design or construction of the Shopping Center or any expansion thereof or any repairs resulting from inferior or deficient workmanship; any costs or expenses incurred by Landlord in bringing the Shopping Center, or any portion thereof, into compliance with any applicable federal, state or local statutes, codes, ordinances or rules; costs of any required corrective action with respect

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to Hazardous Materials in the Common Areas; fines or penalties incurred due to violations by Landlord of any governmental rule or authority other than as a result of the errors or omissions of Tenant; any costs relating to the restoration and/or repair obligations of Landlord with respect to the Shopping Center pursuant to Section 16 and/or Section 18 of this Lease; any cost for which Landlord is reimbursed, receives a credit or is otherwise compensated, including, without limitation, the payment to Landlord of the "Allocable Share of Operating Costs" (as defined in the REA) of the Gottschalks Property and the Hotel Property pursuant to the REA (other than Tenant reimbursements for Taxes or Operating Costs as respectively provided in Sections 10 and 12); repairs and maintenance for items that are covered by guarantees or service contracts; reserves for anticipated future expenses; legal and other professional fees; leasing commissions or other expenses relating to leasing personnel; costs, disbursements, and other expenses incurred in acquiring tenants, or developing new business properties; advertising or promotional expenses (other than Christmas or other seasonal decorations, the cost of which shall not exceed One Thousand Dollars (\$1,000.00) for the entire Shopping Center per year); any items for which Landlord is reimbursed by insurance; any bad debt losses, rent losses or reserves for bad debts or rent losses; all interest or penalties incurred as a result of Landlord's failure to pay any bill as it shall become due; costs resulting from the gross negligence of Landlord its agents, employees and/or independent contractors; the cost of leasing any item other than items whose purchase price would be included in reimbursable expenses hereunder; expenses related to management offices, utility rooms, storage areas and outparcels; individual compensation or other expenses with respect to officers, executives or on- or off-site management or administrative personnel of Landlord, or third parties engaged by Landlord to provide such services, or any other costs or expenses relating to administrative, bookkeeping, accounting, management or similar services or functions with respect to the Common Areas; any amount paid to any corporation or other entity related to Landlord or to the managing agent of Landlord which is in excess of the amount which would have been paid in the absence of such relationship; costs in excess of fair market expenses; any cost related to the operation of Landlord as an entity rather than the operating of the Shopping Center, including the cost and formation of the entity, internal accounting, legal matters, preparation of tax returns, etc.; mortgage payments or ground rents, or any costs associated with refinancing the Shopping Center, including points and closing fees; trustee fees; the cost of garbage removal and maintenance and repair of common garbage areas of other tenants if Tenant has an exclusive and enclosed garbage area which it maintains and repairs pursuant to Section 11.B.; any costs associated with tenant alterations, improvements or decorations or the cost of any utility, maintenance, service or repair provided exclusively to any leased or leasable premises in the Shopping Center or any portion of the Common Areas which provide income for Landlord; and costs, disbursements and other expenses in connection with services or other benefits of the type which are not provided Tenant but which are provided to another tenant or occupant of the Shopping Center.

(4) "Tenant's Proportionate Share" the amount of which is set forth in Item 20 of the Basic Lease Provisions, shall be a fraction, the numerator of which is the number of square feet of gross leasable area in the Premises and the denominator of which is the gross leasable area of the Shopping Center.

B. Reimbursement

Within a reasonable time before the commencement of each Lease Year during the Term, Landlord shall deliver to Tenant a reasonable estimate of the anticipated Common Operating Costs for the forthcoming Lease Year. Tenant shall pay to Landlord, as Additional Rent, commencing on the Lease Commencement Date, and continuing on the first day of each calendar month thereafter, an amount equal to one-twelfth (1/12th) of the product obtained by multiplying the then estimated Common Operating Costs times Tenant's Proportionate Share. The estimated monthly charge for Tenant's Proportionate Share may be adjusted one time by Landlord during the Lease Year on the basis of Landlord's reasonably anticipated costs. Common Operating Costs shall not include the amortization of any capital improvements made to the Shopping Center except for (i) capital improvements intended to reduce Common Operating Costs but only to the extent of the reduction in any particular Lease Year provided that such costs are amortized over the useful life of the improvement or the applicable tax code depreciation schedule; whichever is longer; (ii) the costs of repaving the parking lot to a thickness of two inches (2") one time every seven (7) years provided that such costs are amortized over seven (7) years or the warranty period covering such work; whichever is longer; and (iii) the costs of slurry coating the parking lot one time every three (3) years provided that such costs are amortized over three (3) years or the warranty period covering such work; whichever is longer.

Notwithstanding anything herein to the contrary, Landlord's budget for "controllable expenses" for any Lease Year shall not exceed one hundred seven percent (107%) of the actual Common Operating Costs for the immediately preceding Lease Year or Partial Lease Year, as applicable (exclusive of Taxes, insurance and extraordinary non-recurring expenses during such prior Lease Year). As used herein the term "controllable expenses" means those items included within Common Operating Costs, the cost of which are



within Landlord's control including, by way of example only, janitorial and landscaping services but excluding, by way of example only, utility costs, costs which are subject to market forces beyond Landlord's control, insurance and costs relating to compliance, by either Landlord or Landlord's vendors, contractors or service providers, with laws or regulations, including by way of example only, increased minimum wage laws and employee benefit acts.

For Partial Lease Years or partial lease months, these limitations should be prorated as provided in Section 4.C. of this Lease.

Landlord's current estimate of Tenant's Proportionate Share of Common Operating Costs for the First Partial Lease Year shall be Two and 60/100 Dollars (\$2.60) per square foot of gross leasable area in the Premises on an annualized basis.

C. Rebate or Additional Charges

After the end of each Lease Year, Landlord shall furnish to Tenant a statement showing the total Common Operating Costs and Tenant's Proportionate Share of the Common Operating Costs for the Lease Year just ended. If the amount of estimated Common Operating Costs paid by Tenant for any year during the Term, or applicable Option Terms exceeds the actual Common Operating Costs for such year, Landlord shall refund such excess to Tenant. If the estimated Common Operating Costs for such year are less than the actual Common Operating Costs for such year, then Tenant shall pay to Landlord, within thirty (30) days of Tenant's receipt of Landlord's statement, as Additional Rent, Tenant's Proportionate Share of the amount by which the actual Common Operating Costs exceeds the estimated Common Operating Costs. In the event the Term of this Lease expires, or this Lease is otherwise terminated, Landlord shall compute the credit or deficiency up to the date the Lease expired or was terminated.

No payment by Tenant with respect to Common Operating Costs shall derogate Tenant's rights to audit and review the books and records of Landlord kept in connection with the Taxes and Common Operating Costs. Landlord agrees to make such books and records available to Tenant upon three (3) business days advance written request by Tenant. If any such audit shows that Tenant's Common Operating Costs or Tenant's Proportionate Share of Taxes has been overstated by more than three percent (3%), Landlord shall immediately pay to Tenant the reasonable cost of such audit, and in any event shall remit the total amount of such overstatement.

D. Control of Common Areas and Shopping Center

Landlord shall have the sole and exclusive control of the Common Areas, as well as the right to make changes to the Common Area subject to the provisions of Section 8 and the terms and conditions of the CC&Rs. Landlord's rights shall include, but not be limited to, the right to (a) restrain the use of the Common Areas by unauthorized persons, (b) utilize from time to time any portion of the Common Areas for promotional, entertainment and related matters, (c) place permanent or temporary kiosks, displays, carts and stands in the Common Areas (excluding, however, those portions of the Common Areas immediately in front of or adjacent to the Premises or the Protected Parking Area) and to lease the same to tenants, (d) temporarily close any portion of the Common Areas for repairs, improvements or alterations, and (e) change the configuration, shape and size of the Common Areas or change the location of improvements to the Common Areas, including, without limitation, buildings, parking areas, roadways, and curb cuts, and construct buildings on the Common Areas, subject, however, to the restrictions set forth in Section 8.I. Landlord may determine the nature, size and extent of the Common Areas as well as make changes to the Common Areas from time to time which, in Landlord's opinion, are deemed desirable for the Project or Shopping Center.

13. ALTERATIONS, ADDITIONS AND TRADE FIXTURES

Tenant shall not make any material alterations, additions or improvements to the Premises, or any part thereof, whether structural or nonstructural (hereafter "Alterations"), without at least thirty (30) days' prior written notice to Landlord and Landlord's prior written consent, which consent shall not be unreasonably withheld or delayed; provided however such consent shall not be necessary for non-structural alterations which do not modify the exterior of the Premises, do not decrease the value of the Premises and which in the aggregate cost less than Forty Thousand Dollars (\$40,000.00) in any Lease Year. In order to obtain Landlord's consent, Tenant shall submit such information as Landlord may require, including, without limitation, (i) plans and specifications, (ii) permits, licenses and bonds and (iii) evidence of insurance coverage in such types and amounts and from such insurers as Landlord deems satisfactory. All Alterations shall be done in a good and workmanlike manner by qualified and licensed contractors. Tenant shall indemnify, defend, and keep Landlord free and harmless from all liability, loss, claim, damage, cost, attorneys fees and any other expense incurred on account of claims by any person performing work or furnishing materials or supplies for Tenant or any person claiming under Tenant. Landlord may require



Tenant to provide Landlord, at Tenant's sole cost and expense, a lien and completion bond in an amount equal to one and one-half times the estimated cost of such improvements, to insure Landlord against any liability for mechanic's liens and to insure completion of the work, however Landlord shall not exercise Landlord's right to require a bond so long as Tenant is Tahoe Joe's, Inc. or any affiliate corporation or entity of Tenant as described in Section 21.F. of this Lease. Landlord shall have the right at all times to post on the Premises any notices permitted or required by law, or that Landlord shall deem proper, for the protection of Landlord, the Premises, the Shopping Center, and any other party having an interest therein, from mechanics' and materialmen's liens.

14. MECHANIC'S LIENS

Tenant shall keep the Shopping Center and the Premises free from any liens arising out of any work performed, material furnished or obligation incurred by or for Tenant or any person or entity claiming through or under Tenant. In the event that Tenant shall not, within ten (10) days following the imposition of any such lien, cause the same to be released of record by payment or posting of a proper bond, Landlord shall have, in addition to all other remedies provided herein and by law, the right, but not the obligation, to cause such lien to be released by such means as Landlord deems proper, including payment of the claim giving rise to such lien. All such sums paid and all expenses incurred by Landlord in connection therewith shall be due and payable to Landlord by Tenant on demand.

15. ENTRY BY LANDLORD

Landlord reserves and shall at any and all times have the right to enter the Premises at reasonable times (to the extent Landlord enters non-public portions of the Premises, Landlord shall provide two (2) days advance written notice to Tenant) to inspect the same, to supply any service to be provided by Landlord hereunder and to determine whether Tenant is complying with Tenant's obligations hereunder, to exhibit the Premises to prospective purchasers, mortgagees or, during the final six (6) months of this Lease, to prospective tenants, to post notices of non-responsibility, provided such notices do not detract from Tenant's decor or interfere with Tenant's business in the Premises, and to alter, improve or repair the Premises and any portion of the Shopping Center, as Landlord deems necessary or desirable, without abatement of rent, unless such repairs restrict Tenant, in Tenant's reasonable opinion, from conducting Tenant's business from the Premises, and may for that purpose erect scaffolding and other necessary structures that are reasonably required by the character of the work to be performed by Landlord, provided that the business of Tenant shall not be interfered with unreasonably. Landlord shall have the right to use any and all means which Landlord may deem proper to open Tenant's doors in the event of an emergency. Any entry to the Premises or portions thereof obtained by Landlord for the purposes set forth in this Section 15, shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an eviction, actual or constructive, of Tenant from the Premises, or any portion thereof. Notwithstanding the foregoing, in the event such entry and/or exercise of Landlord's rights under this Section 15 interferes with Tenant's business in the Premises and Tenant, in its reasonable opinion, is unable to conduct its business in all or a part of the Premises for more than forty-eight (48) consecutive hours as a result thereof, Tenant shall be entitled to abatement of Minimum Annual Rent and Additional Rent to the extent and for the period Tenant is unable to conduct its business in the Premises as a result thereof.

16. DAMAGE OR DESTRUCTION

In the event of (i) any damage or destruction to the Premises by reason of fire or other casualty and the extent of such damage or destruction exceeds fifty percent (50%) or more of the insurable value of the Premises, or (ii) any damage or destruction exceeding twenty percent (20%) of the full constructionreplacement cost of the Premises occurs during the last three (3) Lease Years of the Term or any Extended Term, then Tenant may terminate this Lease without further liability to Tenant, upon thirty (30) days written notice to Landlord given within sixty (60) days after the date of such damage or destruction. In the event that any damage or destruction to the Shopping Center or the Premises both (a) results in a loss of any part of the vehicular parking located within the Protected Parking Area (unless replacement parking of equivalent accessability and distance from the entry to the Premises is provided, and the Protected Parking Area is redrawn to include those replacement areas), restricts reasonable ingress and egress to the Shopping Center from Dalidio Drive, Madonna Road or El Mercado, or reduces the Shopping Center parking ratio below the Required Parking Ratio, and (b) in any such event Landlord does not replace within forty-five (45) days (or such longer period as may be reasonably necessary to complete such replacement if the same cannot reasonably be completed within said forty-five (45) day period so long as Landlord initiates such replacement within said forty-five (45) day period and diligently pursues the same to completion) after the date of such destruction or damage, to the reasonable satisfaction of Tenant, all vehicular parking within the Protected Parking Area, ingress and egress to the Shopping Center and the Premises from Dalidio Drive, Madonna Road or El Mercado, and/or the Shopping Center parking ratio to the Required Parking Ratio, as the case may be, then Tenant may terminate this Lease without further liability to Tenant, upon thirty (30) days prior



written notice to Landlord following the expiration of such forty-five (45) day period (but in no event later than one hundred twenty (120) days following such damage or destruction). Further, in the event of any damage or destruction to the Shopping Center by reason of fire or other casualty and within two hundred seventy (270) days after the date of such damage or destruction Landlord has not repaired and restored not less than the greater of (x) seventy-five percent (75%) of the gross leasable area of the Shopping Center as the same existed immediately prior to such damage or destruction, or such other condition as the parties may reasonably agree upon and (y) seventy-five percent (75%) of the gross leasable area of the Common Areas to the condition the same existed immediately prior to such damage or destruction, Tenant shall have the option to terminate this Lease without further liability to Tenant, upon delivery of written notice to Landlord given within thirty (30) days after the expiration of such two hundred seventy (270) day period. Further, in the event of any damage or destruction to the Shopping Center by reason of fire or other casualty, whether or not the Premises is damaged or destroyed, and the extent of such damage or destruction exceeds fifty percent (50%) or more of the gross leasable area of the Shopping Center, Landlord may terminate this Lease upon thirty (30) days written notice to Tenant given within sixty (60) days after the date of such damage or destruction. If Landlord terminates this Lease, it must terminate all other tenants of the Shopping Center similarly situated and similarly affected by the damage or destruction. In the event this Lease is terminated as provided in this Section 16, the Term of this Lease shall expire as of the date of the applicable damage or destruction and Tenant shall vacate and surrender the Premises to Landlord within thirty (30) days after delivery of or receipt of such termination notice.

If this Lease is not terminated as provided in this Section 16 and a portion of the Shopping Center and/or the Premises is damaged or destroyed by fire or other casualty: (i) Landlord shall diligently proceed at its sole expense, subject to reimbursement by applicable insurance coverage or third parties, to restore (A) the building pad upon which the Premises are located other than Tenant's Work, and (B) the Shopping Center (subject, however, to the seventy-five percent (75%) floor set forth in the immediately preceding paragraph of this Section 16) to the condition in which they existed immediately before the destruction or damage, (ii) after completion of the restoration work by Landlord described in (i) above, Tenant shall diligently proceed at Tenant's sole expense to restore the Premises and Tenant's Work to the condition which they existed immediately before the damage or destruction (provided, however, in the event (X) the extent of such damage or destruction exceeds fifty percent (50%) or more of the insurable value of the Premises, (Y) Tenant is prohibited from repairing or rebuilding the Premises by reason of any applicable law or ordinance, or (Z) Tenant reasonably determines that the Premises cannot be restored within two hundred seventy (270) days after the date of such damage or destruction, then in any such event Tenant shall not be obligated to restore the Premises or Tenant's Work, but instead within sixty (60) days following the date of such damage or destruction Tenant shall commence and thereafter diligently proceed to remove any rubble and debris resulting from such damage or destruction from the Premises so that the same shall be clean and sightly) and (iii) Tenant shall be entitled to abatement of Minimum Rent and Additional Rent from the date of such damage or destruction if, in exercising reasonable and prudent management, Tenant is unable to conduct its business in the Premises during the performance of the restoration work by Landlord described in (i) above. All rental will resume upon the earlier of (1) two hundred seventy (270) days after the date Landlord has finished its restoration and repair work at the building pad upon which the Premises are located and delivered possession of such building pad to Tenant, whether or not Tenant has finished its work, unless Tenant's delay in finishing its work is caused in any way by Landlord, or (2) the day Tenant reopens or resumes normal operation of its business in the Premises. The foregoing two hundred seventy (270) day period shall be extended by one (1) day for each day that Tenant is delayed in the performance of its restoration and repair work at the Premises by any matter described in Section 32.L, below.

