

# EXHIBIT 2

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## RESTAURANT LEASE

THIS LEASE (the "Lease") is made and entered into as of the 30th day of June, 2000, by and between P.S. REALTY PARTNERS, L.P., a California limited partnership (hereinafter called "Landlord"), and PARAGON OF MICHIGAN, INC., a Wisconsin corporation (hereinafter called "Tenant"). For and in consideration of the rental and of the covenants and agreements hereinafter set forth to be kept and performed by Tenant, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord, the Building or Buildings and the Leased Property as defined below, for the term and at the rental amount, and subject to and upon all of the terms, covenants, and agreements hereinafter set forth.

### 1.0 DEFINITIONS

1.1 Building and Buildings. The word "Building" as used in this Lease shall mean the one (1) one-story restaurant building located on the site more particularly described on Exhibit A.

1.2 Personal Property. The furniture, fixtures and equipment owned by Landlord and used by Tenant at the Premises, more particularly described on Exhibit B.

1.3 Premises. The word "Premises" as used in this Lease shall mean the fee interest in the underlying ground and driveways and parking areas outside of the Building or Buildings as shown on Exhibit A.

1.4 Leased Property. The word "Leased Property" as used in this Lease shall mean collectively, the Building or Buildings, the Premises and the Personal Property with respect to each restaurant.

1.5 Equipment. The word "Equipment" as used in this Lease shall mean collectively, the furniture, fixtures and equipment owned by Tenant and located in any Building or on any Premises.

1.6 Restaurant Operations. The Equipment, inventory, contract rights, leasehold improvements, and other items of personal property, whether tangible or intangible, used by the Tenant in the operation of such restaurant.

1.7 Taxes. The real property taxes and personal property taxes applicable to any Leased Property and Restaurant Operations pursuant to Sections 5.2 and 5.3.

1.8 Guarantor. Guarantor shall mean Steakhouse Partners, Inc., a Delaware corporation.

1.9 Purchase Agreement. The Purchase and Sale Agreement between Landlord and Tenant, dated contemporaneously with the date of this Lease.

1.10 Other Leases. Other Leases shall mean any of the eighteen (18) lease agreements between Landlord and Tenant dated contemporaneously with the date of this Lease, which are more particularly described on Exhibit G hereto.

1.11 Mortgagee. Credit Suisse First Boston Mortgage Capital, LLC, its successors, and assigns under the Mortgage, Assignment of Leases and Rents and Security Agreement, dated June 30, 2000.

## 2.0 TERM

2.1 The Term of this Lease shall be for a period of twenty (20) years, commencing on the date (the "Rent Commencement Date") that Landlord acquires the Premises under the Purchase Agreement. Provided, however, if Landlord or Tenant terminates the Purchase Agreement, this Lease shall terminate and Landlord and Tenant shall have no continuing rights or obligations hereunder; provided, however, such termination shall not prejudice any rights either Landlord or Tenant may have under the Purchase Agreement. A "Lease Year" shall commence on the first day of the month following the Rent Commencement Date (if the Rent Commencement Date is other than the first day of a month) and end 12 months thereafter.

2.2 Option to Renew Lease. Tenant shall have the option upon twenty-four (24) months prior written notice in each instance to renew the Lease for one (1) additional term of ten (10) years on the same terms and conditions as herein set forth.

2.3 Acknowledgment of Commencement Date. Landlord and Tenant shall execute a written acknowledgment of commencement and shall attach it hereto as Exhibit C.

## 3.0 RENT

Tenant shall pay to Landlord as rent for the Leased Property the sums shown on Exhibit D, payable in advance, without deduction, offset, prior notice or demand, by ACH Transfer in which event Tenant shall execute the ACH Authorization Form attached hereto as Exhibit F, or as otherwise instructed in writing by Landlord.

## 4.0 ADDITIONAL SECURITY AND FINANCIAL STATEMENTS

4.1 Guaranty. Guarantor shall irrevocably and unconditionally guaranty all obligations of Tenant under this Lease, and shall execute a Guaranty Agreement, in form attached hereto as Exhibit E.

4.2 Financial Statements. During the term of this Lease, including any renewal terms, Tenant and Guarantor shall deliver to Landlord annual financial statements of Tenant and Guarantor, prepared in accordance with generally accepted accounting principles, certified by the chief executive officer or chief financial officer of Tenant or Guarantor within ninety (90) days following the close of such year. If Tenant or Guarantor has audited financial statements available, they shall deliver such audited financial statements to Landlord. In addition, Tenant shall make periodic reports of gross sales at each restaurant location to Landlord within thirty (30) days following the end of each 4-week period during the term of this Lease. Tenant shall deliver such additional financial information as may reasonably be requested from time to time by Landlord or Mortgagee.

