



Real Estate Assets Department
SDC003

Q320PM 001 A00

SPORTS ARENA VILLAGE LTD

Document Type

LEGAL DOCUMENTS



Sub - Category

SUBLEASES



**CONSENT AGREEMENT TO ASSIGNMENT OF SUBLEASE AND ASSUMPTION
AGREEMENT**

The City of San Diego ("City"), as LESSOR under that certain Lease Agreement dated December 28, 1973 and filed in the office of the City Clerk as Document No. 745923 ("Master Lease") entered into with James R. Simpson, and subsequently amended and assigned to

SPORTS ARENA VILLAGE, LTD.

("LESSEE"), consented to that certain standard retail lease ("Sublease") between the above LESSEE ("SUBLESSOR") and

OCB RESTAURANT COMPANY, LLC, a Minnesota limited liability company

("OCB") dated October 27, 1999, pursuant to a Consent to Sublease Agreement and subsequently consented to a subsublease to PHIL'S BBQ POINT LOMA, INC., pursuant to a Consent to Subsublease Agreement June 23, 2006.

OCB filed a petition for relief under Chapter 11 of title 11 of the United States Bankruptcy Code and on March 27, 2008 the Bankruptcy Court ordered the termination of the sublease and authorized the Assignment of Sublease and Assumption Agreement ("Agreement").

The CITY hereby consents to the Agreement. Said Agreement shall be subordinate to the Master Lease in all respects. The CITY is merely approving the Agreement and the proposed use, and all terms and conditions of the Master Lease shall control and supersede any inconsistent or contrary provisions in the Agreement. The CITY is not bound by any term or condition in the Agreement which in any way conflicts with or is additional to the provisions of the Master Lease.

In addition, this consent is subject to the following conditions:

ASSIGNMENT AND SUBLEASING: SUBLESSEE shall not assign the Sublease or sublet the premises or any part thereof without the prior written consent of LESSEE and the CITY. An assignment by operation of law shall automatically terminate this lease.

HOLD HARMLESS: SUBLESSEE shall assume the defense of indemnify and hold harmless LESSEE and CITY from all claims, expenses and liability of every nature, directly or indirectly arising from, or alleged to have arisen from the operations conducted on the leased premises, the condition of the premises or from any act or omission of SUBLESSEE, his agents and invitees; provided; however, SUBLESSEE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of the CITY, its agents, officers, or employees.

INSURANCE: SUBLESSEE shall be insured by an insurance carrier acceptable to the LESSEE and CITY against loss from public liability arising from the use or condition of or operation

conducted on the leased premises. Minimum coverage shall be two million dollars (\$2,000,000) COMBINED SINGLE LIMIT LIABILITY. A copy of the policy of insurance shall be filed with CITY and shall name "The City of San Diego, its elected officials, officers, representative, agents, and employees" as additional insureds. Said policy shall specify that the policy may not be terminated, altered or canceled without thirty (30) days prior written notice to CITY by the insurance company. Prior to each insurance renewal period, LESSEE or SUBLESSEE shall submit to CITY a copy of the new insurance policy.

LEGAL PROCEEDINGS: Should it become necessary for LESSEE, SUBLESSEE or CITY to commence legal proceedings to collect rent, to recover possession or enforce any other provision of this consent, the prevailing party shall be entitled to an award of reasonable legal costs, including court and attorney fees.

[The remainder of this page intentionally left blank.]

SUBORDINATION: The Sublease is in effect a sublease of a portion of the premises covered by the Master Lease between the SUBLESSOR herein and the CITY. This agreement and the Sublease are subject and subordinate to the covenants and conditions of said Master Lease notwithstanding any provision hereof contrary to or in conflict with this agreement or the Sublease.