17. DEFAULT

A. Tenant's Default

The failure by Tenant to perform any one or more of the following obligations shall constitute a default hereunder by Tenant:

- (1) If Tenant abandons the Premises or vacates the Premises except as set forth in Section 8.B or as otherwise permitted in this Lease;
- (2) If Tenant fails to pay any rent or other charges required to be paid by Tenant under this Lease and such failure continues for ten (10) days after Landlord's written notice of same to Tenant; provided, however, that the obligation of Tenant to pay a late charge or interest pursuant to Section 26 below shall commence as of the expiration of such ten (10) day grace period and further provided that Landlord shall be obligated to provide written notice of Tenant's failure and a grace period only two (2) times in any Lease Year;
- (3) If Tenant involuntarily transfers Tenant's interest in this Lease or voluntarily transfers (attempted or actual) Tenant's interest in this Lease, except in the manner set forth in Section 21;

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- (4) If Tenant or Guarantor files a voluntary petition for relief or if a petition against Tenant or Guarantor in a proceeding under the Federal Bankruptcy Laws or other insolvency laws is filed and not withdrawn or dismissed within forty-five (45) days thereafter, or if under the provisions of any law providing for reorganization or winding up of corporations, any court of competent jurisdiction assumes jurisdiction, custody or control of Tenant or Guarantor or any substantial part of the Premises or any of Tenant's personal property located at the Premises and such jurisdiction, custody or control remains in force unrelinquished, unstayed or unterminated for a period of forty-five (45) days;
- (5) If in any proceeding or action in which Tenant is a party, a trustee, a receiver, agent or custodian is appointed to take charge of the Premises or any of Tenant's personal property located at the Premises for the purpose of enforcing a lien against the Premises or Tenant's personal property which lien is not bonded over within ten (10) days; or
- (6) If Tenant fails to promptly and fully perform any other covenant, condition or agreement contained in this Lease and such failure continues for thirty (30) days after written notice thereof from Landlord to Tenant.

B. Remedies

Upon the occurrence of a default by Tenant that is not cured by Tenant within any grace period specified above, Landlord shall have the following rights and remedies in addition to all other rights and remedies available to Landlord at law or in equity:

- (1) The rights and remedies provided by California Civil Code Section 1951.2 to recover from Tenant upon termination of the Lease:
 - (a) the worth at the time of award of the unpaid rent which had been earned at the time of termination;
 - (b) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided;
 - (c) subject to Subdivision (c) of California Civil Code Section 1951.2, the worth at the time of award of the amount by which the unpaid rent for the balance of the Term after the time of award exceeds the amount of rental loss that Tenant proves could be reasonably avoided; and
 - (d) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform Tenant's obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including, but not limited to, any attorneys' fees, broker's commissions or finder's fees (not only in connection with the reletting of the Premises, but also that portion of any leasing commission paid by Landlord in connection with this Lease which is applicable to that portion of the Lease Term which is unexpired as of the date on which this Lease is terminated), any costs for repairs, clean-up, refurbishing, removal (including the repair of any damage caused by such removal) and storage (or disposal) of Tenant's personal property, equipment, fixtures, and anything else that Tenant is required (under this Lease) to remove but does not remove, and any costs for alterations, additions and renovations (and any other costs and expenses) incurred by Landlord in regaining possession of and reletting (or attempting to relet) the Premises.

The "worth at the time of award" of the amounts referred to in clauses (a) and (b) of this Section 17.B. shall be computed by allowing interest at the prime rate. The "worth at the time of award" of the amount referred to in clause (c) of this Section 17.B. shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

- (2) The rights and remedies provided by California Civil Code Section 1951.4, which allows Landlord to continue this Lease in effect and to enforce all of Landlord's rights and remedies under this Lease, including the right to recover rent and any other additional monetary charges as they become due, for as long as Landlord does not terminate Tenant's right to possession; provided, however, if Landlord elects to exercise Landlord's remedies described in this subsection (2) and Landlord does not terminate this Lease, and if Tenant requests Landlord's consent to an assignment of this Lease or a sublease of the Premises at such time as Tenant is in default, Landlord shall not unreasonably withhold Landlord's consent to such assignment or sublease. Acts of maintenance or preservation, efforts to relet the Premises or the appointment of a receiver upon Landlord's initiative to protect Landlord's interest under this Lease shall not constitute a termination of Tenant's right to possession.
- (3) The right to terminate this Lease by giving notice to Tenant in accordance with applicable law.



C. Landlord's Default

If Landlord shall (i) fail to pay prior to delinquency taxes, mortgage payments, ground rent or any other charge or assessment, the lien of which is prior to this Lease (other than those liens in which the lien holder has entered into a non-disturbance agreement with Tenant), or (ii) fail to perform any of Landlord's covenants or conditions of this Lease and Landlord does not cure such default within thirty (30) days (five (5) business days in the event of defaults in the performance of Landlord's Work) after written notice shall have been given to Landlord (or such longer period as may be reasonably necessary to cure such default so long as (A) Landlord initiates such cure within said thirty (30) day period and diligently pursues the same to completion, and (B) such default does not materially and adversely interfere with Tenant's business in the Premises during such longer period), unless such default in the reasonable opinion of Tenant constitutes an emergency in which event Landlord shall have a reasonable period of time to cure such default, then Tenant may, at Tenant's option, in addition to any other remedies available to Tenant at law or equity, incur any expense necessary to perform such obligation of Landlord and deduct such expense from the Minimum Annual Rent and/or Additional Rent first coming due under this Lease, together with interest thereon at the Default Rate (as defined in Section 26.A). If it shall be unlawful to charge Landlord the aforesaid interest rate, then in such event the interest rate shall be the highest rate per annum allowed by law. No consent or waiver, express or implied by Landlord to any breach of any term of this Lease on the part of the Tenant shall be construed as a consent or waiver of any other breach of the same or any term, unless in writing signed by Landlord.

Tenant's notice as to Landlord's default will be sent simultaneously to Landlord and any mortgagee of a mortgage or beneficiary of a deed of trust encumbering the Premises which has requested such notice, provided such mortgagee has first provided Tenant with a non-disturbance agreement. Any such mortgagee or beneficiary of which Landlord has notified Tenant of its address in the manner provided for notices in this Lease will have the right to cure Landlord's defaults under this Section 17.C. In this connection, any representative of the mortgagee or beneficiary shall have the right to enter upon the Premises for the purpose of curing Landlord's default.

Notwithstanding the foregoing Landlord's Default described in Section 17.C.(i), above, if Landlord fails to pay, prior to delinquency, taxes, mortgage payments, ground rent or any other charge or assessments, the lien of which is prior to this Lease (other than those liens in which the lien holder has entered into a non-disturbance agreement with Tenant) as a result of a good faith dispute between Landlord and the lawful payee of such taxes, payments, rents, charges or assessments, Landlord shall not be in default of this Lease if: (1) Landlord pays such taxes, payments, rents, charges or assessments to a court of competent jurisdiction in an interpleader action; and (2) Landlord gives Tenant a ten (10) day advance written notice of Landlord's intent to make interpleader payments.

18. CONDEMNATION

In the event the whole of the Premises and/or the Shopping Center shall be taken by any public or quasi public authority under the power of eminent domain, then this Lease shall automatically terminate without further liability to Tenant. If any portion of the Premises or the Protected Parking Area shall be taken (unless replacement parking of equivalent accessibility and distance from the entry to the Premises is provided, and the Protected Parking Area is redrawn to include those replacement areas), or if so much of the parking facilities shall be so taken that the Shopping Center parking ratio is reduced below the Required Parking Ratio, or, if any material means of ingress to and egress from the Shopping Center from Dalidio Drive, Madonna Road or El Mercado, shall be taken so that reasonable means of ingress and egress for the continued operation of the Shopping Center shall not be available for use by patrons of the Shopping Center, then in any such event Tenant may terminate this Lease without further liability to Tenant, by delivery of written notice to Landlord within thirty (30) days after the date Tenant receives written notice of such taking. Further, if less than whole of the Shopping Center shall be so taken and within one hundred eighty (180) days after the date of such taking Landlord has not repaired and altered the Shopping Center (including, but not limited to, the Common Areas) so that the same is architecturally complete and tenantable and contains not less than seventy-five percent (75%) of the gross leasable area of the Shopping Center as the same existed immediately prior to such taking, and (b) seventy-five percent (75%) of the gross leasable area of the Common Areas to the condition the same existed immediately prior to such taking, Tenant may terminate this Lease without further liability to Tenant, by delivery of written notice of termination to Landlord within thirty (30) days after the expiration of such one hundred eighty (180) day period.

If less than the whole but more than fifty percent (50%) of either the Common Areas or the gross leasable area of the Shopping Center shall be taken by any public or quasi public authority under the power of eminent domain, then Landlord may terminate this Lease by delivering of written notice to Tenant within thirty (30) days after the date the terminating party receives written notice of such taking. In the event Landlord terminates this Lease as provided in this Section 18, (1) Landlord must terminate the leases of all

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tenants of the Shopping Center similarly situated and similarly affected by such taking, and (2) except to the extent Tenant receives an award from the condemning authority, Landlord shall pay to Tenant Tenant's unamortized cost of constructing and performing Tenant's Work in the amount equal to the lesser of: (x) the depreciated amount at which the Tenant's Work are carried on Tenant's books, utilizing a thirty (30) year straight line amortization schedule based upon Tenant's recorded costs of the improvements, or (y) an amount determined by multiplying the original costs of constructing and performing Tenant's Work by a fraction, the numerator of which shall be the number of unexpired Lease Years remaining in the Term of this Lease, including extensions, and the denominator of which shall be the original number of Lease Years of the Term of this Lease, including extensions, less an amount equal to any monetary remuneration Tenant shall have received from the public or quasi public authority as an award for Tenant's Work as a result of such taking. Any termination under this Section 18 shall be effective on the day possession shall be taken by such public or quasi public authority and Minimum Rent and Additional Rent shall be paid up to the day possession is taken with a proportionate refund by Landlord to Tenant of such rent as may have been paid in advance for a period subsequent to the date of the taking of possession.

If the Lease is not terminated as provided in the first paragraph of this Section 18 and a portion of the Premises and/or the Shopping Center is taken by such public or quasi public authority: (i) Tenant shall pay Minimum Rent and Additional Rent up to the day possession is taken by such authority with appropriate refund by Landlord to Tenant of such rent as may have been paid in advance for a period subsequent to the date of taking of the Premises (ii) Landlord shall, at its sole expense, diligently proceed to make all necessary repairs or alterations to (A) the portions of the building pad upon which the Premises are located other than the Premises and Tenant's Work, and (B) the Shopping Center (subject, however, to the seventy-five percent (75%) gross leasable area set forth in the immediately preceding paragraph of this Section 18), so as to make the same complete architectural and tenantable units, and (iii) Tenant shall be entitled to an equitable abatement of Minimum Rent and Additional Rent during such period of repair to the extent the Premises is rendered untenantable thereby during the performance of the restoration work by Landlord described in (ii) above. All rental will resume upon the earlier of (1) one hundred fifty (150) days after the date Landlord has finished its restoration and repair work at the building pad upon which the Premises are located and delivered possession of such building pad to Tenant, whether or not Tenant has finished its work, unless Tenant's delay in finishing its work is caused in any way by Landlord, or (2) the date fifteen (15) days following the date Tenant completes Tenant's Work, or (3) the day Tenant reopens or resumes normal operation of its business in the Premises. The foregoing one hundred fifty (150) day period shall be extended by one (1) day for each day that Tenant is delayed in the performance of its restoration and repair work at the Premises by any matter described in Section 32.L, below. All damages awarded for a taking under the power of eminent domain of all or any part of the Premises or the Shopping Center shall be divided as follows:

- (i) any award for the relocation of Tenant's business, depreciation or damage to and cost of removal of Tenant's personal property, equipment and/or trade fixtures, utilizing a thirty (30) year straight line amortization schedule based upon Tenant's recorded costs of said items, shall belong to and shall be paid to Tenant; and
- (ii) the remaining portion of the award shall be paid to Landlord.

The provisions contained in this Section 18 shall apply in like way to any sale made under imminent threat of a taking under the power of eminent domain.

19. HOLDING OVER

Any holding over after the expiration of the Term, or applicable Option Terms (the "Hold Over Period"), with the consent of Landlord, shall be construed to be a tenancy from month to month and Tenant shall pay to Landlord Minimum Annual Rent in amounts equal to one hundred fifty percent (150%) of the amounts which were payable for the twelve (12) month period immediately preceding the expiration of the Lease (prorated on a monthly basis) unless Landlord shall specify a lesser amount for rent in Landlord's sole discretion, together with an amount estimated by Landlord for the monthly Common Operating Costs payable under this Lease, and shall otherwise be on the terms and conditions herein specified as far as applicable (the "Hold Over Payment"). If Landlord and Tenant are in good faith negotiation during the Hold Over Period, and an agreement is consummated between the parties to continue a Landlord/Tenant relationship, all rental payments under the new agreement ("New Rental Payments") shall be retroactive to the first day of the Hold Over Period. Any Hold Over Payments made by Tenant in excess of the New Rental Payments shall be a credit to the New Rental Payments first coming due, and any deficiency between the New Rental Payments and the Hold Over Payments made during the Hold Over Period shall be paid by Tenant to Landlord with the first New Rental Payments. Acceptance by Landlord of any Minimum Annual Rent, or Additional Rent after the expiration or earlier termination of this Lease shall not constitute a consent to a hold over hereunder, constitute acceptance of Tenant as a tenant at will or result in a renewal of this Lease. Any holding over without Landlord's consent shall constitute a default by Tenant and shall entitle Landlord to re-enter the Premises as provided in Section 15 hereof.

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20. ATTORNEYS' FEES

Tenant shall pay to Landlord all amounts for costs, including, but not limited to, reasonable attorneys fees and amounts paid to any collection agency, incurred by Landlord in connection with any breach or default by Tenant under this Lease or incurred in order to enforce the terms or provisions of this Lease. Such amounts shall be payable upon demand. In addition, if any action shall be instituted by either Landlord or Tenant for the enforcement or interpretation of any of its rights or remedies in or under this Lease, the prevailing party shall be entitled to recover from the losing party all costs incurred by the prevailing party in said action and any appeal therefrom, including reasonable attorneys' fees and court costs to be fixed by the court therein.

21. ASSIGNMENT AND SUBLETTING

A. Assignment, Subletting and Release.

Tenant shall not assign or in any manner transfer this Lease or any estate or interest therein or sublease any part or all of the Premises at any time during the First Partial Lease Year plus the first five (5) full Lease Years (excluding any assignment, transfer or sublease to an "affiliate corporation or entity" of Tenant, as that term is defined below); thereafter, Tenant may do so, but only with Landlord's prior written consent, which consent shall not be unreasonably withheld or delayed. In the event that Tenant, with or without the previous consent of Landlord, does assign or in any manner transfer this Lease or any estate or interest therein or sublease the Premises, Tenant shall not be released from any of Tenant's obligations under this Lease; provided, however, in the event Tenant's assignee, transferee or sublessee has a net worth equal to or greater than Thirty Million Dollars (\$30,000,000.00) and Tenant obtained the prior written consent of Landlord as required in this Section 21, then Tenant shall be fully released from Tenant's obligations under this Lease which arise or accrue after the effective date of the assignment, transfer or sublease. Landlord's consent to any of the foregoing shall not release or waive the prohibition against them thereafter or constitute a consent to any other assignment, transfer, or sublease. Except as otherwise provided in this Section, if this Lease is assigned or if the Premises or any part thereof is transferred, subleased or occupied by anybody other than Tenant, whether with or without Landlord's consent, Landlord may collect from the assignee, sublessee, occupant, licensee, or concessionaire, those rentals and other charges payable by Tenant to the extent set forth in this Lease, and apply the amounts collected to the extent of the rentals and other charges herein reserved, but such collection by Landlord shall not be deemed an acceptance of the assignee, sublessee, occupant, licensee, or concessionaire as Tenant nor a release of Tenant from the performance by Tenant of this Lease, except as otherwise specifically provided in this Section 21.A.

B. Required Information for Approval.

If Tenant desires at any time to enter into an assignment, or a sublease of the Premises or any portion thereof, which requires Landlord's consent pursuant to Section 21.A. above, Tenant shall request in writing, at least sixty (60) days prior to the effective date of the assignment or sublease, Landlord's consent to the assignment or sublease, and provide the following: (a) the name of the proposed assignee, subtenant or occupant, (b) the nature of the proposed assignee's, subtenant's or occupant's business to be carried on in the Premises and such transferee's experience in such business, (c) the terms and provisions of the proposed Assignment or Sublease, and (d) such reasonable financial information concerning the proposed assignee, subtenant or occupant which Landlord shall have requested following Landlord's receipt of Tenant's request for consent to evaluate the assignee or subtenant's net worth.

C. Criteria for Approval.

At any time within thirty (30) days after Landlord's receipt of the notice specified in subparagraph B., above, Landlord may by written notice to Tenant elect either to: (a) consent to the proposed assignment or sublease, or (b) refuse to consent to the proposed assignment or sublease. Landlord and Tenant agree (by way of example and without limitation) that it shall be reasonable for Landlord to withhold Landlord's consent if any of the following situations exist or may exist: (i) in Landlord's reasonable business judgment, the proposed transferee lacks sufficient business experience to operate a successful business of the type and quality permitted under this Lease, (ii) Tenant is in material default beyond any applicable period to cure such default pursuant to this Lease, (iii) the assignment would breach any covenant of Landlord respecting radius, location, use or exclusivity in any other lease or other agreement relating to the Shopping Center (excepting Tenant's Permitted Use), or (iv) the nature of the proposed transferee's proposed or likely use of the Premises would impose a materially increased burden on the Common Areas or involve any increased risk of the presence, use, release or discharge of Hazardous Materials.



D. Consent.

If Landlord consents to the sublease or assignment within said thirty (30) day period, Tenant may enter into such assignment or sublease of the Premises or portion thereof, but only upon the terms and conditions set forth in the notice furnished by Tenant to Landlord pursuant to subparagraph B.

E. No Release of Tenant.

Except as provided in Section 21.A. hereof, no consent by Landlord to any assignment or sublease by Tenant shall relieve Tenant of any obligation to be performed by Tenant under this Lease, whether arising before or after the assignment or sublease. The consent by Landlord to any assignment or sublease shall not relieve Tenant of the obligation to obtain Landlord's express written consent to any other assignment or sublease. Any assignment or sublease that is not in compliance with this Section 21 shall be void and, at the option of Landlord, shall constitute a material default by Tenant under this Lease. The acceptance of rent or payment of any other monetary obligation by Landlord from a proposed assignee or sublessee shall not constitute the consent by Landlord to such assignment or sublease.