4.3 Capital Improvements. Tenant shall incur at least \$1,250,000.00 of expenditures for improvements to the leasehold improvements under this Lease and the Other Leases during the initial twenty-four (24) months of the Lease Term, which expenditures would be considered capital in nature in accordance with generally accepted accounting principles. Tenant shall certify to Landlord, in form and content acceptable to Landlord, that it has satisfied its obligation under this Section.

## 5.0 TAXES.

5.1 Payment of Taxes. Tenant shall pay, as additional rent hereunder, all real property taxes applicable to the Leased Property during the term of the Lease and shall assume all obligations for taxes prior to the Rent Commencement Date. Payment of taxes shall be made directly to the applicable taxing authority no later than 15 days prior to the first day on which any interest or penalty will accrue or be assessed for the nonpayment thereof, with contemporaneous written notice to Landlord of evidence of payment. In the event such real property taxes required to be paid by Tenant cover any period of time after expiration of the term of this Lease, Tenant's share of such taxes shall be equitably prorated to cover only the period of time within the fiscal tax year during which this Lease is in effect. Landlord shall forward copies of all tax bills within fifteen (15) days after Landlord's receipt thereof. If any tax in the nature of a special assessment for public improvement or benefits having a useful life beyond the expiration of the Term is assessed, then for purposes of determining Tenant's payment obligations hereunder with respect to such tax, the same shall be amortized over the useful life of such improvements or benefits, as the case may be, as reasonably determined by Landlord and its accountants, and Tenant shall be responsible for only that portion of such amortization applicable to the year in question.

5.2 Definition of "Real Property Taxes". As used herein, the term "real property tax" shall include, without limitation, any form of assessment, license fee, rent tax, sales tax on rental receipts, levy, or tax imposed by any authority having the direct or indirect power to tax, including any city, county, state, or federal government, or any school, agricultural, lighting, drainage, or other improvement district thereof, as against any legal or equitable interest of Landlord in any Leased Property or in the real property of which any Premises is a part, as against Landlord's right to rent or other gross (but not net) income therefrom.

### 5.3 Personal Property Tax.

(a) Tenant shall pay prior to delinquency all taxes assessed against and levied upon leasehold improvements, fixtures, furnishings, Personal Property and Equipment.

(b) If any Equipment shall be assessed with Landlord's real property, Tenant shall pay the taxes attributable to such Equipment within ten (10) days after receipt of a written statement setting forth the taxes applicable to the Equipment.

5.4 Without limiting in any way Tenant's other obligations under this Lease, Tenant agrees that after any default hereunder after applicable notice and cure period, it will deposit in a segregated non-interest bearing bank account in Landlord's name, during each month of the term of this Lease on the same day that rent is due hereunder, an amount equal to one-twelfth (1/12) of the estimated annual amount of Taxes. Monthly escrow payments shall be based upon the estimated amounts for the year in question, and shall be increased or decreased annually to reflect the projected actual amount of all Taxes.

If Tenant should fail to pay any taxes, assessments or governmental charges required to be paid by it hereunder, in addition to any other remedies provided herein, Landlord may, in its sole discretion, pay such taxes, assessments and governmental charges. Any sums so paid by Landlord shall be deemed to be additional rental owing by Tenant to Landlord and due and payable upon demand as additional rent with interest at the rate of twelve percent (12.00%) from the date of the payment by Landlord.

5.5 If at any time during the term of the Lease the present method of taxation shall be changed so that, in lieu of the whole or any part of any taxes, assessments, levies or charges levied, assessed or imposed on real estate and the improvements thereon there shall be levied, assessed or imposed on Landlord a capital levy or other tax directly on the rents received from Tenant and/or any assessment, levy or charge measured by or based in whole or in part, upon such rents, then all such taxes, assessments, levies or charges, or the part thereof so measured or based, shall be deemed to be included with the term taxes for the purposes hereof and shall be paid by Tenant.

5.6 Notwithstanding anything to the contrary in this Lease, nothing herein shall be construed to require Tenant to pay any tax on net income (whether denominated a franchise of capital stock or other tax) imposed upon Landlord or any other person, any transfer or net revenue tax of Landlord or any other person, any tax imposed with respect to the sale, exchange or other disposition by Landlord of any Leased Property or the proceeds thereof or any principal or interest on any indebtedness on any Leased Property for which Landlord is the obligor.