LESSOR:

THE CITY OF SAN DIEGO

Dated: 7/7/08

By: 
Name: David A. Sandoval, CCIM
Title: Deputy Director, Real Estate Assets

SUBLESSOR:

SPORTS ARENA VILLAGE, LTD.,
a California limited partnership

Dated: 6-30-08

By: 
Name: KURT SULLIVAN
Title: Vice President

ASSIGNOR:

~~OCB RESTAURANT COMPANY,
LLC, a Minnesota limited liability
Company~~

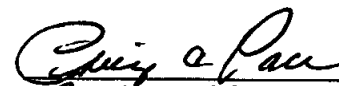
Dated: _____

~~By: _____
Name: _____
Title: _____~~

SUBLESSEE:

PHIL'S BBQ POINT LOMA, INC.,
a California corporation

Dated: _____

By: 
Name: Phillip PACE
Title: PRES.

APPROVED AS TO FORM AND
LEGALITY:

Michael J. Aguirre, City Attorney

Dated: 7/8/08

By: 
Name: Jose Aguirre
Title: Deputy City Attorney

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HOLD HARMLESS: SUBLESSEE shall assume the defense of indemnify and hold harmless LESSEE and CITY from all claims, expenses and liability of every nature, directly or indirectly arising from, or alleged to have arisen from the operations conducted on the leased premises, the condition of the premises or from any act or omission of SUBLESSEE, his agents and invitees; provided; however, SUBLESSEE'S duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of the CITY, its agents, officers, or employees.

INSURANCE: SUBLESSEE shall be insured by an insurance carrier acceptable to the LESSEE and CITY against loss from public liability arising from the use or condition of or operation

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LESSOR:

THE CITY OF SAN DIEGO

Dated: 7/7/08

By: 
Name: David A. Sandoval, CCIM
Title: Deputy Director, Real Estate Asset

SUBLESSOR:

SPORTS ARENA VILLAGE, LTD.,
a California limited partnership

Dated: 6-30-08

By: 
Name: KURT SULLIVAN
Title: Vice President

ASSIGNOR:

~~OCB RESTAURANT COMPANY,
LLC, a Minnesota limited liability
Company~~

Dated: _____

~~By: _____
Name: _____
Title: _____~~

SUBLESSEE:

PHIL'S BBQ POINT LOMA, INC.,
a California corporation

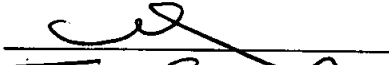
Dated: _____

By: 
Name: Philip C. PRICE
Title: PRES.

APPROVED AS TO FORM AND
LEGALITY:

Michael J. Aguirre, City Attorney

Dated: 7/8/08

By: 
Name: Tom Rasmussen
Title: Deputy City Attorney

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

----- Chapter 11
In re: :
BUFFETS HOLDINGS, INC., : Case No. 08-10141 (MFW)
a Delaware corporation, et al., : Jointly Administered
Debtors. : Ref. Docket No. 417

x

**ORDER APPROVING THE DEBTORS' (I) ASSUMPTION AND
ASSIGNMENT OF THE UNEXPIRED LEASE OF NON-RESIDENTIAL
REAL PROPERTY, AND (II) CONSENSUAL TERMINATION OF THE
UNEXPIRED SUBLEASE OF NON-RESIDENTIAL REAL PROPERTY
RELATED TO PROPERTY LOCATED AT 3750 SPORTS ARENA
BOULEVARD, STE. 11, SAN DIEGO, CA 92110 PURSUANT TO SECTIONS
105, 363 AND 365 OF THE BANKRUPTCY CODE**

Upon consideration of the motion (the "Motion") of the above-captioned debtors and debtors-in-possession (collectively, the "Debtors"), for an order pursuant to sections 105, 363 and 365(a) of the Bankruptcy Code and Bankruptcy Rules 6004(h) and 6006(d) authorizing the Debtor to (i) assume and assign the Lease pursuant to the terms of the Assumption and Assignment Agreement, a copy of which is annexed hereto as Exhibit A, and (ii) terminate the Sublease pursuant to the terms of the LTA, a copy of which is annexed hereto as Exhibit B; and it appearing that the Court has jurisdiction to consider the Motion pursuant to 28 U.S.C.