F. Tenant's Affiliates.

Notwithstanding anything contained herein to the contrary, Tenant may, without the necessity of the consent of, but subject to Tenant providing written notice thereof to Landlord, at any time assign, sublease, or otherwise transfer this Lease or any portion thereof to any parent, subsidiary, or affiliate corporation or entity; any corporation resulting from the consolidation or merger of Tenant into or with any other entity; or any person, firm, entity, or corporation acquiring a majority of Tenant's issued and outstanding capital stock or all or substantially all of Tenant's assets. As used herein, the expression "affiliate corporation or entity" means a person or business entity, corporate, or otherwise, that directly or indirectly through one or more intermediaries, controls or is controlled by or is under control with Tenant. The word "control" means the right and power, direct or indirect, to direct or cause the direction of the management and policies of a person or business entity, corporation, or otherwise. Notwithstanding anything contained herein to the contrary, in no event shall Landlord be entitled to claim any portion of any rent or other charges or consideration whatsoever paid to Tenant by any parent, subsidiary, or affiliate corporation or entity pursuant to an assignment or sublease of this Lease related to any portion of the Premises, including, without limitation, any rent or other charges or consideration paid in connection with such assignment or sublease.

G. Joint Liability.

Each assignee, or other transferee, other than Landlord, shall assume, as provided in this subparagraph G, all obligations of Tenant under this Lease and shall be and remain liable jointly and severally with Tenant for the payment of Minimum Annual Rent and all other monetary obligations hereunder, and for the performance of all the terms, covenants, conditions and agreements herein contained on Tenant's part to be performed for the Term. No assignment, transfer or sublease shall be binding on Landlord unless prior written consent by Landlord as required in this Section 21 has been obtained by Tenant, and until the assignee or Tenant shall have delivered to Landlord a counterpart of the Assignment and an instrument in recordable form that contains a covenant of assumption by the assignee satisfactory in substance and form to Landlord, consistent with the requirements of this subparagraph G., but the failure or refusal of the assignee to execute such instrument of assumption shall not release or discharge the assignee from its liability as set forth above.

H. Administrative Costs.

Tenant shall pay Landlord's actual reasonable attorneys' fees and other expenses up to a maximum of Five Hundred Dollars (\$500.00) incurred in connection with each such proposed transfer (other than related to transfers not requiring Landlord's consent) to cover the legal review and processing expenses of Landlord, whether or not Landlord shall grant Landlord's consent to such proposed transfers.

22. MORTGAGE PROTECTION/SUBORDINATION

A. Subordination

The rights of Tenant under this Lease are and shall be, at the option of Landlord, either subordinate or superior to the interest created by any mortgage or deed of trust (including a consolidated mortgagee or deed of trust) constituting a lien on the Premises or Landlord's interest therein or any part thereof, whether such mortgage or deed of trust has heretofore been, or may hereafter be, placed upon the Premises by Landlord, and to any ground or master lease if Landlord's title to the Premises or any part thereof is or shall become a leasehold interest. To further assure the foregoing subordination or superiority, Tenant shall, upon Landlord's request, together with the request of any mortgagee under a mortgage or beneficiary under a deed



of trust or ground or master lessor, execute any instrument or instruments intended to subordinate this Lease, or at the option of Landlord, to make it superior to the interest created by any mortgage, deed of trust, or ground or master lease. Notwithstanding any such subordination, Tenant's right to occupy the Premises pursuant to this Lease shall remain in effect for the full Term, and applicable Option Terms so long as Tenant is not in material default beyond any applicable time to cure such default hereunder.

B. Attornment

Notwithstanding the provisions of A. Subordination next above, Tenant agrees (1) to attorn to any mortgagee of a mortgage or beneficiary of a deed of trust encumbering the Premises and to any party acquiring title to the Premises by judicial foreclosure, trustee's sale, or deed in lieu of foreclosure, and to any ground or master lessor, as the successor to Landlord hereunder, (2) to execute any attornment agreement reasonably requested by a mortgagee, beneficiary, ground or master lessor, or party so acquiring title to the Premises, and (3) that this Lease, subject to the rights under any outstanding non-disturbance agreement shall remain in force notwithstanding any such judicial foreclosure, trustee's sale, deed in lieu of foreclosure, or merger of titles. Notwithstanding the foregoing, neither a mortgagee of a mortgage or beneficiary of a deed of trust encumbering the Premises, any party acquiring title to the Premises by judicial foreclosure, trustee's sale, or deed in lieu of foreclosure, or any ground lessor or master lessor, as the successor to Landlord hereunder, shall be liable or responsible for any breach of a covenant contained in this Lease that occurred before such party acquired its interest in the Premises and no such party shall be liable or responsible for any security deposits held by Landlord hereunder which have not been transferred or actually received by such party, and such party shall not be bound by any payment of rent or Additional Rent for more than two (2) months in advance, however, in no event shall such party be relieved of its obligations to remedy any failure of duty by the Landlord which is subsisting when such receiver acquires Landlord's interest in the Premises.

C. Non-disturbance

Landlord, within thirty (30) days after Landlord's and Tenant's execution of this Lease as a precondition to Tenant's obligations under this Lease shall provide Tenant with an executed non-disturbance agreement substantially in the form of Exhibit G attached hereto and incorporated herein by this reference, with such changes thereto as reasonably may be required by any mortgagee of Landlord or other party holding an interest in the Shopping Center, as reasonably accepted by Tenant in writing, from any and all existing mortgagees, holders of deeds of trust, and any other parties holding an interest in the Shopping Center or the Premises; and thereafter, Landlord shall similarly provide Tenant with executed non-disturbance agreements from any and all future mortgagees, holders of deeds of trust, and any other parties holding an interest in the Shopping Center or Premises, within thirty (30) days after the date said parties obtain such an interest.

23. TRANSFER OF LANDLORD'S INTEREST / ESTOPPEL CERTIFICATE / FINANCIAL STATEMENTS

A. Estoppel Certificate

Landlord and Tenant, at any time and from time to time upon not less than twenty (20) days' prior written notice from the other, agrees to execute and deliver to the other a statement (a) certifying that this Lease is unmodified and in full force and effect, or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect and the date to which the rent and other charges are paid in advance, if any; (b) acknowledging that there are not, to such party's knowledge, any uncured defaults on the part of Landlord hereunder, or specifying such defaults if they are claimed evidencing the status of this Lease; and (c) as to such other matters as may be reasonably requested.

B. Furnishing of Financial Statements

Landlord has reviewed financial statements if so requested of the Tenant and has relied upon the truth and accuracy thereof with Tenant's knowledge and representations of the truth and accuracy of such statements and that said statements accurately and fairly depict the financial condition of Tenant. Said financial statements are an inducing factor and consideration for the entering into of this Lease by Landlord with this particular Tenant. Tenant shall, from time to time, upon Landlord's reasonable request therefore, furnish Landlord with printed or electronic financial statements reflecting Tenant's and Guarantor's then financial condition by consolidated financials of Tenant and Guarantor (or by separate financials if Tenant has the same).

C. Liability of Transferee

In the event Landlord shall sell or otherwise convey Landlord's title to the Premises and Landlord's purchaser or grantee expressly assumes, in writing, all obligations and liabilities of Landlord, after the effective date of such sale or conveyance Landlord shall have no further liability under this Lease to Tenant except as to matters of liability which have accrued and are unsatisfied as of the date of sale or conveyance, and Tenant shall seek performance solely from Tenant's purchaser or successor in title.



24. PARKING

Landlord agrees to maintain or cause to be maintained an automobile parking area and to maintain and operate, or cause to be maintained and operated, said automobile parking area during the Term, and applicable Option Terms of this Lease for the benefit and use of the customers, service suppliers, other invitees and employees of Tenant. Whenever the words "automobile" or "parking area" are used in this Lease, it is intended that the same shall include, whether in a surface parking area or a parking structure, the automobile parking stalls, driveways, loading docks, truck areas, service drives, entrances and exits and sidewalks, landscaped areas, pedestrian passageways in conjunction therewith and other areas designed for parking. Landlord shall keep said automobile parking area in a neat, clean and orderly condition, lighted and landscaped, and shall repair any damage to the facilities thereof (subject to the provisions of Section 11A above), the cost of which shall be included in Common Operating Costs as defined in Section 12 above. Landlord shall also have the right to establish such reasonable rules and regulations as may be deemed desirable, at Landlord's sole discretion, for the proper and efficient operation and maintenance of said automobile parking area.

Landlord shall at all times during the Term, and applicable Option Terms hereof, have the sole and exclusive control of the automobile parking area (subject to the terms and conditions of the CC&Rs), and may at any time during the Term, and applicable Option Terms hereof, exclude and restrain any person from use or occupancy thereof; excepting, however, Tenant and employees, customers, service suppliers and other invitees of Tenant and of other tenants in the Shopping Center who make use of said area in accordance with any rules and regulations established by Landlord from time to time with respect thereto. Landlord also shall have the right to prescribe and restrict parking by designating certain parking areas to be used by Landlord's tenants and their respective employees, agents, representatives and licensees. It is understood that areas designated for employee parking may be located in those portions of the parking area most distant from the lease buildings within the Shopping Center. The rights of Tenant and Tenant's employees, customers, service suppliers and invitees referred to in this Section shall at all times be subject to (i) the rights of Landlord and other tenants in the Shopping Center to use the same in common with Tenant and Tenant's employees, customers, service suppliers and invitees, and (ii) the availability of parking spaces in said automobile parking area.

At all times during the Term and any Option Term, Landlord shall maintain exclusively for vehicular parking the area as approximately outlined on Exhibit A containing at least one hundred fifty (150) parking spaces and referred to in this Lease and on Exhibit A as the "Protected Parking Area", and shall not interfere with, change the use of, or build or construct any improvements thereupon which would reduce the number of parking spaces thereon or which would adversely affect access to or visibility of the Premises. Nothing in this Lease shall be deemed to designate the Protected Parking Area as an exclusive parking area for the use of Tenant and Tenant's invitees only. Further, Landlord agrees to maintain a parking ratio for the Shopping Center of at least the greater of three and eighty-seven hundredths (3.87) parking spaces per one thousand (1,000) square feet of gross leasable area in the Shopping Center, or the minimum parking ratio required for the Shopping Center under any applicable governmental law, ordinance, or rule (the "Required Parking Ratio"). Further Landlord agrees that Landlord will provide signage on four (4) parking spaces immediately in front of the Premises that will indicate said parking spaces are for "take-out" customers only.

25. SIGNS

Tenant may erect and maintain only such signs as consented to by Landlord. In the event Landlord consents to Tenant placing a sign on or about the Premises, or the building in which the Premises are located, any such sign shall (i) be subject to Landlord's approval of the color, size, style and location of such sign, (ii) conform to any future or current sign criteria established by Landlord or the CC&Rs for signs in the Shopping Center or Project and (iii) comply with all laws, ordinances, orders, codes, rules and regulations of all governmental agencies asserting jurisdiction over the Shopping Center or Project. Upon the expiration or earlier termination of the Term, Tenant agrees to remove, at Tenant's sole cost and expense, all signs, names and insignia from the Premises or the building in which the Premises are located, and shall promptly repair any damage to the Premises or the building in which the Premises are located resulting from such removal.

Except as otherwise consented to by Landlord, Tenant shall not affix upon the Premises, the building of which the Premises are a part or anywhere in the Common Areas or in any interior portions of the Premises that may be visible from the exterior of the building, signs, advertising placard, name, insignia, trademark, descriptive material or any other similar item without Landlord's prior written consent, which consent shall not be unreasonably withheld or unduly delayed.



Notwithstanding anything to the contrary set forth above, but subject to Tenant's compliance with the provisions of clause (iii) of the first paragraph of this Section 25, Tenant may, in Tenant's discretion, and at Tenant's expense, and subject to applicable laws and ordinances, install and throughout the Term, and applicable Option Terms of this Lease maintain Tenant's standard sign on the front sign band and all sides of the Premises with individually illuminated letters consistent with the Master Sign Program attached hereto as Exhibit I and incorporated herein by reference. In addition, Tenant shall have the right to use a portion of the existing Shopping Center billboard sign (controlled by Landlord) if said signage is available and Tenant agrees to pay its pro rata share of costs incurred for said billboard sign use. In addition, Tenant shall be allowed signage on the monument to be located at the corner of El Mercado and Madonna Road, which signage is approved and attached hereto as Exhibit I (said monument sign will contain ten (10) full panels and four (4) half panels when counting both sides, and Tenant shall have the right to two (2) half panels and Tenant will pay for the cost of its panels and its prorata share of the costs for designing, permitting, constructing, maintaining and insuring such sign). In addition, Landlord acknowledges that Tenant may petition, at Tenant's sole cost and expense, the applicable governmental authorities for approval of, in lieu of the two (2) half panels, one (1) full size panel on said monument sign and Landlord agrees to cooperate with and assist Tenant in its efforts. In no event shall Tenant have any right to any approved pylon or monument sign along the freeway. Tenant may hang professionally prepared "coming soon" and "now open" banners on the front and each side of the Building within thirty (30) days of opening for business or erect a temporary street monument, subject to all applicable governmental approvals. The location and size of Tenant's signage on the Premises and monument is shown on the drawings attached hereto as Exhibit I and incorporated herein by this reference. Notwithstanding the foregoing or the attached Exhibits, Tenant will in any event be allowed maximum signage permitted by applicable law.

26. LATE PAYMENTS; INTEREST AND LATE CHARGES

A. Interest

Any amount due from Tenant to Landlord which is not paid when due shall bear interest at the annual rate of two percent (2%) over the rate then announced by Chase Manhattan Bank as its base or prime rate ("**Default Rate**") from ten (10) days following Landlord's written notice to Tenant that such payment is due until paid, except that amounts spent by Landlord on behalf of Tenant shall bear interest at such rate from the date of disbursement by Landlord.

B. Late Charges

Tenant acknowledges that late payment of rent by Tenant to Landlord will cause Landlord to incur costs not contemplated by this Lease, including without limitation, administrative and collection costs and processing and accounting expenses, the exact amount of such costs being extremely difficult and impracticable to fix. Therefore, in addition to interest, Tenant shall pay to Landlord, as Additional Rent, a late charge equal to Three Hundred Dollars (\$300.00) concurrently with any rent payment received by Landlord ten (10) or more days after such rent payment is due. The foregoing late charge, for the first late payment by Tenant during any calendar year, shall be disclaimed by Landlord.

C. No Waiver

Neither assessment nor acceptance of interest or late charges by Landlord shall constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of Landlord's other rights and remedies under this Lease. Nothing contained in this Section shall be deemed to condone, authorize, sanction or grant to Tenant an option for the late payment of rent, Additional Rent or other sums due hereunder, and Tenant shall be deemed in default with regard to any such payments should the same not be made by the date on which they are due.

27. BROKER

Tenant warrants and represents that it has not dealt with any real estate broker or agent in connection with this Lease or Tenant's negotiation except the Brokers identified in Item 16. of the Basic Lease Provisions. Tenant shall indemnify and hold Landlord harmless from any cost, expense or liability (including costs of suit and reasonable attorneys' fees) for any compensation, commission or fees claimed by any other real estate broker or agent in connection with this Lease or Tenant's negotiation by reason of any action or inaction of Tenant.

Landlord warrants and represents that it has not dealt with any real estate broker or agent in connection with this Lease or Landlord's negotiation except the Brokers identified in Item 16. of the Basic Lease Provisions whose commissions shall be paid by Landlord as provided in said Item 16. Landlord shall indemnify and hold Tenant harmless from any cost, expense or liability (including costs of suit and reasonable attorneys' fees) for any compensation, commission or fees claimed by any other real estate broker or agent in connection with this Lease or Landlord's negotiation by reason of any action or inaction of Landlord.



28. NO PERSONAL LIABILITY OF LANDLORD

The term "Landlord" as used in this section shall mean the fee owner of the Shopping Center, and in the event of transfer by such owner of its interest in the Shopping Center, such owner shall thereupon be released and discharged from all covenants and obligations of the Landlord thereafter accruing under this Lease, but such covenants and obligations shall be binding upon each new owner for the duration of such owner's ownership during the Lease Term. Notwithstanding any other provision hereof, Tenant acknowledges and agrees with Landlord that Landlord shall not have any personal liability under this Lease or arising out of the relationship of the parties created thereby for any damage or liability of any kind or for injury to or death of persons or damage to property of Tenant or any other person occurring from and after substantial completion of Landlord's Work at the Premises, from any cause whatsoever related to the use, occupancy, or enjoyment of the Premises by Tenant or any person thereon or holding under Tenant, including, but not limited to, damages resulting from a breach or default by Landlord in any term or provisions of this Lease. Tenant agrees to look solely to the rents, insurance recoveries and proceeds related thereto, and the proceeds from the sale of the Shopping Center and to the equity then owned by Landlord in the land and improvements which constitute the Shopping Center. Any judgments rendered against Landlord shall be satisfied solely out of the income, rents, insurance recoveries and proceeds related thereto, from the operation of the Shopping Center and from any proceeds of sale of Landlord's interest in the Shopping Center and as set forth herein. However, in no event shall any personal or deficiency judgment or any monetary judgment of any kind be sought or obtained against Landlord or any of Landlord's other assets except for all Landlord's right, title, and interest in the Shopping Center. These provisions are not designed to relieve Landlord from the performance of any of Landlord's obligations under this Lease, but only to limit the personal liability of the Landlord in case of recovery of a judgment against Landlord. These provisions shall inure to the benefit of Landlord's successors and assigns and shall survive the expiration or earlier termination of this Lease.

29. NOTICES

Any notice, demand, approval, consent, bill, statement or other communication required or desired to be given under this Lease shall be in writing and directed to Landlord at Landlord's Address for Notice or to Tenant at Tenant's Address for Notice, as set forth in Items 17. and 18., respectively, of the Basic Lease Provisions, and shall be personally served or given by nationally recognized overnight messenger service or United States mail, and shall be deemed to have been received upon receipt of delivery, or, if mailed, when three (3) business days have elapsed from the date of the deposit into the United States mail, certified and postage prepaid.

30. QUIET ENJOYMENT

Upon payment by the Tenant of the rents herein provided and upon the observance and performance of all other covenants, terms and conditions on Tenant's part to be observed and performed, Tenant shall quietly enjoy the Premises without hindrance or interruption by Landlord or anyone claiming through Landlord. Landlord represents and warrants that: (i) Landlord has good and marketable leasehold title to the Shopping Center; (ii) the Shopping Center, as of the date of this Lease, is not subject to the lien of any deed of trust, mortgage or other similar encumbering instrument, except Bank of America (which representation and warranty shall not, subject to the provisions of Section 22 of this Lease, restrict in any way Landlord's right to subsequently modify such current lien or further encumber the Shopping Center with any future liens as may be desired by Landlord at its sole discretion); (iii) Landlord has the full and unencumbered power, right and authority to make this Lease for the Term hereof; (iv) Landlord will put Tenant into complete and exclusive possession of the Premises, subject only to easements, covenants, restrictions, agreements or other matters of record which affect the Premises; (v) the Shopping Center contains adequate parking facilities required by applicable codes or ordinances for the Shopping Center and the Premises as constructed and operated in accordance with the provisions of this Lease, the CC&R's and Tenant's Plans, and (vi) as of the date of this Lease, the Shopping Center, including, but not limited to, the Premises, are in compliance with all applicable federal, state and local statutes, codes, ordinances and rules (other than those compliance failures not affecting Tenant's business).