5.7 Tenant may contest by appropriate proceedings, the amount, validity or application of any taxes by appropriate proceedings diligently conducted in good faith provided that (a) such proceedings shall suspend the collection thereof, (b) no part of the Leased Property or of any rent would be subject to loss, sale or forfeiture before determination of any contest, (c) Landlord would not be subject to any

criminal liability for failure to pay, (d) such proceedings shall not affect the payment of rent hereunder or prevent Tenant from using any Leased Property for its intended purposes, and (e) Tenant shall notify Landlord of any such proceedings at which the amount of contest exceeds \$10,000.00 within 20 days after the commencement thereof, and shall describe such proceedings in reasonable detail. Tenant will conduct all such contests in good faith and with due diligence and will, promptly after the determination of such contest, pay and discharge all amounts which shall be determined to be payable therein. In the event Tenant elects to dispute and contest any taxes after the later of the due date or delinquency date for such taxes, it shall provide Landlord with a surety bond in the amount of taxes in dispute, or such other security reasonably satisfactory to Landlord and Mortgagee. Landlord shall provide reasonable cooperation with Tenant, and shall execute such documents as Tenant may reasonably request (at no expense or liability to Landlord), in connection with the contest of any such taxes.

5.8 Landlord covenants and agrees that if there shall be any refunds or rebates of the Taxes paid by Tenant, such refunds or rebates shall belong to Tenant. Any refunds received by Landlord shall be deemed trust funds and as such are to be received by Landlord in trust and paid to Tenant forthwith. Tenant will, upon the request of Landlord, sign any receipts which may be necessary to secure the payment of any such refunds or rebates.

## 6.0 USE

6.1 Use. The Leased Property shall be used and occupied by Tenant only as a national or regionally branded restaurant, or pursuant to Tenant's current use of the Property if other than a national or regionally branded restaurant, or pursuant to a restaurant brand developed by Tenant as a national or regional brand. Tenant shall not change the use of any Leased Property as set forth above without Landlord's prior written consent, which consent shall not unreasonably be withheld, and if required under any mortgage encumbering the Premises, the consent of Mortgagee. Tenant will not do or permit any act or thing that is contrary to any legal requirement or insurance requirement, or that impairs the value of any Leased Property or any part thereof or that materially increases the dangers, or poses unreasonable risk of harm, to third parties (in, on or off any Leased Property) arising from activities thereon, or that constitutes a public or private nuisance or waste to any Leased Property or any part thereof. Tenant shall not conduct any activity on any Premises or use any Leased Property in any manner (i) which would cause any Leased Property to become a hazardous waste treatment, storage or disposal facility within the meaning of, or otherwise bring any Leased Property within the ambit of, the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901, et seq., or any similar state law or local ordinance; (ii) so as to cause a release or threat of release of hazardous waste from any Leased Property within the meaning of, or otherwise bring any Leased Property within the ambit of, the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. § 9601-57, or any similar state law or local ordinance or any other environmental law; or (iii) so as to cause a discharge of pollutants or effluents into any water source or system, or the discharge into the air of any emissions, which would require a permit under the Federal Water Pollution Control Act, 33 U.S.C. § 1251, et seq., or the Clean Air Act, 42 U.S.C. § 741, et seq., or any similar state or local ordinance.

6.2 Compliance with the Law. Tenant shall, at Tenant's expense, comply promptly with all applicable statutes, ordinances, rules, regulations, orders, and requirements in effect during the term hereof, applicable to the Leased Property, including, but not limited to any expense or liability incurred as a result of an encroachment of the Leased Property over an easement or building set-back line. Tenant shall not use or permit the use of any Leased Property in any manner that will create waste or a nuisance, or otherwise expose Landlord or any Leased Property to any liability.

6.3 Condition of Leased Property. Tenant hereby accepts all of the Leased Property in their condition as of the date of the possession hereunder, subject to all applicable zoning, municipal, county, and state laws, ordinances, and regulations, including private easements and restrictions, governing and regulating the use of any Leased Property, and accepts this Lease subject thereto and to all matters disclosed thereby, and by any exhibits attached hereto. Tenant acknowledges that neither Landlord nor Landlord's agent has made any representation or warranty as to the suitability of any Leased Property for the conduct of the Tenant's business.

6.4 Tenant's Covenants and Indemnity. Tenant shall not dispose of or otherwise allow the release of any hazardous waste or materials in, on, or under the Premises, or any adjacent property or in any improvements placed on the Premises. Tenant represents and warrants to Landlord that Tenant's intended use of any Leased Property does not involve the use, production, disposal or bringing onto any Premises of any hazardous waste or materials except those customarily used in connection with restaurant operations. Tenant shall promptly comply with all statutes, regulations and ordinances, and with all orders, decrees or judgments of governmental authorities or courts having jurisdiction, relating to the use, collection, treatment, disposal, storage, control, removal or clean up of hazardous waste or materials, in, on or under any Leased Property or any adjacent property, or incorporated in any improvements, at Tenant's expense.