The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Buffets Holdings, Inc. (4018); Buffets, Inc. (2294); HomeTown Buffet, Inc. (3002); OCB Restaurant Company, LLC (7607); OCB Purchasing Co. (7610); Buffets Leasing Company, LLC (8138); Ryan's Restaurant Group, Inc. (7895); Buffets Franchise Holdings, LLC (8759); Tahoe Joe's, Inc. (7129); HomeTown Leasing Company, LLC (8142); OCB Leasing Company, LLC (8147); Big R Procurement Company, LLC (5198); Ryan's Restaurant Leasing Company, LLC (7405); Fire Mountain Restaurants, LLC (8003); Ryan's Restaurant Management Group, LLC (6739); Tahoe Joe's Leasing Company, LLC (8145); Fire Mountain Leasing Company, LLC (7452); Fire Mountain Management Group, LLC (7299). The address for all of the Debtors is 1460 Buffet Way, Eagan, MN 55121.

§ 157(b)(2); and the Court having determined that good business reasons justify the Debtors' entry into and performance of the Agreements; and the Court having determined that good business reasons justify the relief requested in the Motion and that such relief is in the best interests of the Debtors, their estates and their creditors; and it appearing that due and adequate notice of the Motion has been given, and that no other or further notice need be given; and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that the Motion is granted; and it is further

ORDERED that the Agreements are hereby approved; and it is further

ORDERED that the Debtors have satisfied their obligations pursuant to, *inter alia*, 11 U.S.C. §§ 365(b) and (f) in that the Landlord and Subtenant have consented to the relief requested in the Motion with no further cure or adequate assurance requirements; and it is further

ORDERED that the Debtors are authorized to assume and assign the Lease to the Subtenant pursuant to section 365(a) of the Bankruptcy Code and the terms of the Assumption and Assignment Agreement; and it is further

ORDERED that the Sublease shall be, and hereby is, terminated pursuant to the terms of the LTA; and it is further

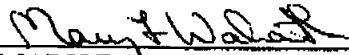
ORDERED that the provisions of Bankruptcy Rules 6004(h) or 6006(d) are hereby waived and this Order shall take effect and be immediately enforceable upon execution hereof; and it is further

ORDERED that the Debtors are authorized to take any action necessary to effectuate the terms of this Order and the Agreements without further order of the Court; and it is further

ORDERED that this Court shall retain jurisdiction regarding the implementation or interpretation of this Order or the Agreements.

Dated: Wilmington, Delaware

March 27, 2008



MARY F. WALRATH
CHIEF UNITED STATES BANKRUPTCY JUDGE

Exhibit A

**ASSIGNMENT OF LEASE AND
ASSUMPTION AGREEMENT**

THIS ASSIGNMENT OF LEASE AND ASSUMPTION AGREEMENT ("Assignment") is made and entered into on the 22nd day of FEBRUARY, 2008, by and between OCB RESTAURANT COMPANY, LLC, a Minnesota limited liability company having a mailing address of 1460 Buffet Way, Eagan, MN 55121 ("Assignor"), SPORTS ARENA VILLAGE LTD, a California limited partnership, having a mailing address of 3760 Sports Arena Boulevard, Ste 14, San Diego, CA 92110 ("Landlord"), and PHIL'S B.B.Q. POINT LOMA, INC., a California corporation, whose address is 3750 Sports Arena Boulevard, Building D, Suites 11-14, San Diego, CA 92110 ("Assignee" or "Sublessee"). If there is hereafter more than one party liable as Assignee, the obligations hereunder imposed shall be joint and several.

WITNESSETH:

WHEREAS, by written lease between Landlord as landlord and Assignor as tenant dated October 27, 1999 (as assumed and amended from time-to-time, the "Lease"), Landlord did lease and demise unto Assignor certain premises more particularly described therein, located at 3750 Sports Arena Boulevard, Ste 11, San Diego, CA 92110 ("Premises"); and

WHEREAS, by written sublease dated June 1, 2006 between Assignor and Sublessee, as assumed and amended by an Agreement Regarding Lease Assumption and Extension dated June 1, 2006 between Assignor, Landlord and Sublessee (as assumed and amended from time-to-time, the "Sublease"), Assignor did sublease and demise the Premises unto the Sublessee; and

WHEREAS Assignor has filed a petition for relief under Chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") and is required to obtain approval from the Bankruptcy Court to consummate the transactions contemplated by this Agreement; and