31. [INTENTIONALLY DELETED.]

32. GENERAL

A. Paragraph Headings

The paragraph headings used in this Lease are for the purposes of convenience only. They shall not be construed to limit or to extend the meaning of any part of this Lease.



B. Incorporation of Prior Agreements; Amendments

This Lease contains all agreements of Landlord and Tenant with respect to any matter mentioned, or dealt with, herein. No prior agreement or understanding pertaining to any such matter shall be binding upon Landlord. Any amendments to or modifications of this Lease shall be in writing, signed by the parties hereto, and neither Landlord nor Tenant shall be liable for any oral or implied agreements.

C. Waiver

Waiver by Landlord of any breach of any term, covenant, or condition contained in this Lease shall not be deemed to be a waiver of such term, covenant, or condition or of any subsequent breach of the same or of any other term, covenant, or condition contained in this Lease. Landlord's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Landlord's consent to, or approval of, any subsequent act by Tenant. The acceptance of rent or other sums payable hereunder by Landlord shall not be a waiver of any preceding breach by Tenant of any provision hereof, other than failure of Tenant to pay the particular rent or other sum so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such rent, or sum equivalent to rent.

D. Short Form

Upon the request of Tenant, Landlord and Tenant agree to execute, deliver, and acknowledge a short form of this Lease in substantially the same form as <u>Exhibit H</u> attached hereto and record such short form in the county where the Premises are located with the cost of recording to be the exclusive responsibility of Tenant.

E. Time of Essence

Time is of the essence in the performance of each provision of this Lease.

F. Examination of Lease

Submission of this instrument for examination or signature by Landlord or Tenant does not constitute a reservation of or option for lease, and it is not effective as a lease or otherwise until execution by and delivery to both Landlord and Tenant.

G. Severability

If any term or provision of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

H. Surrender of Lease Not Merger

Neither the voluntary or other surrender of the Lease by Tenant nor the mutual cancellation thereof shall cause a merger of the titles of Landlord and Tenant, but such surrender or cancellation shall, at the option of Landlord, either terminate all or any existing subleases or operate as an assignment to Landlord of any such subleases.

I. Corporate Authority

If Tenant is a corporation, each individual executing this Lease on behalf of Tenant represents and warrants (1) that he is duly authorized to execute and deliver this Lease on behalf of Tenant in accordance with a duly adopted resolution of the board of directors of Tenant in accordance with the by-laws of Tenant and (2) that this Lease is binding upon and enforceable by Landlord against Tenant in accordance with its terms.

J. Bankruptcy

If Landlord shall not be permitted to terminate this Lease because of the provisions of Title 11 of the United States Code relating to Bankruptcy, as amended ("<u>Bankruptcy Code</u>"), Tenant, as a debtor-in-possession or any trustee for Tenant, agrees promptly, within no more than fifteen (15) days upon request by Landlord to the Bankruptcy Court, to assume or reject this Lease, and Tenant on behalf of itself and any trustee agrees not to seek or request any extension or adjournment of any application to assume or reject this



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Lease by Landlord with such Court. In no event after the assumption of this Lease shall any then existing default remain uncured for a period in excess of the earlier of ten (10) days or the time period set forth herein. In the event of a filing of a petition under the Bankruptcy Code, Landlord shall have no obligation to provide Tenant with any services or utilities as herein required unless Tenant shall have paid and is current in all payments of operating charges for Common Operating Costs and other charges for services.

K. Advertising and Promotion

Nothing in this Lease shall require Tenant to: (i) participate in any joint advertising or promotional event; (ii) become a member of any merchants association or promotion fund concerning the Shopping Center; or (iii) contribute more than Fifty and No/100 Dollars (\$50.00) in any month during the Term or any Option Term for any such merchant's association or promotional fund. Notwithstanding any other provision of this Lease, procedures for promotions and Landlord's restrictions on solicitation and distribution in Common Areas pursuant to this Lease will be applicable uniformly to all tenants of Landlord. If Landlord elects (in its sole discretion) to permit tenants to conduct such promotions and solicitations or distributions, Tenant will be permitted to do so in compliance with all reasonable rules adopted by Landlord to govern tenants' rights to conduct such activities.

L. Delays

In the event that either party hereto shall be delayed, or hindered in, or prevented from the performance of any act required hereunder by reason of acts of God, strikes, lockouts, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, war, acts (or failure to act) of government (provided timely application and diligent prosecution for such governmental action, if required was undertaken by the delayed party) or other reason of like nature not the fault of, or within the control of, the party delayed in performing work or doing acts required under the terms of this Lease, then performance of such work or act shall be excused for the period of the delay and the period for the performance of any such work or act shall be extended for a period equivalent to the period of such delay. This provision shall not operate to excuse Tenant from prompt payment of Minimum Annual Rent or Additional Rent, or any other payments required by the terms of this Lease, unless the Lease Commencement Date or periods permitting Tenant to abatement of rent are postponed or extended by such delays.

M. Temporary Space.

For not more than sixty (60) days prior to the Lease Commencement Date, Landlord shall allow Tenant to use vacant space (if any exists within the Shopping Center) for the purpose of interviewing and training prospective employees. Tenant shall pay for utilities and insurance, but will pay no Minimum Rent or other charges for this temporary space. In addition, Tenant agrees to vacate said space within ten (10) business days of prior written notice from Landlord.

N. Cotenancy.

Notwithstanding anything in this Lease to the contrary, in the event during any period of the Term or any Option Term (i) less than fifty percent (50%) of the gross leasable area of the Shopping Center is occupied by tenants of the Shopping Center who during such period are regularly open for business and operating their respective leased premises for retail purposes shall cease regular and continuous operation of their respective leased premises for retail purposes for, and is not replaced within twelve (12) consecutive months, and (ii) Tenant's Gross Sales for such period of time decreases by ten percent (10%) or more as compared to Tenant's Gross Sales over the same twelve (12) month period in the preceding calendar year (the occurrence of items (i) and (ii) shall be referred to hereinafter as "Cotenancy Period"), then under the occurrence of such Cotenancy Period, Tenant, at its option exercised by delivering fifteen (15) day prior written notice to Landlord, shall be entitled to pay to Landlord, in lieu of Minimum Rent and Additional Rent during such Cotenancy Period, commencing on the next scheduled rental payment date, a monthly gross rental for the Premises equal to two percent (2%) of Tenant's Gross Sales (as such term is defined in Section 8A above) during any such Cotenancy Period ("Gross Rental"). Tenant shall pay any such Gross Rental to Landlord monthly, on or before the fifteenth (15th) day of the month following each calendar month, or part thereof, occurring during a Cotenancy Period. Tenant shall deliver to Landlord a monthly statement of Tenant's Gross Sales with respect to any Cotenancy Period concurrent with the Gross Rental. The Gross Sales statement shall be signed by an authorized accounting employee of Tenant to be correct. Landlord shall have the right to audit Tenant's books and records for the purpose of determining the accuracy of such statement, in the same manner as provided in Section 8A above. Any right of setoff, abatement or deduction in favor of Tenant with respect to Minimum Rent and/or Additional Rent as provided in this Lease shall similarly apply to any Gross Rental payable by Tenant during any Cotenancy Period. At any time after six (6) months from the date that Landlord receives Tenant's written notice of its election to pay Gross Rental, Landlord may provide Tenant with a written demand that Tenant recommence paying Minimum Rent and Additional



Rent pursuant to Section 4 of this Lease. Within thirty (30) days of receiving such demand, Tenant shall elect either to terminate this Lease within sixty (60) days following receipt of said notice or recommence paying Minimum Rent and Additional Rent as provided herein.

O. Disclaimer.

No provision of the Lease will be construed as a limitation on Tenant's right to conduct business in other locations. There is no express or implied radius restriction or covenant of operation. There is no percentage rent (except in instances otherwise set forth in this Lease wherein Tenant utilizes a percentage rent format as, in whole or in part, a remedy for certain conditions and/or Landlord default(s)).

P. Governing Law

This Lease will be governed and construed in accordance with the laws of the State of California.

33. EXECUTION

This Lease may be executed in several duplicate counterparts, each of which shall be deemed an original of this Lease for all purposes.

34. SEPARATE PARCELS

Notwithstanding anything apparently to the contrary in this Lease (specifically including, without limitation, Section 23), not the fact of: (a) the building pad upon which the Premises are located becoming a separate parcel for real estate tax purposes or otherwise, nor (b) such building pad or the Shopping Center being sold or conveyed in any manner, nor (c) such building pad in any manner coming into a state of separate ownership with respect to the remainder of the Shopping Center, shall in any manner affect (i) the calculations of Additional Rent, Taxes or Tenant's Proportionate Share of Common Operating Costs as set forth in this Lease, (ii) the liability and obligations of Landlord (and its successor(s) and assign(s) to comply with the provisions of this Lease with regard to the Project, the Shopping Center and the Premises, or (iii) Tenant's rights as provided in this Lease with respect to the Premises, the Shopping Center and the Project.

"LANDLORD"

"TENANT"

MBK SOUTHERN CALIFORNIA LTD., a California limited partnership,

TAHOE JOE'S, INC., a Delaware corporation

By:

MBK Southern California, Inc., a California corporation, its sole general partner

By: Print:

Its:

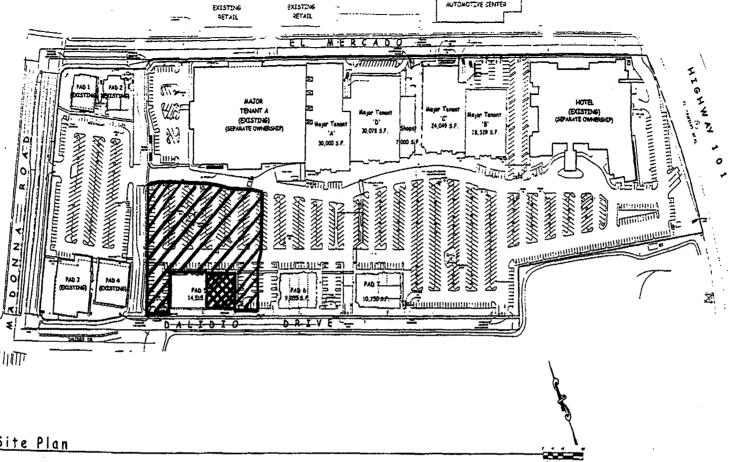
By: Print: Its:

By: H. Thomas Mitchell Print:

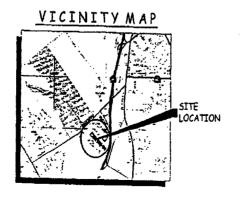
Secretary Its:

By: Clark C. Grant **Print:**

Chief Financial Officer Its:



Site Plan



OWNER/DEVELOPER:





Case 21-30725-sgj11 Claim 2-1 Filed 08/27/21 Desc Main Document Page 61 of 106

EXHIBIT B
INTENTIONALLY DELETED



EXHIBIT C CONSTRUCTION WORK LETTER

By the Tender Date, the building pad upon which the Premises are located must be graded and compacted in the manner described below and there is Substantial Completion of Landlord's Work as provided in Section 3.D of the Lease. Notwithstanding the foregoing, Landlord shall have (i) until and including June 10, 2000, to cause all utilities to be installed and ready for use; (ii) until and including July 10, 2000, to complete all curbing on the building pad upon which the building of which the Premises are a part will be located; and (iii) until and including August 20, 2000, to complete the remainder of Landlord's Work and the parking areas adjacent to such building pad. In the event Landlord shall fail to perform any of Landlord's Work by said dates, Tenant shall have such remedies as provided in Section 3.D. and 17.C. of the Lease.

LANDLORD'S WORK

Landlord agrees to provide the following in a location as shown on the point of connection plan attached hereto as Exhibit C-1 and in a location as directed by Tenant:

- <u>Electrical</u>: Twelve hundred (1200) amp electrical service at 120/208 volts, three (3) phase.
- b. Temporary Electrical: Temporary electrical service of two hundred (200) amps at 120/208 volts within one hundred (100) feet of the building of which the Premises are a part during construction.
- c. Gas: A gas line capable of supplying three (3) million BTU's of natural gas at a pressure equal to a seven (7) inch water column with meter. Tenant acknowledges that the capacity of such gas line is strictly dependent upon the gas company's approval and installation of the same; provided, however, Tenant has been told by the gas company that they will provide the foregoing and Landlord agrees to use commercially reasonable efforts to compel the gas company to provide the same.
- d. Telephone Service Lines: Provide two (2) inch conduit and pull string from main service. Tenant requires up to ten (10) lines.
- A six (6) inch water supply line at a pressure equal to fifty (50) pounds to be shared e. <u>Fire Service</u>: with the balance of "Pad 5" as depicted on Exhibit A of the Lease.
- f. Water: A two (2) inch water supply line at a pressure equal to sixty (60) pounds.
- g. Irrigation: Provide tie into the existing Shopping Center's irrigation maintained by Landlord or if no irrigation system exists, provide a one and one-half (1½) water supply line at pressure equal to sixty (60) pounds.
- h. Sanitary Sewer: A minimum four (4) inch dedicated sewer line. Tenant acknowledges that the sewer size, depth and location proposed on Landlord's drawing dated January 20, 2000 labeled C-7 a portion of which is attached hereto as Exhibit C-2 is acceptable. Tenant agrees that the grease trap to be designed and installed by Tenant shall be located in the location as shown on Exhibit C-2 or in such other location as mutually agreed upon by Landlord and Tenant.
- Storm Sewer: Storm water drainage and retention of adequate size and capacity to accommodate parking lot and roof drainage of Tenant's improvements.
- Tenant will be responsible for all improvement/modification fees, including, but not limited j. Fees: to, city, state and local sewer and water hook-up/connection fees, as well as fees associated with conveyance, traffic, impact and treatment. Landlord shall disclose to Tenant and Tenant shall have rights to sewer and water access credits available to Landlord from the municipalities.
- All site preparation of the building pad upon which the Premises are located and k. Site Preparation: Common Areas adjacent thereto shall be completed as necessary, including, without limitation, grading, paving, curbs, striping, site lighting, public conveyance sidewalks, landscaping and irrigation as necessary. The pad shall be delivered within 1/10 of one foot of the elevation recommended in the applicable



civil engineer's drawings. Site to be compacted by Landlord in compliance with recommendations set forth in Landlord's geo-technical report (which compaction Landlord represents and warrants to Tenant will be in compliance with the December 23, 1998 report prepared by Earth Systems Consultants Northern California, as such report may be amended from time to time, so long as the building pad upon which the Premises are to be located is delivered to Tenant at an elevation of 133.83 feet above sea level and at a compaction of between 90-95%) and the site shall be free of any and all substructures, debris, etc.

1. <u>Hazardous Materials</u>: Such building pad will be free of all Hazardous Materials upon delivery to Tenant as provided in the Lease.

Tenant agrees to reimburse Landlord for certain costs incurred by Landlord upon the substantial completion of Landlord's Work and Landlord's written request therefor, in an amount equal to Seventy-Nine Thousand One Hundred Forty-Two and No/100 Dollars (\$79,142.00) within thirty (30) days following substantial completion of Landlord's Work and Landlord's written request therefor. Tenant will have the right to withhold up to ten percent (10%) of the aforementioned amount to be paid to Landlord to assure prompt completion of the remaining items as shown on a "punch-list" relating to any uncompleted Landlord's Work.

TENANT'S WORK

Tenant agrees that following the later to occur of (A) the Tender Date, or (B) upon Tenant's receipt of necessary permits and approvals for Tenant's Work, Tenant shall, at Tenant's sole expense, proceed with reasonable diligence to (i) perform all fixturing work required to prepare the Premises for the conduct of Tenant's business therein (collectively "Tenant's Work"). Tenant shall have the reasonable right of access to the Common Areas (as defined in Section 12.A.) of the Shopping Center (including, but not limited to, the reasonable right to excavate in the portions of the Common Areas adjacent or nearby the Premises and do related work) for the purpose of constructing Tenant's Work. Tenant's Work and any alteration or addition, together with all repairs required to be made by Tenant pursuant to this Lease, shall be made in a good and workmanlike manner and in compliance with all applicable federal, state and local codes and ordinances. Tenant agrees that it shall use reasonable efforts to construct Tenant's Work in such a manner as to reasonably minimize disturbance to other tenants and occupants of the Shopping Center.

It is understood and agreed that upon Tenant's or its employees, agents or contractors entering such building pad prior to the Lease Commencement Date, for any purpose, including without limitation, the construction of Tenant's Work, all of the covenants and conditions of this Lease shall apply to the parties as if the Lease Term had begun at such time with the exception of those provisions as to Minimum Rent, Additional Rent and any other charges payable by Tenant, which shall go into effect as of the Lease Commencement Date, even if the Tenant's Work is not completed; provided, however, Tenant shall not be responsible for payment of Minimum Rent, Additional Rent or any other charges payable by Tenant until completion of Tenant's Work to the extent of any delay in completion of the same is caused by the actions or inactions of Landlord.

In the event a lien is filed against such building pad or Shopping Center by reason of Tenant's Work or any alteration, addition or repair to the such building pad made by or at the order of Tenant, Tenant shall be allowed to contest such lien; provided, however, Tenant shall cause such lien to be discharged or bonded within thirty (30) days after such lien is filed, and Tenant hereby agrees to hold Landlord harmless from and against any and all claims and demands by contractors or other third parties against such building pad or Shopping Center relating to or arising out of such work, alteration, addition or repair.