After written notice to Tenant and reasonable opportunity for Tenant to effect such compliance, Landlord may, but is not obligated to, enter upon any Leased Property and take such actions and incur such costs and expenses to effect such compliance as it deems advisable to protect its interest in any Leased Property; provided, however, that Landlord shall not be obligated to give Tenant notice and an opportunity to effect such compliance if (i) such delay might result in material adverse harm to Landlord or any Leased Property, (ii) Tenant has already had actual knowledge of the situation and a reasonable opportunity to effect such compliance, or (iii) an emergency exists. Whether or not Tenant has actual knowledge of the release of hazardous waste or materials in, on or under any Leased Property or any adjacent property as the result of Tenant's use of any Leased Property, Tenant shall reimburse Landlord for the full amount of all costs and expenses incurred by Landlord in connection with such compliance activities, and such obligation shall continue even after the termination of this Lease. Tenant shall notify Landlord immediately of any release of any hazardous waste or materials in, on or under any Leased Property.

Tenant shall indemnify, defend and hold Landlord harmless from and against any and all claims, damages, demands, losses, liens, liabilities, obligations, fines, penalties, charges, judgments, clean up costs, remedial actions and other proceedings and costs and expenses (including, without limitation, attorneys' fees and disbursements) which may be imposed on, incurred or paid by, or asserted against Landlord or any Leased Property by reason of, or in connection with (i) any misrepresentation or breach of warranty, or (ii) the acts or omissions of Tenant, or any sublessee or other person for whom Tenant would otherwise be liable, resulting in the release of any hazardous waste or materials prior to or during the Term, or (iii) arising directly or indirectly from or out of or in any way connected to Tenant's use, storage, ownership, possession, or control of hazardous substances in, on or under any Leased Property which directly or indirectly result in the Leased Property or any other property becoming contaminated with hazardous substances. Tenant hereby agrees upon notification to clean up from any Leased Property or any other property any contamination caused by its activity, including, without limitation, use, storage, ownership, possession or control of hazardous substances in, on or under any Leased Property, including, without limitations, any remedial action required by applicable governmental authorities. Tenant further acknowledges that it will be solely responsible for all costs and expenses relating to the clean up of hazardous substances from any Leased Property or any other properties which become contaminated with hazardous substances as a result of Tenant's activities in, on or under any Leased Property.

The term "hazardous substances" and "hazardous waste or materials" shall mean: Any substance or material defined or designated as a hazardous or toxic waste, hazardous or toxic material, a dangerous, hazardous, toxic, or radioactive substance, or other similar term, by any federal, state, or local environmental statute, regulation, or ordinance presently in effect or that may be promulgated in the future, as such statutes, regulations, and ordinances may be amended from time to time including, but not limited to, the statutes listed below:

Federal Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq.

Federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 49 U.S.C. § 1801, et seq.

Federal Clean Air Act, 42 U.S.C. § 7401-7626.

Federal Water Pollution Control Act, Federal Clean Water Act of 1977, 33 U.S.C. § 1251, et seq.

Federal Insecticide, Fungicide, and Rodenticide Act, Federal Pesticide Act of 1978, 7 U.S.C., Paragraph 13, et seq.

Federal Toxic Substances Control Act, 15 U.S.C. § 2601, et seq.



Federal Safe Drinking Water Act, 42 U.S.C. § 300 (f), et seq.

Notwithstanding the above, hazardous substance shall not include those materials, substances and/or wastes which are necessary and commercially reasonable for the conduct of business operated on the Premises and which are handled and disposed of in compliance with all relevant environmental laws and industry standards and in a commercially reasonable manner.

6.5 Insurance Cancellation. Notwithstanding the provisions of Section 6.1 above, no use shall be made or permitted to be made of any Leased Property nor acts done which will cause the cancellation of any insurance policy covering any Leased Property or any other property of which any Premises may be a part.

## 7.0 UTILITIES.

Tenant shall pay prior to delinquency for all water, gas, heat, light, power, telephone, sewage and city assessments, air conditioning, ventilation, janitorial, landscaping, fire protection monitoring service, and all other materials and utilities supplied to any Leased Property prior to or during the Term. Landlord has no responsibility to maintain or pay for any utilities on any Leased Property.

## 8.0 MAINTENANCE AND REPAIRS: ALTERATIONS AND ADDITIONS

8.1 Maintenance. During the Term, Tenant shall at its sole cost and expense keep and maintain all Leased Property, including sidewalks, landscaping and driveways located on the Premises, in good order and condition and repair, casualty or condemnation excepted, and shall suffer no waste with respect thereto. Tenant shall at its sole cost and expense make all needed repairs to and replacements of the Leased Property, interior and exterior, structural and nonstructural, ordinary and extraordinary, including but not limited to any roof, air conditioning and heating systems, replacements of cracked or broken glass, repair of parking areas and driveways, and shall keep the plumbing units, pipes and connections free from obstruction and protected against ice and freezing. Landlord has no responsibility to maintain or pay for any part of the maintenance or replacement of the Leased Property.