WHEREAS, Assignor desires to assign to Assignee all of Assignor's right, title and interest as lessee in, to and under the Lease; and in and to all obligations as lessee thereunder, provided Assignee agrees to assume all obligations of Assignor under the Lease, and

WHEREAS, Assignee is willing to assume all responsibilities and obligations as tenant under the Lease, and Assignee and Landlord consent to this Assignment provided that Assignee assumes and agrees to perform all obligations of Assignor as lessee under the Lease;

NOW, THEREFORE, in consideration of the premises and the mutual covenants, conditions and promises set forth herein, the legal sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **ASSIGNMENT.** Assignor hereby transfers, assigns and conveys unto Assignee pursuant to section 365 of the Bankruptcy Code all of Assignor's right, title and interest as lessee in, to and under the Lease, and grants and conveys unto Assignee all of Assignor's right, title and interest in the leasehold improvements, furniture, fixtures and equipment ("FF&E") (if any) at the Premises as of the Effective Date (as defined below).

2. **ASSUMPTION.** As of the Effective Date, Assignee hereby assumes and agrees to perform all duties, responsibilities, agreements, covenants and obligations of Assignor under the Lease.

3. **ASSIGNEE AND SUBLESSEE INDEMNIFICATION.** Assignee (its successors and assigns) and Landlord (its successors and assigns) hereby covenant and agree to protect, to indemnify and to hold harmless Assignor from and against all direct or indirect liability and loss of whatsoever nature, including, but not limited to, any claims, losses, liabilities, demands, judgments, executions, damages and awards (including court costs and reasonable attorneys' fees), regardless of whether such liability or obligation is expressed or implied, absolute or contingent, liquidated or unliquidated, known or unknown, accrued, due or to become due in conjunction with: (i) the injury or death to any person and damage to any property which shall occur, or is alleged to have occurred, on, in or about the Premises, or any portion thereof, resulting from Assignee's or Landlord's use, occupation or control of the Premises, or any portion thereof, from and after the Effective Date set forth herein, or (ii) the non-performance or improper performance of the lessor obligations, liabilities and responsibilities under the Lease, from and after the Effective Date. Assignee and Landlord shall defend any claims against Assignor and hold Assignor harmless and shall pay, satisfy and discharge any judgments, orders and decrees which may be recovered against Assignor as a result of the foregoing indemnity resulting from acts or omissions from and after the Effective Date.

4. **EFFECTIVE DATE.** Subject to approval of the Bankruptcy Court, the Effective Date of this Assignment by Assignor and Assumption by Assignee shall be February 1, 2008, at which time Assignee shall assume all obligations of sublessor under the Sublease.

5. **"AS IS" ASSIGNMENT.** The delivery of the Premises and any property located therein including without limitation, any FF&E, is on an "AS IS AND WHERE IS" basis with no representations and warranties express or implied, as to any such matters, and with no responsibility of Assignor as to its condition. Assignee represents that it has had the opportunity to inspect all aspects of the Premises and the property located therein prior to execution of this Assignment including its physical condition and usability for Assignee's use, and all other aspects of the Premises, and its compliance with building codes, ADA, and other governmental requirements, and Assignee is not relying upon any representation by Assignor, its agents or employees or representatives, whether oral or in writing, as to any such matters.

6. **ASSIGNOR'S LIABILITY AND RIGHTS.** Assignor expressly acknowledges it IS released and discharged from any liability whatsoever under the Lease and Assignee and Landlord consent hereto. Assignor and all related guarantors of Assignor's obligations under the Lease, if any, are hereby fully and forever released from any and all obligations under the Lease and any such guarantees accruing after the Effective Date of this Assignment.

7. **LANDLORD RELEASE.** Landlord and Assignor do hereby and for their respective affiliates, successors, and assigns, release, acquit, and forever jointly and severally discharge one another and their respective affiliates, agents, servants, successors (not including Assignee), heirs, executors, and administrators of and from any and all rights (the "Affiliated Parties"), claims or causes of action which now have or which may hereafter accrue, whether known or unknown, in any way relating to the Lease or Sublease (each, a "Claim"), including, without limitation, with respect to the Landlord, Claims arising from any lease rejection under Section 365 of the Bankruptcy Code or claims for administrative rent or other claims under Section 503(b) of the Bankruptcy Code.