Tenant's Work and any alteration, addition or improvement to such building pad (except Tenant's stock in trade, furniture, equipment, trade fixtures and personal property) shall become part of the realty and belong to Landlord at the Expiration Date or earlier termination of this Lease, but until such time shall be owned by Tenant and Tenant alone shall be entitled to deduct all depreciation on Tenant's income tax return in relation thereto. Any damages caused by the removal of any trade fixture shall be immediately repaired by Tenant at its sole cost and expense.

Construction of Tenant's Work.

Upon the Tender Date, Tenant shall commence and thereafter, at its sole cost and expense, diligently prosecute to lien-free completion, using licensed contractors, the construction and installation of Tenant's Work. Tenant shall, at Tenant's expense, procure all permits and licenses and make all contracts necessary for the construction of the Tenant's Work.

Mark I

Tenant's Work shall be performed only by licensed contractors. Tenant's Work shall conform to all applicable statutes, ordinances, regulations, and codes (including, but not limited to, the Americans with Disabilities Act) and shall be in accordance and compliance with the Working Drawings and Specifications approved by Landlord.

No later than the expiration of the Plan and Permit Termination Option, Tenant shall furnish to Landlord in writing a schedule setting forth projected completion dates and showing deadlines for any actions required to be taken by Landlord and Tenant during such construction. Tenant agrees to update and revise the schedule during the course of construction, to the extent of any material changes therein, and to promptly deliver each revised schedule to Landlord.

Plans and Specifications

Within ten (10) days of the execution and delivery of this Lease, and based on the approved building design for the building of which the Premises are a part, and the nature of Landlord's Work, Tenant shall cause to be prepared and submitted to Landlord, a complete set of elevation drawings, preliminary floor plans, and such other specifications and documents as may be reasonably required for Landlord to obtain approval for Landlord's Work (as set forth in this Exhibit).

Within sixty (60) days of the execution and delivery of this Lease, and Tenant's receipt of the building design for the building of which the Premises are a part, Tenant shall cause to be prepared and submitted to both Landlord and the applicable governmental authorities, a complete set of architectural plans and specifications suitable in all respects for Tenant to complete construction of the Premises, which Plans shall be in accordance with all applicable federal, state and local laws, regulations, codes and ordinances (collectively referred to as "Plans"). The Plans shall be subject to Landlord's review and approval, which review and approval shall be based on and shall be consistent with Landlord's overall design and construction standards for the Shopping Center. Landlord's approval of the Plans shall not be unreasonably withheld or delayed and shall be deemed to have been given unless objection is made thereto within fifteen (15) days of submission by Tenant to Landlord of the Plans, together with a written notice to Landlord stating in bold and all capital letters the following: "LANDLORD IS DEEMED TO HAVE APPROVED THE PLANS SUBMITTED BY TENANT CONCURRENTLY HEREWITH IF LANDLORD FAILS TO OBJECT THERETO WITHIN FIFTEEN (15) DAYS FROM THE FOLLOWING SUBMISSION DATE: {insert delivery date}."

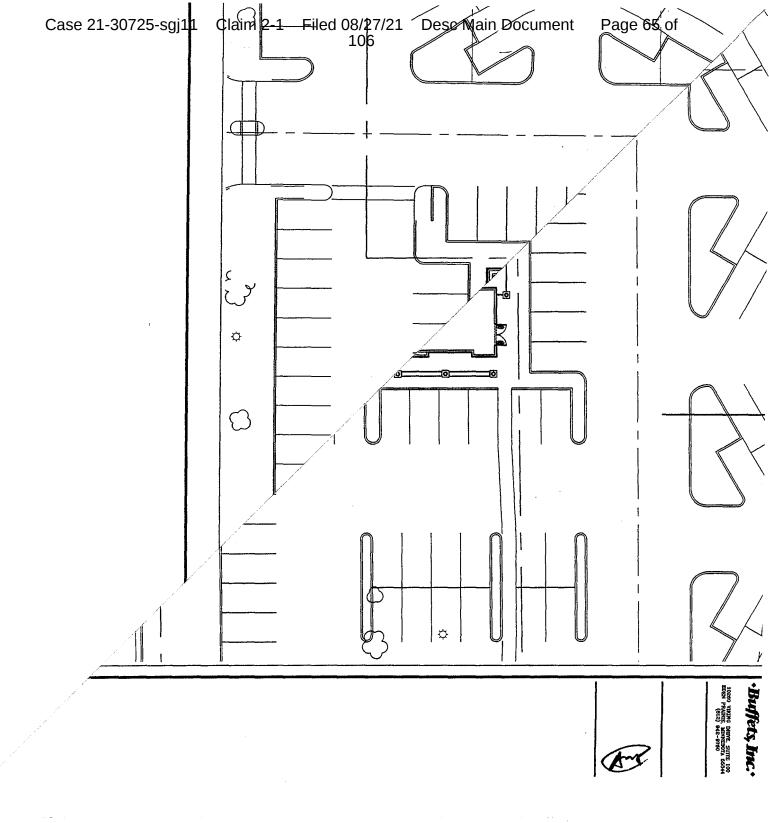
Tenant shall not be required to submit Plans to Landlord until such time as Landlord and Tenant have mutually executed a Non-Disclosure Agreement in the form attached hereto as Exhibit K. Landlord specifically approves of the Premises elevations and Premises signage design as set forth on Exhibit I. If any portion of the Plans are disapproved by Landlord, Landlord shall specify in detail the reasons for such disapproval and of any modifications requested by Landlord. Tenant shall make the revisions requested by Landlord and resubmit to Landlord the revised Plans within fifteen (15) days after receipt of Landlord's comments and requested revisions. Such process shall continue until the Plans have been approved by Landlord. Tenant's Work shall conform to the approved Plans and any changes thereto approved in writing by Landlord. All revisions and any notice of disapproval after the initial submission of Plans by Tenant and initial comments thereon by Landlord shall be given within fifteen (15) days after receipt thereof. Tenant shall be solely responsible for the cost and expense of the preparation of the Plans and all changes made thereto (the "Plan Costs"), and shall further be solely responsible for compliance with all city, county, state, and federal laws and ordinances applicable to the improvements to be constructed as a part of the Premises. Tenant shall cause to be made any changes to the Plans necessary to obtain the building permit. The costs of constructing any change or changes required by the applicable governmental authorities to be made to the Plans shall be paid by Tenant.

Construction debris removal must be performed as reasonably necessary. Tenant or Tenant's contractor is responsible for providing debris boxes as necessary, exercising care and diligence to avoid littering or damaging the Common Areas of the Shopping Center.

Upon substantial completion of Tenant's Work, Tenant shall give Landlord written notice thereof.

Brox.

C-3



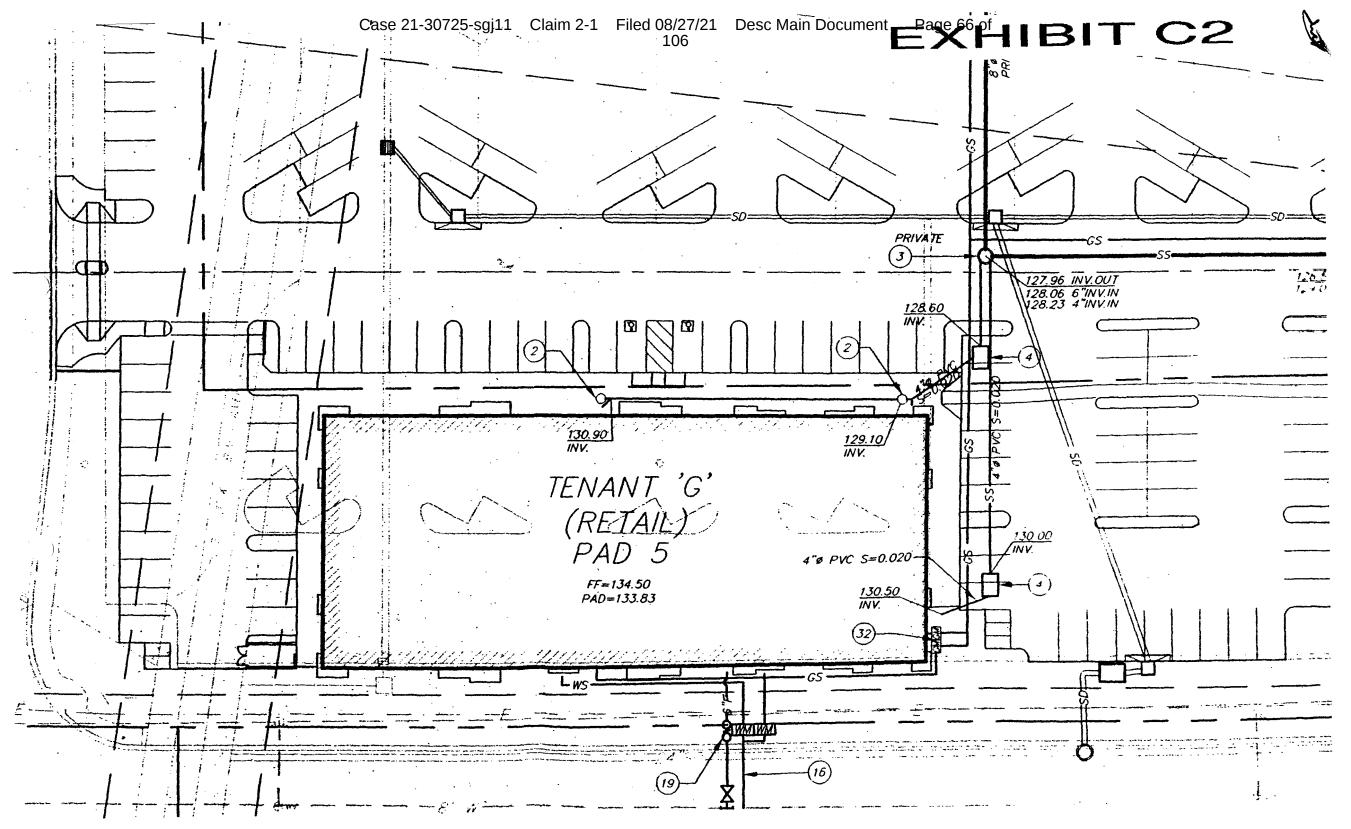


EXHIBIT D COMMENCEMENT VERIFICATION

	l entered into this day of, 20, a California limited partnership ("Landlord") and Tahoe
WITI	NESSETH:
	that certain Lease dated March, 2000, under "SLO Promenade" (f/k/a "Central Coast Mall"); and
WHEREAS, the exact Lease Commenceme determined.	ent Date was not specified in the Lease, but now has been
NOW THEREFORE, in consideration of Landlord and Tenant hereby agree as follows	the Lease and the mutual covenants contained therein,
1. Landlord and Tenant hereby clarify said	Lease by establishing the Lease Commencement Date as
change, alter, amplify, interpret or supersede any othings control.	tis Commencement Verification does not amend, modify, of the terms and provisions of the Lease, which shall in all enant have caused this Commencement Verification to be en.
"LANDLORD"	"TENANT"
MBK SOUTHERN CALIFORNIA LTD., a California limited partnership,	TAHOE JOE'S, INC., a Delaware corporation
By: MBK Southern California, Inc., a California corporation, its sole general partner	
By: Print: Its:	By: Print: Its:
By: Michael H. Voss	By:



Its:

Chairman

EXHIBIT E RENT SCHEDULE

Minimum Annual Rent (and the monthly installments thereof) shall be increased at the beginning of the sixth full Lease Year and on each fifth anniversary thereafter based on, and shall be payable in accordance with, the following schedule:

Years

Annual Minimum Rent

First Partial Lease Year and Lease Years 1 through 5. Lease Years 6 through 10	7,083.33 1/15/ \$85,000.00 1/1/2	2001 - 17/31/20 002 - 12/31/20
Lease Years 6 through 10		007=12/31/201
Lease Vears 11 through 15	\$102.850.00 : 1/1/20	(2 -
First Extended Term (Lease Years 16 through 20)	\$113,135.00 1/1/20	17-1431/202
Second Extended Term (Lease Years 21 through 25)	\$124 449 00 11120	22 - 13:1202
Third Extended Term (Lease Vears 26 through 30)	\$136,804.00 1/1/203	12-13/1003
Fourth Extended Term (Lease Years 31 through 35)	\$150,583.00 1/1/20	132 -12/51/2051



EXHIBIT F RULES AND REGULATIONS

In the case of any conflict between these rules and regulations and the Ground Lease, by and between MBK Southern California Ltd., a California limited partnership, as Landlord, and Tahoe Joe's, Inc., a Delaware corporation, as Tenant (the "Lease"), the Lease shall be controlling. All capitalized terms herein shall have the same meaning as defined in the Lease, unless otherwise expressly provided herein.

- 1. No tenant, or its agents or employees, shall loiter in the Common Areas of the Shopping Center, nor shall they in any way obstruct the sidewalks, entry passageways, driveways, entrances and exits to the Shopping Center, and they shall use the same only as passageways to and from their respective premises. Each such tenant and its agents or employees shall comply with all regulations with respect to the Common Areas, including but not by way of limitation, posted speed limits, directional markings and parking stall markings. Landlord reserves the right to exclude or expel from the Shopping Center any person who, in the judgment of Landlord, is intoxicated or under the influence of liquor or drugs, or who shall in any manner do any act in violation of the rules and regulations of the Shopping Center.
- 2. Water closets and urinals shall not be used for any purpose other than those for which they were constructed and no rubbish, newspapers or other substances of any kind shall be thrown into them. No tenant, or its agents or employees, shall throw or discard cigar or cigarette butts or other substances or litter of any kind in or about the Shopping Center, except in receptacles placed therein for such purposes by Landlord or governmental authorities. All garbage, including wet garbage, refuse and trash shall be place by each tenant in the receptacles provided by Landlord for that purpose. No tenant, or its agents or employees, shall place in any trash receptacle within the Shopping Center any material which cannot be disposed of in the ordinary and customary manner of trash and garbage disposal.
- 3. All trash, refuse and waste materials shall be regularly removed from the premises of each tenant, and until removal shall be stored (a) in adequate containers, which such containers shall be located so as not to be visible to the general public shopping in the Shopping Center, and (b) so as not to constitute any health or fire hazard or nuisance to any occupant of the Shopping Center. No tenant, or its agents or employees, shall sweep or throw or permit to be swept or thrown from such tenant's respective premises any dirt or other substance out of the doors or windows of such tenant's respective building, and each such tenant shall not use, keep or permit to be used or kept any foul or noxious gas or substance in each such premises, or permit or suffer such premises to be occupied or used in a manner offensive or objectionable to Landlord, or other occupants of the Shopping Center by reason of noise, odors and/or vibrations, or interfere in any way with other tenants or those having business therein, nor shall any animals, firearms or birds be kept in or about the Shopping Center.
- 4. No tenant shall do anything within their respective premises or the Shopping Center, or bring or keep anything therein, which will in any way increase or tend to increase the risk of fire or the rate of fire insurance or which shall conflict with applicable law, rules or regulations established by any governmental body or official having jurisdiction, the regulations of the fire department or the provisions of requirements of any insurance policy on such premises or any part thereof.

Landlord shall have the right, in order to conduct such fire drills as may be required by applicable governmental authorities and/or insurance requirements, to cause tenants and/or occupants of the Shopping Center to vacate the same for such period as is required, and such tenants shall cause their employees, agents, contractors and invitees to cooperate in connection therewith.

- 5. No tenant, or its agents or employees, shall place a load upon any floor which exceeds the load per square foot as allowed by law.
- 6. No tenant, or its agents or employees, shall make or permit any loud, unusual or improper noises in the Shopping Center, nor interfere in any way with other tenants or those having business with them, nor bring into nor keep within the Shopping Center any animal or bird, or any bicycle or other vehicle (in each case except and to the extent the same constitutes merchandise), except such vehicles as tenants are permitted to park in the Shopping Center parking lot, and each such tenant and its agents and employees shall park only in the areas designated from time to time for employee parking generally.
- 7. No tenant, or its agents or employees, shall install, maintain or operate in any Common Areas under the exclusive control of Landlord any vending machines (other than for newspapers) or video games without Landlord's prior written consent. No tenant, or its agents or employees, shall engage in the sale of tickets or coupons for any lottery or other games of chance.
 - 8. No portion of the Shopping Center shall be used for lodging purposes.

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- 9. No person shall use any utility area, truck and trash facility or other area reserved for use in connection with the conduct of business, except for the specific purposes for which it is intended.
- 10. No person shall use any roadway, walkway or mall, except as a means of egress from or ingress to any store and automobile parking area within the Shopping Center, or adjacent public street. Such use shall be in an orderly manner, in accordance with the directional or other signs or guides. Roadways shall not be used at a speed in excess of twenty (20) miles per hour and shall not be used for parking or stopping, except for the immediate loading or unloading of passengers or goods.
- 11. No person shall use any automobile parking area except for the parking of motor vehicles during the period of time such person or the occupants of such vehicle are customers or business invitees of the retail, service and restaurant establishments within the Shopping Center. All motor vehicles shall be parked in an orderly manner within the painted lines defining the individual parking places. With the exception of any parking spaces within the Protected Parking Area (as such term is defined in Article 24 of the Lease), during peak business periods of business activity, reasonable limitations may be imposed as to the length of time for parking use within specified areas.
- 12. No person, without the prior written consent of Landlord, shall in or on any part of the common area:
- (i) Vend, peddle or solicit orders for sale or distribution of any merchandise, device, service, periodical, book, pamphlet or other matter whatsoever;
 - (ii) Exhibit any sign, placard, banner, notice or other written material:
 - (iii) Distribute any circular, booklet, handbill, placard or other material;
- (iv) Solicit membership in any organization, group or association or any contribution for any purpose;
- (v) Parade, rally, patrol, picket, demonstrate or engage in any conduct that might tend to interfere with or impede the use of any of the common area by any permittee, create a disturbance, attract attention or harass, annoy, disparage or be detrimental to the interest of any of the retail, service or restaurant establishments within the Shopping Center;
- (vi) Use any common area for any purpose when none of the establishments within the Shopping Center is open for business or employment;
- (vii) Throw, dispose, discard or deposit any paper, glass, garbage, refuse or extraneous matter of any kind except in designated receptacles, or create litter or hazards of any kind; and
- (viii) Deface, damage or demolish any sign, light standard or fixture, landscaping material or other improvement within the Shopping Center, or the property of customers, business invitees or employees situated within the Shopping Center.
- 13. With respect to Landlord's maintenance of the Common Areas of the Shopping Center, Section 11.A. of the Lease shall control.
- 14. Landlord reserves the right to close and keep locked any and all gates, closing the parking areas within the Shopping Center at any time in an emergency, and otherwise during such hours outside normal business hours of the tenants as Landlord may reasonably and in good faith deem to be advisable for the adequate protection of the Shopping Center; provided, however, except in an emergency situation, tenants and their agents and employees shall be provided access to parking for the Shopping Center and or merchandise deliveries.
- 15. In the event a premises, or any portion thereof, within the Shopping Center is being used for the preparation, handling or selling of any food whatsoever, then the tenant leasing such premises shall, at its own cost, retain a licensed, bonded professional pest and sanitation control service to perform inspections of the Premises, the building thereon, and such portions thereof as reasonably necessary, not less frequently than once each ninety (90) days for the purpose of controlling infestation by insects, rodents and vermin and shall promptly cause any corrective or extermination work recommended by such service to be performed. If such tenant fails to perform this obligation, Landlord may, at its option and after five (5) days' written notice to such non-performing tenant, cause such inspection to be performed and any necessary corrective or extermination work which is recommended to be done, and the cost of such inspection and corrective and extermination work, together with an additional charge of ten percent (10%) to cover Landlord's administrative and overhead expenses incurred in conducting such activity, shall be paid by such non-performing tenant to Landlord within five (5) business days upon written demand thereof.

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- 16. Each of Landlord's tenants is hereby informed and acknowledges that Health Department requirements may require that such tenant install a grease trap in the floor drain of any kitchen located within such tenant's respective premises. Each of such tenants agrees that if such grease trap has not been installed as required, then such tenant, at its sole cost and expense, shall install or cause to be installed such required grease trap and shall clean and maintain or cause to be cleaned and maintained such grease trap in such manner as may be required by the Health Department or other applicable governmental authorities having jurisdiction.
- 17. In an emergency, and subject to the terms and conditions of the Lease, each tenant shall abide by any additional rules or regulations which are ordered by any governmental or military authority, whether the same are implemented by such authority or by Landlord. Each tenant shall be responsible for the observance of these rules and any such rules by its employees and agents.
- 18. Landlord agrees to use reasonable efforts to enforce these rules. The rules shall be uniformly enforced in a non-discriminatory manner. These rules shall not be construed to create any rights or remedies in any tenant, occupant or invitee.

Landlord may waive any one or more of these rules for the benefit of any particular tenant or tenants of Landlord, but no such waiver by Landlord shall be construed a waiver of such rules in favor of any other tenant or tenants, nor prevent Landlord from thereafter enforcing any such rules against any or all of the tenants of the Landlord's Parcel. No waiver of any rule or regulation by Landlord shall be effective unless in writing and signed by Landlord. A copy of these rules and regulations shall be attached to and form a part of each tenant lease within the Shopping Center.



EXHIBIT G

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (the
"Agreement"), dated this day of, 200_, by and among Tahoe Joe's, Inc., a Delaware
corporation ("Tenant"),, a
("Landlord"), and, a
(Leituei).
RECITALS
WHEREAS, Lender is the current holder of a [mortgage/deed of trust] made by Landlord in Lender's favor dated,, and filed in the Office of County, as
(the "[Mortgage/Deed of Trust]"); and
WHEREAS, the [Mortgage/Deed of Trust] relates to that certain shopping center development, located in the City of San Luis Obispo, County of San Luis Obispo, California, known as SLO Promenade (f/k/a "Central Coast Mall"), a portion of which is owned by Landlord and is legally described on Exhibit A attached hereto and incorporated herein by this reference (the "Shopping Center"); and
WHEREAS, Tenant is the tenant, and Landlord is the landlord, under that certain Lease dated March, 2000 (the "Lease"), relating to a certain portion of the Shopping Center more particularly described in the Lease (the "Premises"); and
WHEREAS, Lender, Landlord and Tenant have requested of and granted to each other the agreements hereinafter stated and desire to evidence said agreements in writing.
NOW, THEREFORE, For good and valuable consideration paid by each to the other, the receipt and sufficiency of which is hereby acknowledged, Landlord, Tenant and Lender hereby agree as follows:
1. <u>Subordination</u> . Except as otherwise provided herein, the Lease is now and shall at all times continue to be, subject and subordinate in each and every respect to the lien of and security interest created by the [Mortgage/Deed of Trust], and to any and all renewals, extensions, modifications, substitutions or replacements thereof, subject to the terms and conditions of this Agreement.
2. <u>Non-disturbance</u> . So long as Tenant is not in default, beyond any applicable cure periods provided in the Lease, in the payment of the rental reserved in the Lease, or in the observance or performance of any of the other terms, covenants or conditions contained in the Lease or in this Agreement on Tenant's part to be observed and performed:
(a) Tenant's possession of the Premises and Tenant's rights and privileges under the Lease shall not be terminated, canceled or in any way disturbed, diminished or interfered with by the Lender during the Term of the Lease (as defined in the Lease) and any extension or renewal thereof, whether or not the [Mortgage/Deed of Trust] is in default and whether or not Lender acquires Landlord's interest in the Lease by foreclosure or deed in lieu of foreclosure, or otherwise.
(b) Lender will not join Tenant as a party defendant in any action or proceeding for the purpose of terminating Tenant's interest and estate under the Lease as a result of any default under the [Mortgage/Deed of Trust]; provided, however, Lender may join Tenant in a foreclosure action if such joinder is necessary for the purpose of foreclosing the [Mortgage/Deed of Trust] against Landlord, but then only for such purpose and not for the purpose of terminating the Lease.
(c) If Lender has control of any funds or allowances owed Tenant by Landlord, Lender shall release the funds or allowances pursuant to the terms of the Lease.
3. Attornment. If the interests of Landlord shall be transferred to and owned by Lender by reason of foreclosure or other proceedings brought by it in lieu of or pursuant to a foreclosure, or by any other manner, and Lender succeeds to the interest of the Landlord under the Lease, Tenant shall be bound to Lender under all of the terms, covenants, and conditions of the Lease for the balance of the Term thereof remaining and any extensions or renewals thereof which may be effected in accordance with any option therefor in the Lease, with the same force and effect as if Lender were the landlord under the Lease, and Tenant does hereby attorn to Lender as its landlord, said attornment to be effective and self-operative immediately upon Lender succeeding to the interest of Landlord under the Lease without the execution of any further instruments on the part of any of the parties hereto; provided, however, that Tenant shall be under no obligation to pay rent to Lender until Tenant receives written notice from Lender that it has succeeded to the interest of the Landlord under the Lease. The parties hereto agree that the respective rights and obligations of Tenant and Lender upon such attornment, to the extent of the then remaining balance of the Term of the Lease and any such extensions and renewals, shall be and are the same as now set forth therein; it being the intention of the parties for this purpose to incorporate the Lease in this Agreement by reference with the same force

and effect as if set forth at length in this Agreement.

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- 4. Representations and Warranties of Landlord. Landlord represents and warrants to Tenant that as of the date of this Agreement the [Mortgage/Deed of Trust] is the only mortgage/deed of trust encumbrance on the Shopping Center or on the Premises and that the interest of Tenant under the Lease is not subordinate to any other lien or interest.
- 5. Rental Payment. Landlord and Lender agree that upon receipt of written notice from Lender that Lender has succeeded to the interest of Landlord under the Lease, that Tenant may pay all rental and other charges reserved under the Lease directly to Lender. Landlord and Lender further agree that any such payments shall be credited by both Lender and Landlord against Tenant's rental and other obligations under the Lease, regardless of whether Lender had the right to make such demand and regardless of any contrary demands which may be made by Landlord.
- 6. Successors and Assigns: Binding Effect. This Agreement shall be binding upon Landlord, its successors and assigns, shall be binding upon and inure to the benefit of Tenant, its successors, assigns and sublessees and shall be binding upon and inure to the benefit of Lender, its successors and assigns who acquired title thereto from or through Lender.
- 7. Entire Agreement. This Agreement contains the whole agreement between the parties hereto as to the [Mortgage/Deed of Trust] and the priority thereof, herein described, and there are no agreements, written or oral, outside or separate from this Agreement, and all prior negotiations, if any, are merged into this Agreement.
- 8. Relationship Between Parties. The subordination of the Lease to the [Mortgage/Deed of Trust] will not be construed to give Lender, or its successors and assigns, any interest in casualty insurance maintained by Tenant or proceeds to which Tenant is entitled under the Lease, nor will it be construed to modify any of the provisions of the Lease or of the parties' obligations under the Lease.
- 9. <u>Notices</u>. Any notices required or permitted hereunder may be given in the manner and at the addresses for Tenant and Landlord as provided in Section 29 of the Lease. Lender's address for notice purposes is as set forth below.
- 10. <u>Governing Law</u>. This Agreement will be governed and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first shown above. TAHÒE JOE'S, INC. Tenant: By: Print: MBK SOUTHERN CALIFORNIA LTD., Landlord: a California limited partnership MBK SOUTHERN CALIFORNIA, INC., By: a California corporation, sole general partner By: Print: Its: Lender:

By:

[Each party attach appropriate California notary block]



Address for Lender for notice purposes:

EXHIBIT H MEMORANDUM OF GROUND LEASE

THIS MEMORANDUM OF GROUND LEASE, is made and entered into as of this	day of March, 2000, by
and between MBK SOUTHERN CALIFORNIA LTD., a California limited partnership ("Landlord'	'), and Tahoe Joe's, Inc.
a Delaware corporation ("Tenant").	

RECITALS

WHEREAS, Landlord and Tenant entered into that certain Ground Lease dated March _______, 2000 (the "Lease"), relating to certain leased land (the "Premises") which is a part of the shopping center development known as SLO Promenade (f/k/a "Central Coast Mall") (the "Shopping Center"), situated on certain real property in the City of San Luis Obispo, County of San Luis Obispo, California, which Shopping Center is legally described on Exhibit A attached hereto; and

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

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

- 1. Landlord and Tenant are parties to the Lease to demise and let the Premises, upon the terms and conditions more particularly set forth in the Lease.
- 2. The term of the Lease shall be for an initial term of fifteen (15) full Lease Years and any Partial Lease Year (as such terms are defined in the Lease), commencing pursuant to the terms of the Lease (the "Commencement Date"), and anticipated to expire on December 31, 2015.
- 3. Subject to the terms and conditions more particularly set forth in the Lease, Tenant has the option to extend the term of the Lease for four (4) additional periods of five (5) years each, such periods to commence at the expiration of the initial term or preceding extended term of the Lease, as the case may be.
- 4. Subject to the terms and conditions more particularly set forth in the Lease, and except for certain excluded tenants specified in the Lease, Tenant shall have the exclusive right to operate a full-service or self-service restaurant selling primarily steaks or steak products (with the exclusion of hamburgers), ribs and prime rib in the Shopping Center. Landlord covenants and agrees not to lease any space in, or ground lease or sell any parcel or portion of the Shopping Center to any other tenant or person whose primary business conducted in any space that is occupied by it (or any tenant or subtenant of it) at the Shopping Center is for the operation of a full-service or self-service restaurant selling primarily steaks or steak products (with the exclusion of hamburgers), ribs and prime rib, nor shall Landlord hereafter permit with respect to the Shopping Center, or consent with respect to the Project, to the operation of a full-service or self-service restaurant selling primarily steaks or steak products (with the exclusion of hamburgers), ribs and prime rib, other than at the Premises. Tenant's Exclusive Use commitment will be binding on Landlord, its successors and assigns, and any tenants of Landlord or its successors of the Shopping Center.
- 5. Reference is made to the Lease for a full statement of the terms and conditions of the Lease, all of which are hereby incorporated by reference.
- 6. Nothing in this Memorandum of Ground Lease shall be construed to amend, modify, change, alter, amplify, interpret or supersede any of the terms and provisions of the Lease, which shall in all things control.

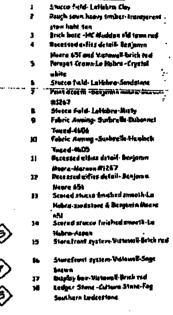
IN WITNESS WHEREOF, Landlord and Tenant have caused this Memorandum of Ground Lease to be executed as of the day and year first above written.

of the day and year first above written.			
Witness:	LANDLORD: MBK SOUTHERN CALIFORNIA LTD.,		
Print	a California limited partnership		
	By: MBK SOUTHERN CALIFORNIA, INC.,		
	a California corporation, sole general partner		
	Ву:		
	Print:		
	Its:		
	By:		
	Print: Michael H. Voss		
	Its: Chairman		
Witness:	TENANT:		
	TAHOE JOE'S, INC.,		
Print	a Delaware corporation		
	Ву:		
	Print:		
	Its:		
•	Ву:		
	Print:		
	Its:		





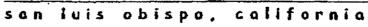




WEST ELEVATION

NORTH ELEVATION



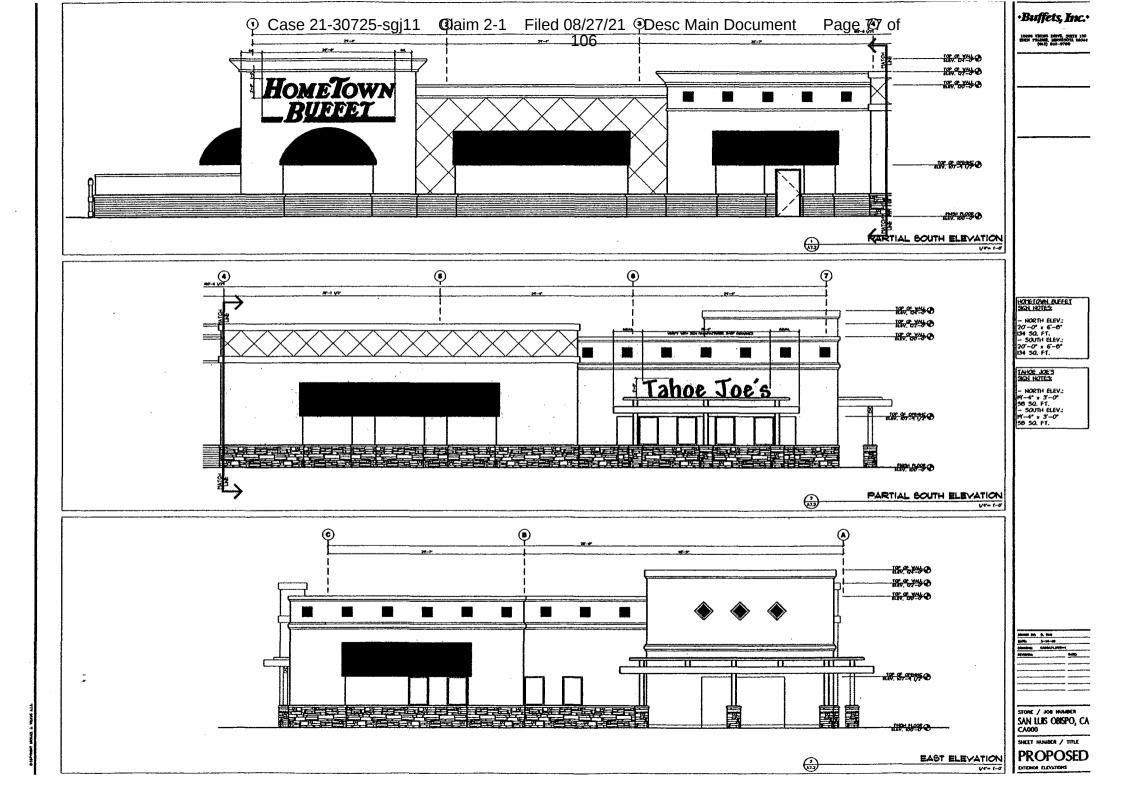


EAST ELEVATION

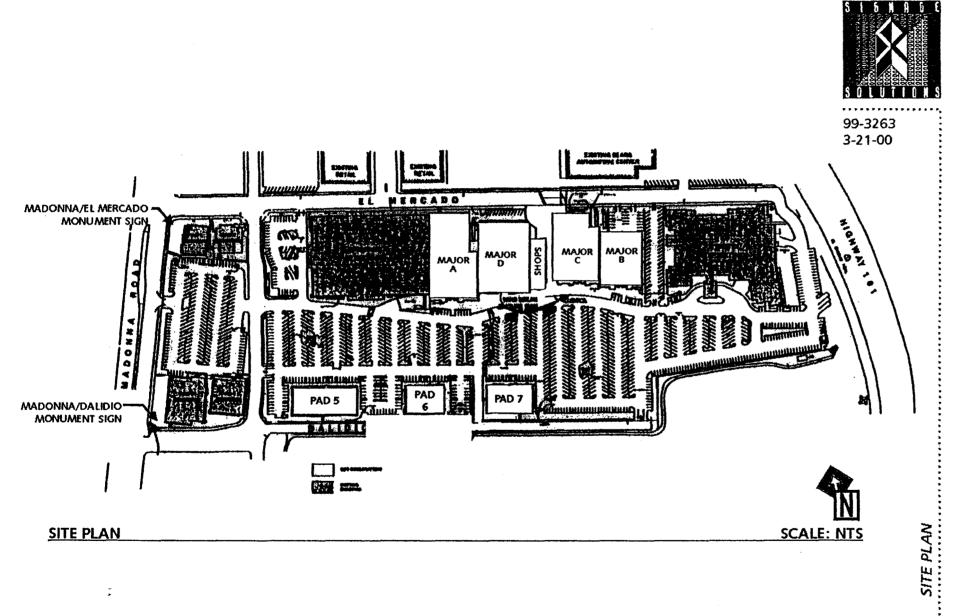




R. C.



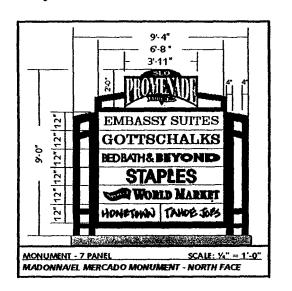




Page 3



PROJECT/TENANT MONUMENT



EMBASSY SUITES

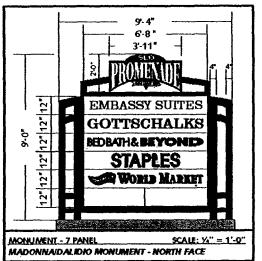
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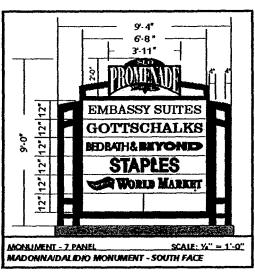
STAPLES

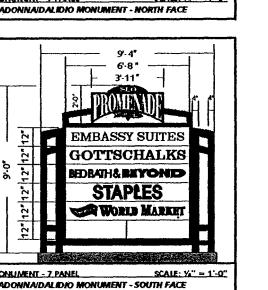
MADONNAIEL MERCADO MONUMENT - SOUTH FACE

SCALE: 1/4" = 1'-0"

MONUMENT - 7 PANEL







99-3263

3-21-00



Master Sign Program

City of San Luis Obispo

December 6, 1999

Modified on December 9, 1999 to meet ARC conditions of approval

Prepared by:



RRM DESIGNGROUP

Architecture • Planning • Engineering • Surveying • Interiors • Landscape Architecture

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SLO Promenade Master Sign Program

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Monument Sign(s)

El Mercado Street Gateway Sign Entrance Sign at Pad Seven

Wind Break Feature Sign

IV. Prohibited Signs

V. Definitions

Exhibits

- 1 Site Key Plan
- 2 Typical Major Tenant Sign
- 3 Typical Pad and Shop Building Sign
- 4 Channel Letter Section
- 5 Pylon Sign
- 6 El Mercado Gateway Sign
- 7 Entrance Sign at Pad 7
- 8 Wind Break Feature Sign
- 9c Monument Sign 7 Panel
- 9d Monument Sign 9 Panel

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SLO Promenade Master Sign Program

I. Introduction

The intent of the SLO Promenade Master Sign Program is to provide the guidelines necessary to achieve a visually coordinated, balanced and attractive sign environment for the entire project, in accordance with the City of San Luis Obispo and its adopted sign requirements.

Performance of this sign criteria shall be strictly enforced by the City of San Luis Obispo. Any nonconforming or illegally installed signs shall be removed by the tenant or his sign contractor at their expense, upon demand by the City.

All signs meeting the requirements of the SLO Promenade Sign Program shall be administratively approved by the Planning Department.

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SLO Promenade Master Sign Program

II. Tenant Signs

Sign Approval Procedures

- 1. All tenant storefront identification signs shall be subject to approval, in writing, from the owner. The tenant shall submit preliminary sign drawings to the owner for his review at the time of preliminary store design review.
- 2. The tenant shall submit to the owner, for written approval, three (3) copies of the final scaled shop drawings of the proposed sign showing materials, colors, finishes and dimensions. These drawings shall indicate conformance with the sign criteria herein outlined and one copy shall be in full color.

Send to:

MBK Southern California Ltd. 1801 Century Park East, Suite 1040 Los Angeles, CA 90067

- 3. The tenant shall submit drawings, approved and stamped by the owner, to the City of San Luis Obispo Planning Department for approval prior to obtaining a sign permit from the Building Department.
- 4. The tenant shall pay for all signs, their installation (including final connection, transformers and all other labor and materials) and maintenance.
- 5. The tenant shall obtain all necessary permits.
- 6. Future major tenants unable to conform with the approved sign criteria herein outlined in this document shall return to the San Luis Obispo Architectural Review Commission for review and approval.

General Guidelines

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- 1. All signs will be limited to tenant's trade name and logo. The use of brand names or brand name logos will not be allowed on the sign unless it is specifically included in the tenant's Doing Business As.
- 2. Any tenant with registered trademarks or recognized logos shall be permitted to use them subject to approval by the City of San Luis Obispo Planning Department. The area of said trademark or logo shall be calculated within the total sign area permitted for such tenant.

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SLO Promenade MASTER SIGN PROGRAM

- 3. All signs and sign structures, as well as the immediate premises surrounding them, shall be well maintained by the tenant and MBK Southern California Ltd. The illumination must be maintained from dusk to closure of business. Signs shall not be illuminated after 10:00 p.m. or close of business, whichever is later.
- 4. All wall signs shall be constructed as one of the following sign types:
 - A. Internally illuminated individual channel letters with acrylic plastic faces with a minimum thickness of 1/4". See Exhibit 4 for more information. Internal illumination is to be 60 mili-amp neon, installed and labeled in accordance with the "National Board of Fire Underwriters Specifications."
 - B. Internally illuminated sign 'cans' shall be permitted as secondary features and only in the event that they represent a company logo.
 - C. Externally illuminated so that illumination is indirect and utilizes focused light fixtures that do not allow light or glare to shine above the horizontal plane of the top of the sign or onto any public right-of-way or adjoining property.
 - D. Background elements for signs, either through the use of color or material shall be permitted. The area of said background shall be calculated within the total sign area permitted for such sign.
- 5. Each sign shall be designed so that illumination does not exceed 100 luxes (10 candlepower) at a distance of 10 feet from the sign. Illumination must be of uniform intensity and well maintained for all letters and/or symbols. Lighting for signs shall not create a hazardous glare for pedestrians or vehicles.
- 6. All signs and installation of signs shall conform to the appropriate building and electrical codes; PK housings shall be used on all channel letters. Letters shall have disconnecting switches, and bear the U.L. label. Each tenant shall be fully responsible for the operations of their sign contractor.
- 7. All conduits, raceway, transformers, junction boxes, openings in building surfaces, etc., shall be concealed. Exposed hardware shall be finished in a manner consistent with quality fabrication practices. All finished signs shall be pegged from the wall.
- 8. It is the responsibility of the tenant's sign company to verify all conduit and transformer locations and service prior to fabrication.
- 9. Then tenant shall supply electrical stubs at fascia for approved internally illuminated channelized letter signs. Electrical service to tenant signs shall extend to the house panel of each building.
- 10. Upon notice by either the City of San Luis Obispo or MBK Southern California Ltd., a tenant shall be required to repair or refurbish any sign structure, acrylic plastic face and/or sign illumination within seven (7) days.

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SLO Promenade Master Sign Program

- 11. In the event of a tenant vacancy, the tenant shall remove all wall signs. All holes left by the sign shall be repaired and painted to match exterior building color. Any sign faces located on the El Mercado Gateway, Pylon and/ or Monument signs shall be removed and replaced with a solid piece of acrylic plastic matching the background color of the sign face.
- 12. No sign or sign structure shall be erected at any location where, by reason of this position, shape, size, or color, it may obstruct or interfere with the view of any traffic control device or directional sign. Vehicle STOP signs shall be painted on pavement, stop pole signs and handicap-accessible parking signs shall be installed as per City of San Luis Obispo Public Works Department standards.
- 13. Banner signs are subject to Section IV.C of this Master Sign Program document.
- 14. Window Signs shall be permitted to obscure no more than twenty-five percent (25%) of the total window area. All window signs may remain for a period no longer than thirty (30) days.
- 15. All signs existing on property as of the date of this Master Sign Program shall continue to be allowed.

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SLO Promenade Master Sign Program

Major Tenant Identification

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Permitted Signs and Requirements

- 1. Each major tenant shall be allowed two (2) wall signs. See table below for specific sign requirements.
- 2. The primary wall sign shall be located over the front entrance and the secondary wall sign shall be located on the rear wall facing El Mercado Street.
- 3. Signs shall be centered top to bottom and end to end on tenant's storefront fascia. See Exhibit 2.
- 4. Signs shall not be less than (1) one foot from the edge of a tenant's storefront fascia or any architectural feature. See Exhibit 2.
- 5. No more than two rows of letters are permitted, provided their maximum total height does not exceed the maximum sign height allowed.

Major Tenant Primary Wall Signs

	Maximum Letter Height	Maximum Sign Length	Maximum Sign Height	Maximum Sign Area
Major A	36"	40' - 0"	3' - 0"	120 S.F.
Major B	42"	40' - 0"	4' - 6"	180 S.F.
Major C	42"	52, - 0	8' - 0"	180 S.F.
Major D	42"	28' - 0"	7' - 6 *	200 S.F.

Major Tenant Secondary Wall Signs

	Maximum Letter Height	Maximum Sign Length	Maximum Sign Height	Maximum Sign Area
Major A	No Sign Propos	ed		
Major B	36*	34' - 0"	4' - 0"	125 S.F.
Major C	42"	22' - 0"	5' - 6"	125 S.F.
Major D	36"	23' - 6 "	6' - 4"	125 S.F.

RRM Design Group

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SLO Promenade MASTER SICN PROGRAM

Pad and Shop Building Tenant Identification Permitted Signs and Requirements

- 1. Each pad or shop tenant shall be allowed one wall sign per leased building face. No tenant shall have more than one wall sign on a single building face.
- 2. Pad or shop tenant wall signs shall have a maximum letter height of thirty (30) inches except for the first letter of each word which shall have a maximum letter height of thirty six (36) inches. No more than two rows of letters shall be permitted per sign. See Exhibit 3.
- 3. Pad or shop tenant wall signs shall have a maximum length of seventy (70) percent of the leasehold width. See Exhibit 3.
- 4. Total wall sign area to be allocated to a pad or shop tenant shall not exceed two hundred (200) square feet.
- 5. The total area of wall, window, and awning signs on the same wall may not exceed one hundred (100) square feet or fifteen (15) percent of the tenant's building face, whichever is less.

RRM Design Group

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SLO Promenade Master Sign Program

III. Project Sign Information

Pylon Sign

One (1) freeway pylon sign shall be permitted to replace the existing freeway sign and shall be located approximately at the location of the existing freeway sign. See Exhibit 1 for sign locations. The sign shall contain the project name, logo, and up to five (5) tenant names. Individual tenant panels shall be constructed of plexiglass with raised letters. The panel background colors shall be dark and opaque, and illumination shall be limited to the letters themselves. See Exhibit 5 for sign dimensions.

Monument Sign(s)

One (1) monument sign shall be permitted on the corner Madonna Road and El Mercado Street. See Exhibit 1 for sign location. The sign shall be double faced and contain the project name, logo, and up to nine (9) tenant names. See Exhibit 9d for sign dimensions.

OR

Subject to the removal of the existing monument sign near the corner of Dalidio Drive and Madonna Road, two (2) monument signs shall permitted. One shall replace the existing monument sign, and one shall be located on the corner of Madonna Road and El Mercado Street. See Exhibit 1 for sign locations. The signs shall be double faced and contain the project name, logo, and up to seven (7) tenant names each. See Exhibit 9c for sign dimensions.

El Mercado Street Gateway Sign

One (1) Gateway Sign located between the Shops and Major Tenant 'C' facing El Mercado Street shall be permitted. The sign shall be single faced and include the project name and logo. See Exhibit 1 for sign location and Exhibit 6 for sign dimensions.

Entrance Sign at Pad Seven

One (1) Entrance Sign located on the wall of Pad '7' shall be permitted. The sign shall contain the project name and logo. See Exhibit 1 for sign location and Exhibit 7 for sign dimensions.

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SLO Promenade MASTER SIGN PROGRAM

Wind Break Feature Sign

One (1) Wind Break Feature Sign located between the Shops and Major Tenant 'C' shall be permitted. See Exhibit 1 for sign location. The sign shall contain the project name and logo on the side facing the parking lot. Directional signs containing the names of tenants and the hotel shall be located on both faces of the sign. See Exhibit 8 for sign dimensions.

RRM Design Group

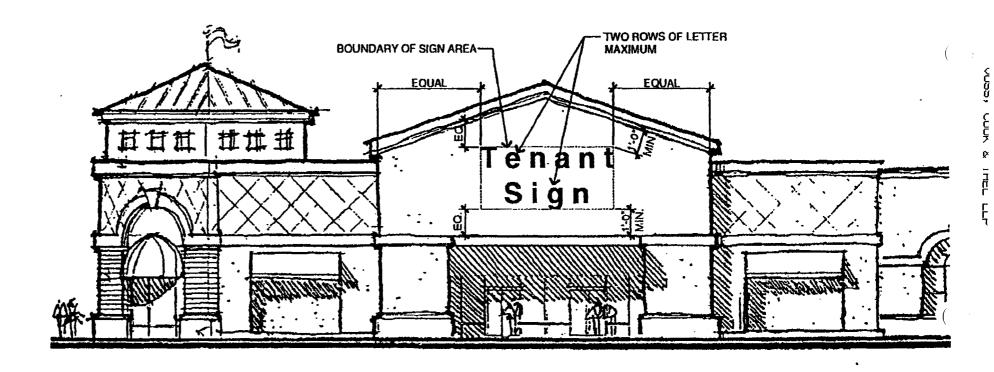
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PAGE. 02

EXHIBIT 1 - Site Key Plan

SLO Promenade Master Sign Program





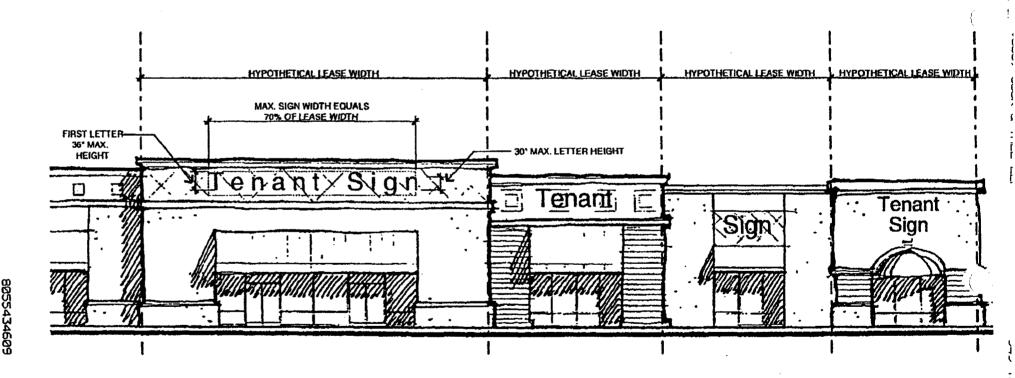
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EXHIBIT 2 - Typical Major Tenant Primary Sign

SLO Promenade Master Sign Program





GE. 04

EXHIBIT 3 - Pad and Shop Building Signs



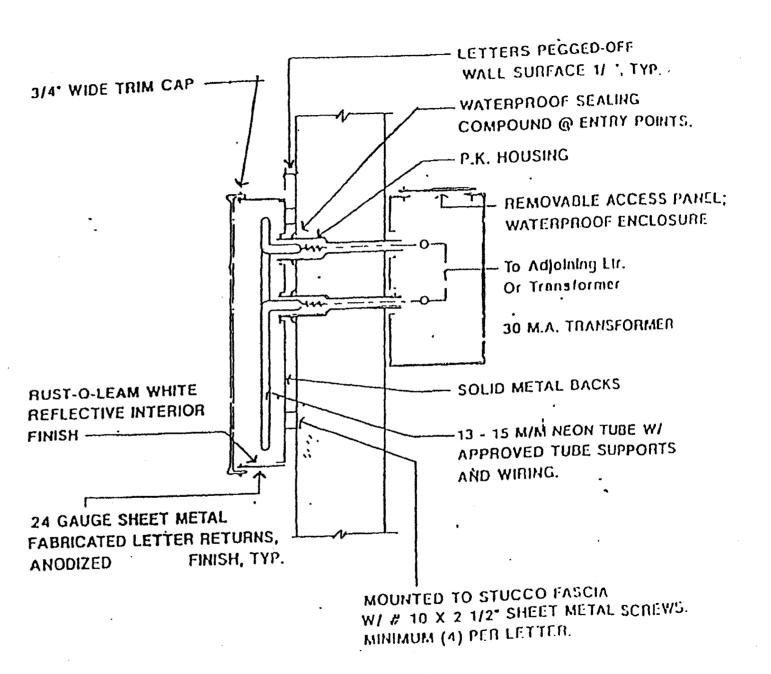


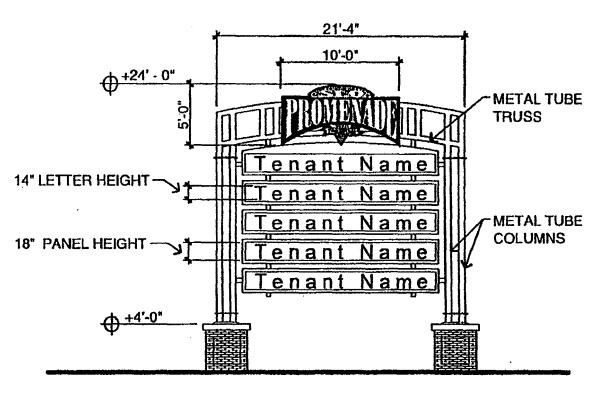
EXHIBIT 4 - Channel Letter Section

Central Coast Mall Signage Program

8055434609



<u>PLAN</u>



FRONT ELEVATION

EXHIBIT 5 - Freeway Pylon Sign

8055434609

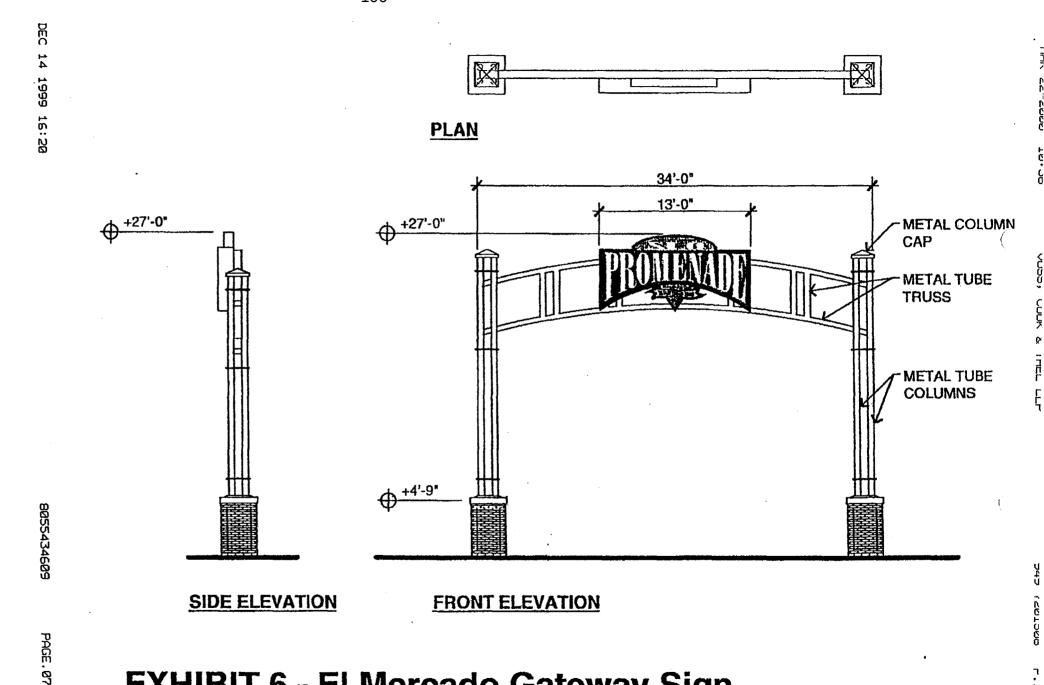


EXHIBIT 6 - El Mercado Gateway Sign

FRONT ELEVATION

EXHIBIT 7 - Entrance Sign at Pad 7

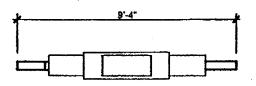
SLO Promenade Master Sign Program

SCALE: 1/8" = 1'-0"