8.2 Surrender. On the last day of the term hereof, or on any sooner termination, Tenant shall surrender the Leased Property to Landlord in good condition, broom clean, reasonable wear and tear and damage by casualty excepted. Tenant shall repair any damage to the Leased Property caused by the removal of Tenant's Equipment pursuant to Section 8.4 below, which repairs shall include the patching and filling of holes thereof, the repair of structural damage of any kind or type, the repair or replacement of all damaged mechanical equipment and all heating, air conditioning, and ventilating equipment.

8.3 Landlord's Rights. If Tenant fails to perform Tenant's obligations under any of the provisions of this Section 8, Landlord shall give Tenant written notice to do such acts as are reasonably required to maintain any Leased Property in good order and condition. If, within thirty (30) days of such notice, or if an emergency requires the immediate attention of Landlord, such shorter notice period as Landlord deems sufficient, Tenant fails to commence to do the work and diligently prosecute it to completion, or, with respect to items which are not reasonably susceptible to being remedied within such thirty (30) day period, within the period during which the work may reasonably be completed, then Landlord shall have the right, (but not the obligation) to do such acts and expend such funds at the expense of Tenant as are reasonably required to perform such work satisfactorily. Any amount so expended by Landlord shall be paid by Tenant within ten (10) days after billing for same, with interest at the lesser of (i) ten percent (10.0%) per annum or (ii) the maximum non-usurious interest rate, from the date of such work. Landlord shall have no liability to Tenant for any damage, inconvenience, or interference with the use of any Leased Property by Tenant as a result of performing any such work.

8.4 Alterations and Additions.

(a) Tenant shall not make any alterations to any structural component of any Building (including, but not limited to exterior walls, foundations, roof and ceilings), or utility installations on or about any Premises without the express written consent of the Landlord; provided, however, that the Landlord will not unreasonably delay or withhold consent. As used in this section, the term "utility installations" shall include ducting, power plants, fluorescent fixtures, space heaters, conduit, and wiring unless the costs of construction or repair of such items is less than \$10,000.00, in which event no consent by Landlord shall be required. Non-structural alteration and non-utility installation do not require the consent of Landlord.

(b) Tenant shall provide Landlord with written notice of each contractor or subcontractor performing work on any Leased Property. Landlord's consent to the selection of such contractors or subcontractors shall not be required for construction on the Leased Property not exceeding \$50,000.00. Landlord shall have the right to approve any contractors or sub-contractors for work on any Leased Property which is reasonably expected to exceed \$50,000.00, which approval shall not be unreasonably withheld. With respect to any construction reasonably expected to exceed \$500,000.00, Landlord may require, as a condition to providing its consent, that Tenant furnish security for completion of such construction reasonably satisfactory to Landlord and Mortgagee. Tenant shall provide Landlord with evidence of builder's/contractor's risk only insurance naming Landlord as an additional insured prior to the commencement of construction pursuant to Section 8.1 hereof.

(c) All alterations, changes, additions, improvements, and utility installations (whether or not such utility installations constitute trade fixtures of Tenant) which may be made to any Leased Property, shall at the expiration or earlier termination of this Lease, become the property of the Landlord and remain upon and be surrendered with the Leased Property. The Equipment, inventory and any other personal property, to the extent owned by Tenant ("Tenant Personalty"), other than that which

is affixed to any Building or Premises so that it cannot be removed without material damage to such Building or Premises, shall remain the property of the Tenant, and may be removed by the Tenant subject to the provisions of Section 8.2, at any time during the term of this Lease when Tenant is not in default of any of the provisions of this Lease.

#### 9.0 ENTRY BY LANDLORD.

Landlord and Landlord's agents, shall have the right on reasonable prior notice to enter any Building or Premises to inspect the same or to maintain or repair the Leased Property or any portion thereof or to show any Leased Property to prospective purchasers or lenders, or during the last three (3) months of the term of the Lease to any prospective Tenant. Landlord may at any time place a sign advertising the Premises for sale and within the last twelve (12) months of the Lease Term (and during any period during which Tenant is in default hereunder), place a for lease sign at the Premises. Landlord shall have the right to use any and all means which Landlord may deem proper to open the door to any Building in an emergency of any type.

#### 10.0 LIENS.

Tenant shall keep all Leased Property free from any and all liens arising out of work performed, materials furnished, or obligations incurred by Tenant and shall indemnify and hold harmless and defend the Landlord from any and all liens and/or encumbrances arising out of any work performed or materials furnished by or at the direction to the Tenant. In the event that any such lien is imposed (other than statutory liens with a principal balance of less than \$5,000.00), Tenant shall have thirty (30) days from the date of imposition to cause the lien to be released of record or bonded around. Failure to do so by Tenant shall allow Landlord, in addition to all other remedies provided herein by law, the right, but by no means the obligation, to cause the lien to be released by such means as it shall deem proper, including payment of the claim giving rise to the lien. All such sums paid by Landlord and all expenses incurred by it in connection therewith, including attorney's fees and costs, shall be payable to Landlord by Tenant on demand with interest at the lesser of (i) ten percent (10.0%) per annum, or (ii) the maximum non-usurious interest rate. Landlord shall have the right at all times to post and keep posted on any Leased Property any notices permitted or required by law, or which the Landlord shall deem proper, for the protection of the Landlord and any Leased Property, and/or any other party having an interest therein, from mechanic's and materialman's liens. The Tenant shall give to Landlord at least ten (10) days written notice of the expected date of commencement of any work relating to alterations and/or additions to the Leased Property.