8. **ASSIGNEE RELEASE.** Subject to Assignor's return of the deposit as contemplated in paragraph 10.F. hereof, Assignee does hereby and for its affiliates, successors, and assigns, release, acquit, and forever jointly and severally discharge Assignor and Landlord and their respective affiliates, agents, servants, successors (not including Assignee), heirs, executors, and administrators of and from any and all rights (the "Affiliated Parties"), claims or causes of action which now have or which may hereafter accrue, whether known or unknown, in any way relating to the Lease or Sublease (each, a "Claim"), including, without limitation, Claims arising from any lease rejection under Section 365 of the Bankruptcy Code or claims for administrative rent or other claims under Section 503(b) of the Bankruptcy Code.

9. This Agreement shall not be effective until approved by the Bankruptcy Court. The parties expressly consent to the jurisdiction of the Bankruptcy Court to interpret this Agreement and resolve any and all disputes arising hereunder.

10. **MISCELLANEOUS.**

A. If and to the extent the consent of the City of San Diego is required by the Assignee or the Landlord with respect to the assignment of the Lease contemplated hereby, the Assignor, Assignee and Landlord agree to reasonably cooperate in procuring such consent. Assignee agrees to reimburse Landlord for the cost of procuring such consent and the Assignor shall have no liability with respect thereto.

B. **Successors and Assigns.** This Assignment shall be binding upon and shall inure to the benefit of the parties and their heirs, successors and assigns.

C. **Governing Law.** This Assignment shall be governed by and construed in accordance with the laws of the State that govern the terms of the Lease.

066956.1001

SPORTS ARENA VILLAGE LTD,
a California limited partnership

By: Donald Allred (SEAL)
Print:
Its:

STATE OF _____)
County of _____) ss.

ACKNOWLEDGMENT

On _____, 2008, before me, a Notary Public in and for said State, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the _____ of SPORTS ARENA VILLAGE LTD, a California limited partnership, whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity as such _____, and that by his/her signature on the within instrument he/she executed the instrument on behalf of such limited partnership as the act and deed of such limited partnership.

Notary Public

My commission expires: _____

See Attached Notary

ACKNOWLEDGMENT

State of California
County of San Diego } ss.

On February 22, 2008, before me, Julie Ann Staner, Notary Public, personally appeared Douglas O. Allred, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Julie Ann Staner
Signature



(323)

OPTIONAL INFORMATION

Date of Document: _____

Thumbprint of Signer

Type or Title of Document

Assignment of Lease and
Assumption Agreement

Number of Pages in Document: _____

Document in a Foreign Language: _____

Type of Satisfactory Evidence:

- ☐ Personally Known with Paper Identification
☐ Paper Identification
☐ Credible Witness(es)

Capacity of Signer:

- ☐ Trustee
☐ Power of Attorney
☐ CEO / CFO / COO
☐ President / Vice-President / Secretary / Treasurer
☐ Other: _____

☐ Check here if
no thumbprint
or fingerprint
is available.

Other Information: _____

ASSIGNEE:

PHIL'S B.B.Q. POINT LOMA, INC.,
a California corporation

By: [Signature] (SEAL)

Print:

Its:

STATE OF _____)
County of _____) ss.

ACKNOWLEDGMENT

On _____, 2008, before me, a Notary Public in and for said State, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the _____ of PHIL'S B.B.Q. POINT LOMA, INC., a California corporation, whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity as such _____, and that by his/her signature on the within instrument he/she executed the instrument on behalf of such limited partnership as the act and deed of such limited partnership.