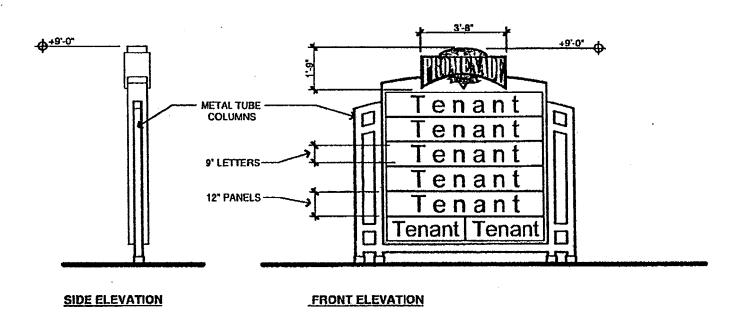
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PLAN

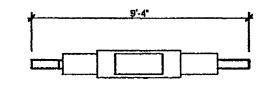


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EXHIBIT 9c - Monument Sign

Seven Panels





PLAN

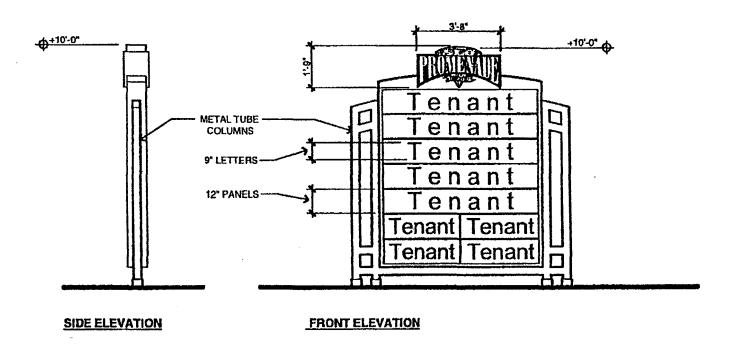


EXHIBIT 9d - Monument Sign

Nine Panels

TotAL P.21

EXHIBIT J LEGAL DESCRIPTION OF THE SHOPPING CENTER

LAST AMERICA.

SLO-934115A NP

ALTA Extended Owners Commitment Form 1344-A (1982)

PARCEL 1:

Lots 1, 2, 7 and 9 of Tract No. 1268, in the City of San Luis Obispo, in the County of San Luis Obispo, State of California, according to map filed for record August 27, 1986 in Book 13, Page 46 of Maps, in the office of the County Recorder of said County.

PARCEL 2:

A portion of Lot 10 of Tract No 1268, in the City of San Luis Obispo, in the County of San Luis Obispo, State of California, according to map recorded August 27, 1986 in Book 13, Page 46 of Maps, in the office of the County Recorder of said County, described as follows:

Beginning at the Northerly most corner of Lot 3;

Thence along the Northwesterly line of said Lot 10 as shown on said map, North 50° 10' 16" E. 290.70 feet to a point on the Southwesterly corner of Lot 1 as shown on said map;

Thence along the Southwesterly line of Lots 1 and 2, as shown on said map, South 46° 04' 00" East, 227.94 feet to the Southerly most corner of said Lot 2;

Thence along the Southeasterly line of said Lot 2, North 43° 56' 00" East, 127.00 feet to the Northeasterly line of said Lot 10;

Thence along said Northeasterly line of Lot 10, South 46° 04' 00". East, 37.07 feet to the most Northerly corner of Lot 9 as shown on said map;

Thence along the Northwesterly line of said Lot 9, South 43° 56' 00" West, 229.00 feet;

Thence South 46° 04' 00" East, 45.00 feet;

Thence South 43° 56' 00" West, 235.00 feet to the Westerly most corner of said Lot 9;

Thence along Southwesterly line of said Lot 9, South 46° 04' 00" East, 437.00 feet to the Southerly most corner of said Lot 9;

Page 1



J-1

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SLO-934115A NP

ALTA Extended Owners Commitment Form 1344-A (1982)

Thence along the Southeasterly line of said Lot 9, North 43° 56' 00" East, 193.00 feet to the Westerly most corner of Lot 7 as shown on said map;

Thence along the Southwesterly line of said Lot 7, South 46° 04' 00" East 591.04 feet to the Easterly most corner of said Lot 10;

Thence South 43° 56' 00" West, 130.00 feet;

Thence North 46 04' 00" West, 88.69 feet;

Thence South 43° 56' 00" West, 173.73 feet to the Southerly most corner of said Lot 10;

Thence South 44° 21' 51" West, 32.00 feet, to a point on the Southwesterly line of Dalidio Raod;

Thence North 45° 38' 09" West, along said Southwesterly line of Dalidio Road, 1030.72 feet;

Thence North 44° 21' 51" East, 32.00 feet, to the Southerly most corner of Lot 4, as shown on said map;

Thence along the Southeasterly line of said Lot 4 and continuing along the Northeasterly prolongation thereof, North 50° 10' 16" East, 122.92 feet;

Thence North 39° 49' 44" West, 265.18 feet to the point of beginning.

PARCEL 3:

A portion of Lot 3 of Tract No. 1268, in the City of San Luis Obispo, in the County of San Luis Obispo, State of California, according to a map recorded August 27, 1986 in Book 13, Page 46 of Maps, in the office of the County Recorder of said County, described as follows:

Beginning at the Southerly most corner of said Lot 3;

Thence along the Southeasterly line of said Lot 3, North 50°10'16" East, 73.13 feet;

Page 2



AST AMERICA.

SLO-934115A NP

ALTA Extended Owners Commitment Form 1344-A (1982)

Thence North 39'49'44" West, 5.00 feet;

Thence parallel to the Southeasterly line of said Lot 3 and 5.00 feet distant therefrom. North 50°10'16" East, 73.04 feet to a point on the Northeasterly line of said Lot 3;

Thence along said line, North 39°49'44" West, 150.18 feet to the Northerly most corner of said Lot 3;

Thence along the Northwesterly line of said Lot 3, South 50° 10' 16" West, 139.81 feet to the beginning of a tangent curve having a radius of 20.00 feet;

Thence southwesterly along said curve an arc length of 33.44 feeet through a central angle of 95° 48' 25" to a point on the Southwesterly line of said Lot 3;

Thence along the Southwesterly line of Lot 3, South 45° 38' 09" East, 133.84 feet to the point of beginning.

PARCEL 4:

Lot 4 and a portion of Lot 3 and Lot 10 of Tract No. 1268, in the City of San Luis Obispo, in the County of San Luis Obispo, State of California, according to a map recorded August 27, 1986 in Book 13, Page 46 of Maps, in the office of the County Recorder of said County, described as follows:

Beginning at the Southerly most corner of said Lot 4:

Thence along the Southeasterly line thereof and continuing along the Northeasterly prolongation thereof North 50°10'16" East, 122.92 feet;

Thence parallel to the Northeasterly line of said lot and 12.00 feet distant therefrom North 39°49'44" West, 115.00 feet to a point on the Northeasterly line of said Lot 3;

Thence parallel to the Southeasterly line of said Lot 3 and 5.00 feet distant therefrom South 50°10'16" West, 73.04 feet;

Thence South 39°49'44" East, 5.00 feet to the Southeasterly line of said Lot 3;

Page 3



AST AMERICA.

SLO-934115A NP

ALTA Extended Owners Commitment Form 1344-A (1982)

Thence along the Southeasterly line thereof South 50°10'16" West, 73.13 feet to the Southerly most corner of said Lot 3, as shown on said map;

Thence along the Southwesterly line of said Lot 4, South 45° 38' 09" East, 5.57 feet to the beginning of a tangent curve having a radius of 190.00 feet;

Thence continuing along said Southwesterly line of said Lot 4 to the left, an arc length of 33.16 feet through a central angle of 10° 00' 00";

Thence continuing along said Southwesterly line of Lot 4, South 55° 38' 09" East, 52.48 feet;

Thence South 45° 38' 09" East, 21.54 feet to the point of beginning.

EXHIBIT K

NON-DISCLOSURE AGREEMENT

THIS NON-DISCLOSURE AGREEMENT is made and entered into this _____ day of March, 2000 by and between TAHOE JOE'S, INC., a Delaware corporation ("Tenant"), and MBK SOUTHERN CALIFORNIA LTD., a California limited partnership ("Landlord").

WHEREAS, the purpose of this Agreement is to set forth terms and conditions under which Tenant and/or Landlord may disclose to each other certain information that is confidential and proprietary to such party for the purpose of furthering the business relationship between Tenant and Landlord. For purposes of this Agreement, the "disclosing party" shall refer to that party, either Tenant or Landlord, which discloses confidential and proprietary information to the other party, which other party shall be referred to as the "non-disclosing party."

NOW THEREFORE, Tenant and Landlord hereby agree as follows:

- I. <u>Confidential Information</u>. "Confidential Information" of Tenant or Landlord means any information which is not made generally available to others by such party. Confidential Information may be oral or written, or recorded on electronic or other storage media. Confidential Information may include (but is not limited to) sales and profitability information, methods, processes, procedures, techniques, recipes, formulas, floorplans, designs, drawings, blueprints, computer programs, know-how, specifications, new product and service ideas, product development plans, marketing plans, strategies, and identities of other suppliers, vendors or contractors with which Tenant or Landlord deals. However, Confidential Information shall not include information which the non-disclosing party can demonstrate by means of prior written records or other clear and convincing circumstances (a) was or becomes generally available to the public other than as a result of a disclosure by such non-disclosing party or by its directors, officers, employees, agents, contractors, subcontractors, representatives, or lenders (collectively, the "Representatives"), or (b) was or becomes known to such non-disclosing party on a non-confidential basis from a source other than the disclosing party, provided that such source (and if applicable, its sources) is not bound by a confidentiality agreement with the disclosing party.
- II. <u>Confidentiality</u>. Tenant and Landlord agree, at all times during and after the existence of the commercial relationship between Tenant and Landlord, to protect and hold the Confidential Information of the other party strictly secret and confidential, to use such Confidential Information only for the purpose(s) for which it is disclosed, and not to directly or indirectly disclose, publish, reproduce or use (or cause or permit the disclosure, publication, reproduction or use of) such Confidential Information for any other purpose. The non-disclosing party will disclose the Confidential Information only to such of non-disclosing party's Representatives, mortgagees and ground lessors on an as-need-to-know basis in order to carry out the activities and purposes for which such Confidential Information was disclosed by the disclosing party.
- III. Return of Confidential Information. At such time as the non-disclosing party no longer needs to retain such Confidential Information to carry out the purposes and activities for which it was disclosed, the non-disclosing party shall, as well as instruct its Representative to, promptly return to the disclosing party or, if so instructed by the same, destroy all tangible material containing or reflecting such Confidential Information, and will not retain any copies, extracts, summaries or other reproductions in whole or in part of such tangible material, and such return/destruction shall be certified in writing to the disclosing party.
- IV. <u>Successors and Assigns</u>. This Agreement shall be binding upon the parties hereto, their respective Representatives, and their heirs, successors and assigns. Each party shall take reasonable precautions to ensure that its Representatives comply with the provisions of this Agreement, and shall indemnify and hold harmless the disclosing party against any breaches hereof by the non-disclosing party and its Representatives. Each party agrees to identify, upon request, all persons to whom any Confidential Information may have been disclosed.
- V. <u>Severability; Remedies</u>. If any provision or application of this Agreement is held unlawful or unenforceable in any respect, such illegality or unenforceability shall not affect other provisions or applications which can be given effect, and this Agreement shall be construed as if the unlawful or unenforceable provision or application had not been contained herein. Each party acknowledges that the disclosing party may not have an adequate remedy at law in the event of any unauthorized use or disclosure of Confidential Information by the non-disclosing party or its Representatives, and that the disclosing party shall therefore be entitled, in addition to any other remedies that may be available, to injunctive and/or other equitable relief to prevent or remedy any such unauthorized use or disclosure.
 - VI. Governing Law. This Agreement shall be construed and enforced in accordance with the

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laws of the State of California.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands as of the day and year first above written.

LANDLORD:

MBK SOUTHERN CALIFORNIA LTD.,

a California limited partnership,

By MBK Southern California, Inc. a California corporation, its sole general partner

By: _______
Print: ______
Its:

By: Michael H- Wass
Its: Chairman

TENANT:

TAHOE JOE'S, INC., a Delaware corporation.

By:

Print: H. Thomas Mitchell Its: Secretary

By: Clark C. Grant

Its: Chief Financial Officer

EXHIBIT L

USE RESTRICTIONS (PROHIBITIVES AND EXCLUSIVES)

- 1. No use or operation will be made, conducted or permitted on or with respect to all or any part of the Shopping Center, which use or operation is obnoxious to or out of harmony with the development or operation of the Shopping Center, including, but not limited to, the following:
 - (i) Any noise, litter or other activity which may constitute a public or private nuisance;
- (ii) Any noise or sound that is objectionable due to excessive intermittence, beat, frequency, shrillness or loudness;
 - (iii) Any obnoxious odor (excluding those odors normally associated with a restaurant);
 - (iv) Any noxious, toxic, caustic or corrosive fuel or gas;
 - (v) Any dust, dirt or fly ash in excessive quantities;
- (vi) Any unusual fire, explosion or other damaging or dangerous hazard, including the storage, display or sale of explosives or fireworks;
 - (vii) Any drilling for and/or removal of subsurface substances; and
 - (viii) Any dumping of garbage or refuse.
- 2. Tenant shall not use or cause to be used any portion of its respective premises or the Shopping Center for the following purposes or activities:
- (i) Displaying and/or selling of gourmet foods, beer and/or wine for off-premises consumption, and/or products made from wicker and/or rattan within an aggregate of five hundred square feet or more of Tenant's Premises.
- (ii) Selling and/or leasing of office equipment (including computers), office furniture or office supplies or providing copying, printing or other office services then provided by Staples, unless such selling and/or leasing is incidental to such tenant's primary business and is conducted within no more than an aggregate of five percent (5%) of such tenant's sales floor area.
- (iii) Conducting the primary business of retail, rental or sale of video software merchandise (such restriction is not applicable to any store whose business is the sale of computer hardware and computer systems), pre-recorded music and/or blank tapes. The term "primary business" as used herein means twenty-five percent (25%) of annual gross sales as to computer software, and fifteen percent (15%) of annual gross sales as to video and audio software.
- (iv) Selling, renting and/or distributing, either singly or in any combination, of items contained in any of the following respective categories of merchandise: (a) linens and domestics; (b) bathroom items; (c) housewares; (d) frames and poster quality wall art; (e) window treatments; and/or (f) closet, shelving and storage items (which items, either singly or in any combination, are hereinafter referred to as the "Exclusive Items"), unless such selling, renting and/or distributing is conducted within an aggregate area (which shall include an allocable portion of the aisle space adjacent to such sales, rental and/or distribution area) not to exceed the lesser of either five percent (5%) or two thousand (2,000) square feet of Floor Area within such tenant's premises.
 - (v) Operating an espresso bar similar to a "Starbucks" or "Coffee Bean and Tea Leaf" store.
- (vi) Operating an open-stock, name-brand footwear store, unless such tenant occupies freestanding facilities or other facilities within the Shopping Center containing floor area in excess of eighteen thousand (18,000) square feet.
- (vii) Selling or displaying (for this purpose display shall not include electronic equipment used in Tenant's day to day business) of electronic equipment and components, including, but not limited to, all types of telecommunication and transmitting equipment, computers and related accessories, and audio/video equipment and accessories, unless such tenant's premises is located east of that certain street thoroughfare running north/south, cutting through the Shopping Center, connecting Dalidio Drive with El Mercado, within the Shopping Center.
- 3. No merchandise and/or services shall be displayed, sold, leased, stored, advertised or offered for sale or lease by Tenant within the Shopping Center unless within the physical limits of the leaseable area of Tenant's Premises, except for occasional promotions established or permitted from time to time by Landlord, subject to the terms and conditions of the REA; and provided further, subject to the foregoing proviso, Tenant acknowledges that the consent of the Hotel (which Hotel may withhold in its sole and absolute discretion) is required for any proposed sale of merchandise and/or services within the automobile parking area located east of the easterly wall of the existing Gottschalks store.



Northern District of Texas Claims Register

21-30725-sgj11 Tahoe Joe's Inc.

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: (19499165) Claim No: 2 Status: SLO Promenade DE, LLC Original Filed Filed by: CR

8080 Park Lane, Suite 700 Date: 08/27/2021 Entered by: J. Seth Moore

Dallas, Texas 75231 Original Entered Modified:

Date: 08/27/2021

Amount claimed: \$122562.96

History:

Details 2-1 08/27/2021 Claim #2 filed by SLO Promenade DE, LLC, Amount claimed: \$122562.96 (Moore, J.)

Description: (2-1) lease

Remarks:

Claims Register Summary

Case Name: Tahoe Joe's Inc. Case Number: 21-30725-sgj11

Chapter: 11

Date Filed: 04/20/2021 **Total Number Of Claims:** 1

Total Amount Claimed*	\$122562.96
Total Amount Allowed*	

^{*}Includes general unsecured claims

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

	Claimed	Allowed
Secured		
Priority		
Administrative		