#### 11.0 INDEMNITY

11.1 Indemnity. Tenant shall defend, indemnify, and hold harmless Landlord from and against any and all claims arising from Tenant's use of any Leased Property or the conduct of its business or from any activity, work, or thing done, permitted, or suffered by Tenant in or about any Leased

Property and shall further defend, indemnify, and hold harmless Landlord from and against any and all claims arising from any breach, or default in the performance of any obligation on Tenant's part to be performed under the terms of this Lease, or arising from any act or negligence of Tenant, or any of its agents, contractors, or employees, and from and against any and all costs, reasonable attorneys fees, expenses, and liabilities incurred in connection with such claim or any action or proceeding brought thereon. In case any action or proceeding be brought against Landlord by reason of any such claim whatsoever, Tenant, upon notice from Landlord, shall defend same at Tenant's expense by counsel reasonably satisfactory to Landlord. However, Tenant shall not be liable for any damage or injury occasioned by the negligence or intentional acts of Landlord or its designated agents, employees or contractors.

11.2 Exemption of Landlord from Liability. Except for intentional acts or gross negligence of the Landlord, its agents and employees, Landlord shall not be held liable for injury or damage which may be sustained by the person, goods, wares, merchandise, or property of Tenant, or by any agent or other person claiming by or under Tenant which might be caused by or resulting from fire, steam, electricity, gas, water, or rain, which may leak or flow from or into any part of any Leased Property, or from breakage, leakage, obstruction, or other defects of the pipes, sprinklers, wires, appliances, plumbing, heating, air conditioning, ventilating, or lighting fixtures of the same, whether the said damage or injury results from conditions arising in, on, or under any Building or Premises or upon other portions of the Property of which the Premises are a part or from other sources. Landlord shall not be liable for any damages arising from any act or neglect of any other tenant (if any) of any Building or Premises, or property of which any Premises is a part. Tenant shall defend, indemnify and hold harmless Landlord from and against any and all claims by any person which may arise from the matters mentioned in this Section 11.2 except for intentional acts or negligence of the Landlord, its agents, employees, or contractors.

## 12.0 INSURANCE

12.1 Liability Insurance. Tenant shall, at Tenant's expense, procure and maintain at all times during the term of this Lease, a policy of comprehensive public liability insurance insuring Landlord and Tenant against any liability arising out of the ownership, use, occupancy, or maintenance of any Leased Property. Such insurance shall at all times be in an amount of not less than \$3,000,000.00. In addition, if Tenant serves liquor at the Premises, Tenant shall maintain at least \$1,000,000.00 of liquor liability insurance. The limits of such insurance shall not limit the liability of the Tenant. All insurance required under this Section 12 shall be with companies rated A or better in Best's Insurance Guide. Tenant shall deliver to Landlord certificates of insurance evidencing the existence and amounts of such insurance with loss payable clauses satisfactory to Landlord. No such policy shall be cancelable or subject to reduction of coverage or other modification except after thirty (30) days prior written notice to Landlord by the insurer. All such policies shall be written as primary policies, not contributing with and not in excess of coverages which the Landlord may carry. Tenant shall, within ten (10) days prior to the expiration of such policies, furnish Landlord with renewals or binders or Landlord may order such insurance and

charge the cost to the Tenant with 24-hours prior written notice to Tenant, which amounts shall be payable by Tenant on demand. Tenant shall have the right to provide such insurance coverage pursuant to blanket policies which the Tenant may have in force, provided such blanket policies expressly afford coverage of any Leased Property and to Landlord as is required by this Lease.

12.2 Property Insurance. Tenant shall, at Tenant's expense, procure and maintain at all times during the term of this Lease, the policy or policies of insurance covering loss or damage to any Leased Property in the amount of the full replacement value thereof, and providing protection against all perils included within the classification of fire, extended coverage, vandalism, malicious mischief, sprinkler leakage, flood and special extended peril (all risk). Tenant shall maintain use and occupancy insurance covering, as applicable rental income or business interruption, with coverage in an amount not less than twelve (12) months gross rental income or gross business earnings, as applicable in each case to the Leased Property, and such additional insurance as reasonably requested by Landlord or Mortgagee. Tenant shall pay the entire amount of such annual insurance premiums and shall deliver to Landlord certificates of insurance evidencing such insurance with loss payable clauses satisfactory to Landlord. No such policy shall be cancelable or subject to reduction of coverage or other modification except after thirty (30) days prior written notice to Landlord by the insurer. All such policies shall be written as primary policies, not contributing with and not in excess of coverages which the Landlord may carry. Tenant shall, within ten (10) days prior to the expiration of such policies, furnish Landlord with renewals or binders or Landlord may order such insurance and charge the cost to the Tenant with 24-hours prior written notice to Tenant, which amounts shall be payable by Tenant on demand. Such insurance shall provide for payment of losses thereunder to Landlord and will name Mortgagee as its interest may appear. Any loss proceeds shall be made available for the purposes of replacing or rebuilding the pertinent Leased Property if required under Section 13 and in which event, such funds shall be segregated from the general funds of Landlord.

12.3 Waiver of Subrogation. Landlord and Tenant shall waive any and all rights of recovery against the other or against the officers, employees, agents and representatives of the other, on account of loss or damage occasioned to such waiving party or its property or the property of others under its control caused by fire or any of the extended coverage risks described above to the extent that such loss or damage is insured. Landlord and/or Tenant shall give notice to the insurance carrier or carriers involved that the foregoing mutual Waiver of Subrogation option is contained in this Lease. The waivers provided for in this Section 12.3 shall be applicable and effective only in the event such waivers are obtainable from the insurance carriers concerned.

### 13.0 DAMAGE TO PREMISES

13.1 Partial or Total Damage-Insurance Available. In the event of damage causing a partial or total destruction of the Building during the term of this Lease and there is made available to the Landlord, pursuant to Section 12.0 above, insurance proceeds for such damage, Landlord shall utilize all such insurance proceeds and cause the Building to be promptly repaired to the condition existing

immediately prior to such damage, with this Lease to continue in full force and effect. Tenant shall deposit with Landlord or make available to Landlord from time to time as work progresses, the amount reasonably estimated by Landlord to be required in addition to any available insurance proceeds to complete the repairs or reconstruction ("Tenant Repair Deposit") within ten (10) days after notice to Tenant by Landlord. The amount of the Tenant Repair Deposit shall not limit Tenant's liability if insufficient insurance is available to reconstruct the Leased Property, and Tenant shall pay any such deficiency to Landlord upon demand; conversely if after such reconstruction there is any balance in the Tenant Repair Deposit, such excess will promptly be refunded to Tenant within ten (10) days after reconstruction is completed. Provided, however, if Landlord has not begun reconstruction or repairs within thirty (30) days after the later of (i) receipt of available insurance proceeds or (ii) receipt of the Tenant Repair Deposit, or it is not reasonably anticipated that such repair or reconstruction can be completed within a 180-day period after commencement of reconstruction, with each such time period being extended due to force majeure causes such as weather, unavailability of materials, strikes, etc., Tenant may terminate this Lease by written notice to Landlord, provided that Tenant has indemnified Landlord against any deficiency in insurance proceeds. Tenant shall be entitled to proceed immediately with repairs and reconstruction using its own funds pending reimbursement of any insurance award provided that Landlord has approved the plans for the repairs and the contractor to be employed in accordance with Section 8.4.

13.2 Repair Not Permitted. In the event that a Building may not be repaired or restored as required herein under applicable laws and regulations notwithstanding the availability of insurance proceeds, this Lease shall be terminated as to such Leased Property effective with the date of the damage occurrence, and Landlord shall be entitled to retain the insurance proceeds plus the Tenant Repair Deposit pertaining to the Leased Property.

13.3 Damage to Building or Personal Property During Last Six Months of Term. In the event of any total or partial destruction to a Building occurring during the last six (6) month period of the term of this Lease (or any extension thereof), and notwithstanding the provisions of Sections 13.1 above, Landlord and Tenant shall each have the right for the period of sixty (60) days following the event giving rise to the casualty or damage, to notify the other party as to the termination of this Lease with respect to such Property, in which event Landlord shall retain all insurance proceeds and any Tenant Repair Deposit. Provided, however, if Tenant has properly exercised any option that it may have to renew the Lease Term, this Section 13.3 shall not be applicable.

13.4 Payment of Rent During Reconstruction Period. Landlord shall apply any rent interruption insurance received upon a casualty to the Property to the rent due during the period of repair or reconstruction; provided, however, Tenant shall be liable for rent during such period if any insurance proceeds are insufficient to discharge the rental obligation during such period.

#### 14.0 CONDEMNATION.

If all, or a substantial portion of any Leased Property shall be taken or appropriated for public or quasi-public use by the right of eminent domain, (with or without litigation), or transferred by agreement in connection with such public or quasi-public use, either Landlord or Tenant shall have the right at its option (exercisable within thirty (30) day of the receipt of notice of such taking), to terminate this Lease as to such Leased Property as of the date possession is taken by the condemning authority. A substantial portion of the Leased Property shall be deemed to be taken or appropriated if it would materially interfere with the economical operation of the Restaurant Operations at the Leased Property. No award for any partial or entire taking shall be apportioned, and except as provided in the next sentence, Tenant hereby assigns to Landlord any award which may be made in such taking appropriation, or condemnation, together with any and all rights of Tenant now or hereafter arising in such award. Landlord has no interest, however, in any award made to Tenant for the taking of Equipment belonging to Tenant; or for the interruption of or damage to Tenant's business (including goodwill), or to Tenant's unamortized cost of leasehold improvements. In the event of a partial taking which does not result in a termination of this Lease with respect to the Leased Property, rent shall be abated from the date of the taking, in the proportion which the part of the Building so made unusable bears to the rented area of the Building immediately prior to the taking or appropriation. Any award to the Landlord by reason of such partial taking shall be made available for reconstruction by Landlord, if the Lease is not terminated, and shall be segregated from the Landlord's general funds. No temporary taking of any Leased Property and/or of the Tenant's rights therein, or under this Lease, shall terminate this Lease as to such Leased Property or give Tenant any right to any abatement of rent. Any award made for such temporary taking shall belong entirely to Tenant.

#### 15.0 ASSIGNMENT AND SUBLETTING

15.1 Landlord's Consent Required. Tenant shall not assign, transfer, mortgage, pledge, hypothecate, or encumber this Lease or any interest therein, nor permit such assignment by operation of law, and shall not sublet any Leased Property or any part thereof, without the prior express written consent of the Landlord, which consent with respect to assignment, transfer or subletting only shall not be unreasonably withheld. Landlord may condition such consent upon any assignee or subtenant providing Landlord with evidence of financial capability and restaurant operating experience satisfactory to Landlord. Any attempt to do so without such consent being in hand, shall be wholly void and shall constitute a breach of this Lease. Notwithstanding the foregoing to the contrary, Tenant shall be entitled to assign or sublease this Lease without Landlord's consent but with prior written notice, to any parent or subsidiary of Tenant or Guarantor, in a merger, reorganization or other similar transaction affecting Tenant and substantially all of Tenant's assets, or in connection with the sale of all or substantially all of the assets of Tenant in a single sale to a single purchaser.

15.2 No Release of Tenant. No consent by Landlord to any assignment or subletting by Tenant shall relieve Tenant of any obligations to be performed by Tenant under this Lease, whether occurring before or after such assignment or subletting. The consent by Landlord to any assignment or subletting shall not relieve Tenant from the obligation to obtain Landlord's express written consent to any other assignment or subletting. The acceptance of any rent by Landlord from any person shall not be deemed to be a waiver by Landlord of any provision of this Lease, or to be consent to any assignment, subletting, or other transfer.

15.3 By Landlord. This Lease shall be fully assignable by Landlord or its assigns.

## 16.0 SUBORDINATION

16.1 Subordination. At Landlord's option, this Lease shall be subject and subordinate to all ground or underlying leases hereinafter executed affecting any Leased Property, and to the lien of any mortgages or deeds of trust in any amount or amounts whatsoever now or hereafter placed on or against the land or improvements or either thereof, of which the Premises are a part, without the necessity of the execution and delivery of any further instruments, on the part of the Tenant, to effectuate such subordination. If any mortgagee, trustee, or ground lessor shall elect to have this Lease prior to the lien of its mortgage deed of trust or ground lease, and shall give written notice thereof to Tenant, this Lease shall be deemed prior to such mortgage, deed of trust or ground lease, on the date of the recording thereof.

16.2 Subordination Agreements. Tenant covenants and agrees to execute and deliver upon demand, without charge, such further instruments evidencing such subordination of this Lease to such ground or underlying leases and to the lien of any such mortgages or deeds of trust as may be reasonably required by Landlord.

16.3 Quiet Enjoyment. Landlord covenants and agrees with Tenant that upon Tenant paying rent and other monetary sums due under this Lease, performing its covenants and conditions of the Lease and upon recognizing any subsequent lessor under a ground or underlying lease or any purchaser as Landlord, Tenant shall and may peaceably and quietly have, hold, and enjoy the Leased Property for the term of the Lease as against any adverse claim of Landlord or any party claiming under Landlord subject, however, to the terms of the Lease.

16.4 Attornment. In the event any proceedings are brought for default under any ground or underlying lease, or in the event of foreclosure or the exercise of a power of sale under any mortgage or deed or trust made by Landlord covering any Leased Property, the Tenant shall attorn to the lessor under the ground or underlying lease or the purchaser upon any such foreclosure, or sale, and recognize such lessor or purchaser as the Landlord under this Lease, provided said lessor or purchaser expressly agrees in writing to be bound by the terms of this Lease.