Notary Public _____
My commission expires: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of San Diego

On 2-22-08

Date

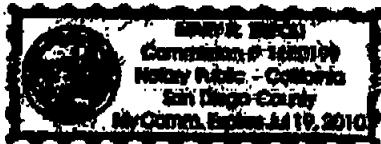
before me,

MARY R. TRIPOLI

Here Insert Name and Title of the Officer

personally appeared CHARLES P. FAIR

Name(s) of Signer(s)



who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Mary R. Tripoli

Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Assignment of Lease & Assumption

Agreement

2/22/08

Number of Pages: 6

Signer(s) Other Than Named Above: Spots Area Village LTD and OLB

Capacity(ies) Claimed by Signer(s): Restaurant

Signer's Name: _____

- ☐ Individual
- ☐ Corporate Officer — Title(s): _____
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: _____

Signer is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer's Name: _____

- ☐ Individual
- ☐ Corporate Officer — Title(s): _____
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: _____

Signer is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Exhibit B

SUBLEASE TERMINATION AGREEMENT

This Sublease Termination Agreement (the "Agreement"), entered into as of the date indicated below, between SPORTS ARENA VILLAGE LTD, a California limited partnership having a mailing address of 3760 Sports Arena Boulevard, Ste 14, San Diego, CA 92110 ("Landlord"), PHIL's B.B.Q. POINT LOMA, INC., a California corporation, whose address is 3750 Sports Arena Boulevard, Building D, Suites 11-14, San Diego, CA 92110 (the "Sublessee" or "Assignee") and OCB RESTAURANT COMPANY, LLC, a Minnesota limited liability company, having its principal office address at 1460 Buffet Way, Eagan, MN 55121 ("Tenant" or "Assigner"). Landlord, Sublessee and Tenant may hereafter be collectively referred to as "Parties" or singularly as "Party."

WHEREAS, Landlord and Tenant entered into that certain lease (the "Lease") dated October 27, 1999, with respect to the use and possession of the premises (the "Premises") located at 3750 Sports Arena Boulevard, Ste 11, San Diego, CA 92110 to conduct operations through a restaurant ("Restaurant Number 333"); and

WHEREAS, Tenant has discontinued operations at Restaurant Number 333 to streamline its overall operations and shed underperforming restaurants; and

WHEREAS, by written sublease dated June 1, 2006 between Tenant and Sublessee, as assumed and amended by an Agreement Regarding Lease Assumption and Extension dated June 1, 2006 between Landlord, Tenant and Sublessee (as assumed and amended from time-to-time, the "Sublease"), Tenant did sublease and demise the Premises unto Sublessee; and

WHEREAS, Tenant has filed a petition for relief under Chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") and is required to obtain approval from the Bankruptcy Court to consummate the transactions contemplated by this Agreement; and

WHEREAS, immediately prior hereto Tenant has assigned all of Tenant's right, title and interest as lessee in, to and under the Lease to Sublessee, pursuant to an Assignment of Lease and Assumption Agreement (the "Lease Assignment Agreement").

WHEREAS, Landlord, Sublessee and Tenant now desire to terminate the Sublease, without terminating or otherwise impairing the Lease.

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING, IT IS HEREBY AGREED:

1 Termination of Sublease. The Parties agree that the Sublease will be terminated effective upon the later of (1) the time immediately after the effectiveness of the Lease Assignment Agreement, on the effective date of the Lease Assignment Agreement (as defined therein) and (2) the Bankruptcy Court's approval of this Agreement (the "Effective Date"). From the Effective Date, the Parties, are accordingly discharged from future performance to each other of any and all obligations under the Sublease.

2 Consideration. Tenant shall assume the Lease pursuant to section 365 of the Bankruptcy code and assign the Lease to Sublessee on the Effective Date. Landlord shall release Tenant from its obligations under the Lease and Sublessee shall release Tenant from its obligation under the Sublease.

3 Landlord Release. Landlord and Assignor do hereby and for their respective affiliates, successors, and assigns, release, acquit, and forever jointly and severally discharge one another and their respective affiliates, agents, servants, successors (not including Assignee), heirs, executors, and administrators of and from any and all rights (the "Affiliated Parties"), claims or causes of action which now have or which may hereafter accrue, whether known or unknown, in any way relating to the Lease or Sublease (each, a "Claim"), including, without limitation, with respect to the Landlord, Claims arising from any lease rejection under Section 365 of the Bankruptcy Code or claims for administrative rent or other claims under Section 503(b) of the Bankruptcy Code.

4 Assignee Release. Assignor does hereby and for its affiliates, successors, and assigns, release, acquit, and forever jointly and severally discharge Assignor and Landlord and their respective affiliates, agents, servants, successors (not including Assignee), heirs, executors, and administrators of and from any and all rights (the "Affiliated Parties"), claims or causes of action which now have or which may hereafter accrue, whether known or unknown, in any way relating to the Lease or Sublease (each, a "Claim"), including, without limitation, Claims arising from any lease rejection under Section 365 of the Bankruptcy Code or claims for administrative rent or other claims under Section 503(b) of the Bankruptcy Code.

5 Tenant shall convey all of Tenant's rights, title and interest in the Lease on the Premises to Sublessee in its "AS IS" condition without representation or warranty of any kind from Tenant in full and final satisfaction of claims released under the Agreement.

6 The parties shall execute any additional documents requested by Tenant to effectuate the foregoing, if necessary.

7 This Agreement constitutes the entire agreement of the parties and supersedes all prior, agreements, representations, warranties, and understandings, whether written or oral, between the parties relating to the subject matter hereof.

8 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns, heirs, and legal representatives including any subsequent trustee that may be appointed in Tenant's chapter 11 case or subsequent proceedings commenced under chapter 7 of the Bankruptcy Code.

9 This Agreement may be executed in any number of counterparts, each of which shall be deemed an original.

10 Each party to this Agreement shall pay all of the expenses incurred by it in connection with this Agreement including, without limitation, its legal and accounting fees and expenses, commissions, fees and expenses of any person employed by it to bring about, or to represent it in, the transactions contemplated hereby.

11 The parties hereto may amend, modify and supplement this Agreement only in such manner as may be agreed upon by them in writing.

12 This Agreement shall not be effective until approved by the Bankruptcy Court. The parties expressly consent to the jurisdiction of the Bankruptcy Court to interpret this Agreement and resolve any and all disputes arising hereunder.

13 This Agreement shall be interpreted in accordance with the laws of the laws of the State that govern the terms of the Sublease.

AGREED this ___th day of _____, 2008:

LANDLORD:

SPORTS ARENA VILLAGE LTD,
a California limited partnership

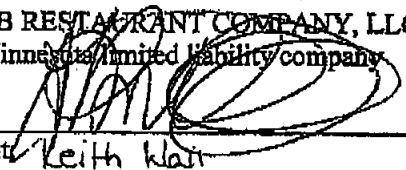
By: _____ (SEAL)

Print:

Its:

TENANT:

OCB RESTAURANT COMPANY, LLC,
a Minnesota limited liability company

By:  (SEAL)

Print: Keith Watt

Its: CFO

SUBLESSEE:

PHIL'S B.B.Q. POINT LOMA, INC.
a California corporation

By: _____ (SEAL)

Print:

Its:

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13 This Agreement shall be interpreted in accordance with the laws of the State that govern the terms of the Sublease.

AGREED this 22th day of Feb, 2008:

LANDLORD:

SPORTS ARENA VILLAGE LTD,
a California limited partnership

By: _____ (SEAL)
Print:
Its:

TENANT:

OCB RESTAURANT COMPANY, LLC,
a Minnesota limited liability company

By: _____ (SEAL)
Print:
Its:

SUBLESSEE:

PHIL'S B.B.Q. POINT LOMA, INC.
a California corporation

By: Philip C Pace (SEAL)
Print: Philip C Pace
Its: PRES

9 This Agreement may be executed in any number of counterparts, each of which shall be deemed an original.

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13 This Agreement shall be interpreted in accordance with the laws of the State that govern the terms of the Sublease.

AGREED this ____th day of _____, 2008:

LANDLORD:

SPORTS ARENA VILLAGE LTD,
a California limited partnership

By: [Signature] (SEAL)
Print:
Its:

TENANT:

OCB RESTAURANT COMPANY, LLC,
a Minnesota limited liability company

By: _____ (SEAL)
Print:
Its:

SUBLESSEE:

PHIL'S B.B.Q. POINT LOMA, INC.
a California corporation

By: _____ (SEAL)
Print:
Its: