

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Brinker International, Inc.
6820 LBJ Freeway
Dallas, Texas 75240
Attention: General Counsel

(THE AREA ABOVE IS RESERVED FOR RECORDER'S USE)

NON-DISTURBANCE AND ATTORNMENT AGREEMENT

1. THE CITY OF SAN DIEGO, a municipal corporation ("CITY " or "LESSOR"), shall not, in the exercise of any of the CITY's rights arising or which may arise out of the Master Lease between the CITY, as lessor, and ARENA GROUP 2000, LP ("LESSEE"), a California limited partnership, as lessee, dated April 2, 2002 and filed in the Office of the City Clerk as Document No. RR-296248, or of any instrument modifying or amending the same or entered into in substitution or replacement thereof ("Master Lease"), disturb or deprive subtenant BRINKER RESTAURANT CORPORATION ("SUBTENANT"), a Delaware corporation in, or of, its possession or its rights to possession of the subleased premises more particularly described in Exhibit A attached hereto ("Subleased Premises") or any part thereof under the Sublease dated June 1, 2003 ("Sublease"), or of any right or privilege granted to or inuring to the benefit of Subtenant under the Sublease, provided Subtenant is not then in breach of the Sublease, after written notice thereof to Subtenant (and Subtenant's Leasehold Mortgagee, as applicable) in accordance with the Sublease and expiration of the applicable cure period under the Sublease. All defined terms used herein shall have the same meanings set forth in the Master Lease, unless specifically provided otherwise herein.

2. If the Master Lease is terminated or expires for any reason before any of the dates provided in the Sublease for the termination of the initial and renewal terms of the Sublease, and if the Sublease shall, immediately prior to such surrender, termination or expiration of the Master Lease, be in full force and effect, then, Subtenant shall not be made a party in any action or proceedings to remove or evict LESSEE nor shall Subtenant be evicted or removed or its possession or right of possession be disturbed or in anyway interfered with and the Sublease shall continue in full force and effect as a direct lease from LESSOR to Subtenant under the terms and provisions of the Sublease; as revised by this Non-Disturbance and Attornment Agreement, under which Subtenant shall be afforded all of its rights and remedies under the Sublease and Subtenant shall agree to attorn to LESSOR under such circumstances. In no event, however, shall the Subtenant be entitled to credit against CITY, if CITY shall become the direct lessor of Subtenant, as aforesaid, for any prepaid minimum rent in excess of thirty (30) days prepaid fixed rent.

3. Leasehold Mortgages. CITY shall provide Subtenant with the same lender protections given by LESSEE to Subtenant and to Subtenant's Leasehold Mortgagee in the Sublease (as approved by the CITY) including, without limitation, the same protections granted by LESSEE to Subtenant under Section 14.5 of the Sublease. For purposes of CITY's obligations under this Section, wherever the word "Landlord" is used in Section 14.5 of the Sublease, it will be deemed to refer to CITY so that CITY shall have the same obligations as the landlord under the Sublease and shall be bound by all of the terms of such Section 14.5 of the Sublease.

4. Transfer Rights. CITY shall have no right to require Subtenant, LESSEE or any other party (and LESSEE shall have no right to require Subtenant) to pay any fees or increased rents in connection with any proposed Transfer of Subtenant's interest in the Sublease so long as Subtenant's Transfer shall comply with the terms and conditions of the Sublease.

5. Damage or Destruction. If the Master Lease is terminated by LESSEE due to damage or destruction in accordance with the terms and conditions of the Master Lease, Subtenant shall have the right to require CITY to recognize Subtenant's rights and interests under the Sublease and in such event, CITY shall agree not to disturb Subtenant in accordance with the terms of Section 2 herein.

6. Memorandum of Sublease. LESSEE and Subtenant may record a memorandum of the Sublease in the local county recorder's office in connection with the Sublease and that CITY's consent or approval shall not be required in connection therewith.

7. From and after the date that the Sublease becomes a direct lease from LESSOR to Subtenant pursuant to Section 2 above, the following sections shall be added to the Sublease, notwithstanding anything to the contrary in the Sublease. For purposes of these added provisions in this Section 7, "Lease" means the Sublease, "LESSEE" means Subtenant, and "Premises" means "Subleased Premises."

a. CITY Approval Standard. Notwithstanding anything to the contrary in the Sublease, the approval or consent of CITY, wherever required in the Lease, shall mean the written approval or consent of the City Manager without need for further resolution by the City Council, except as may be legally required. The City Manager's approval shall not be unreasonably withheld and shall be deemed given after sixty (60) days from CITY's receipt of a written request from LESSEE unless CITY sends a written notice of disapproval or an extension of the sixty (60) day period to LESSEE.

b. Improvements/Alterations. Notwithstanding anything to the contrary in the Sublease, LESSEE agrees that major structural or architectural design alterations or improvements to the approved improvements, structures, or installations may not be made on the Premises without prior written approval by the City Manager and such approval shall not be unreasonably withheld. This provision shall not relieve LESSEE of any obligation under the Lease to maintain the Premises in a decent, safe, healthy, and sanitary condition, including structural repair and restoration of damaged or worn improvements. CITY shall not be obligated by the Lease to make or assume any expense for any improvements or alterations.

c. Exclusive Use. The provisions of Section 5.5 Exclusive Use of the Sublease shall be limited to the three Pad Parcels only.

d. Taxes. Notwithstanding anything to the contrary in the Sublease, LESSEE agrees to pay, before delinquency, all taxes, assessments, and fees assessed or levied upon LESSEE or the Premises, including the land, any buildings, structures, machines, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by LESSEE or levied by reason of the business or other LESSEE activities related to the Leased Premises, including any licenses or permits. LESSEE recognizes and agrees that this Lease may create a possessory interest subject to property taxation, and that LESSEE may be subject to the payment of taxes levied on such interest, and that LESSEE shall pay all such possessory interest taxes. LESSEE further agrees that payment for such taxes, fees and assessments will not reduce any rent due CITY.

e. Building Height Limitations. Notwithstanding anything to the contrary in the Sublease, CITY and LESSEE shall not cause or permit any building or other structure on the Pad Parcels to exceed the maximum height permitted by Law.

f. Entry and Inspection. Notwithstanding anything to the contrary in the Sublease, CITY reserves and shall always have the right, but not the obligation, to enter the Premises for the purpose of viewing and ascertaining the condition of the same, or to protect its interests in the Premises, or to inspect the operations conducted thereon. Except in the event of an emergency, entry by CITY into non-public areas shall occur (a) during the normal business hours, (b) upon 24 hours notice, and (c) accompanied by an authorized representative of LESSEE. Such entry shall not unreasonably interfere with the operation of the Premises and shall be conducted in such manner as to cause minimal disruption. In the event that such entry or inspection by CITY discloses that the Premises are not in a decent, safe, healthy, and sanitary condition, CITY shall have the right, after thirty (30) days written notice to LESSEE and LESSEE's failure to cure the same (or, if the subject of the notice reasonably cannot be cured within such period, LESSEE shall have failed to commence cure within such time and to diligently prosecute such cure to completion), to have any necessary maintenance work done at the expense of LESSEE, and LESSEE hereby agrees to pay promptly any and all costs incurred by CITY in having such necessary maintenance work done, in order to keep said Premises in a decent, safe, healthy, and sanitary condition. Further, if at any time after such notice and LESSEE's failure to cure, in addition to the self help remedy, CITY may at its sole option, without additional notice, require LESSEE to file with CITY a faithful performance bond to assure prompt correction of any condition which is not decent, safe, healthy, and sanitary. Said bond shall be in an amount adequate in the opinion of CITY to correct the said unsatisfactory condition. LESSEE shall pay the cost of said bond. The rights reserved in this section shall not create any obligations on CITY or increase obligations elsewhere in this Lease imposed on CITY.

g. Construction Bond. Notwithstanding anything to the contrary in the Sublease, whenever there is any construction to be performed on the Premises, LESSEE shall deposit or cause to be deposited with CITY, prior to commencement of the construction, a faithful performance bond in the amount of one hundred (100%) percent of the estimated construction cost of the work to be performed. The bond may be in cash or may be a corporate surety bond or other security satisfactory to CITY. The bond shall insure that the construction commenced by LESSEE shall be completed in accordance with the plans approved by CITY or, at the option of CITY, that the uncompleted construction will be removed and the Premises restored to a condition satisfactory to CITY. The bond or cash will be held in trust by CITY for the purpose specified above or at CITY'S option it may be placed in an escrow or other trust approved by CITY.

h. Prohibited Uses. Article 5.7 Prohibited Uses of the Sublease is deleted in its entirety and shall not apply to CITY as Landlord.

i. Early Termination. Notwithstanding anything to the contrary in the Sublease, on the date that is twenty (20) years after the date the third sublease commences but in no event later than the last day of Lease Year Twenty One (21) of the Master Lease and at any time thereafter, CITY shall have the right to terminate this Lease, on the terms and conditions as set forth in Section 3.9 Early Termination of the Master Lease.

j. Eminent Domain. Notwithstanding anything to the contrary in the Sublease, if all or part of the Premises are taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of CITY and LESSEE (or beneficiary or mortgagee) will be as set forth in Section 5.4 Eminent Domain of the Master Lease.

k. Nondiscrimination. Notwithstanding anything to the contrary in the Sublease, LESSEE shall not discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in LESSEE's use of the Premises, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.

1. Compliance with CITY's Equal Opportunity Contracting Program.

(1) Equal Opportunity Contracting. Notwithstanding anything to the contrary in the Sublease, LESSEE acknowledges and agrees that it is aware of, and shall comply with, City Council Ordinance No. 18173 (San Diego Municipal Code Sections 22.2701 through 22.2708, as amended), EQUAL EMPLOYMENT OPPORTUNITY OUTREACH PROGRAM, a copy of which is on file in the Office of the City Clerk and by this reference is incorporated in this Lease. LESSEE and all of its subcontractors are individually responsible to abide by its contents.

LESSEE shall comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and 12086; the California Fair Employment Practices Act; and any other applicable federal and state laws and regulations hereafter enacted. LESSEE will not discriminate against any employee or applicant for employment on any basis prohibited by law.

LESSEE submitted and CITY acknowledges receipt of a current Work Force Report or a current Equal Employment Opportunity (EEO) Plan as required by Section 22.2705 of the San Diego Municipal Code, which sets forth the actions that LESSEE will take to achieve the CITY's commitment to equal employment opportunities.

LESSEE agrees to insert the foregoing provisions in all subcontracts for any work covered by this Lease so that such provisions will be binding upon each subcontractor. LESSEE agrees that compliance with EEO provisions flowing from the authority of both parties will be implemented, monitored, and reviewed by the CITY's Equal Opportunity Contracting Program staff.

(2) Local Business and Employment. Notwithstanding anything to the contrary in the Sublease, LESSEE acknowledges that the City of San Diego seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. LESSEE will, to the extent legally possible, solicit applications for employment, and bids and proposals for subcontracts, for work associated with this Lease from local residents and firms as opportunities occur. LESSEE agrees to hire qualified local residents and firms whenever feasible.

LESSEE understands that failure to comply with the above requirements and/or submitting false information in response to these requirements may result in termination of the Lease and debarment from participating in CITY contracts for a period of not less than one (1) year.

m. CITY Employee Participation Policy. Notwithstanding anything to the contrary in the Sublease, The Lease may, at the sole option of CITY, be unilaterally and immediately terminated by CITY if LESSEE employs an individual who, within the twelve months immediately preceding such employment, did in his/her capacity as a CITY officer or employee participate in negotiations with or otherwise have an influence on the recommendation made to the City Council in connection with the selection of LESSEE. This section does not apply to members of the City Council.

n. Drug-free Workplace. Notwithstanding anything to the contrary in the Sublease, LESSEE shall abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:

(1) Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances are prohibited on the

leasehold and specifying the actions that will be taken against employees for violations of the prohibition.

(2) Establishing a drug-free awareness program to inform employees about all of the following:

- (a) The dangers of drug abuse in the workplace.
- (b) The LESSEE's policy of maintaining a drug-free workplace.
- (c) Any available drug counseling, rehabilitation, and employees assistance programs.
- (d) The penalties that may be imposed upon employees' for drug abuse violations.

(3) LESSEE shall include in each Sublease agreement language which indicates the sublessee's agreement to abide by the provisions of a drug-free workplace. LESSEE and sublessees shall be individually responsible for their own drug-free workplace programs.

o. Disabled Access Compliance. LESSEE shall comply with the California Government Code, Sections 11135-11139.5; the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 (ADA); and any other applicable state and federal laws and regulations hereafter enacted protecting the rights of people with disabilities. LESSEE's compliance shall include but not necessarily be limited to the following:

(1) LESSEE shall not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs, and termination of employment.

(2) No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs, or activities of LESSEE.

(3) LESSEE shall post a statement addressing the requirements of the ADA in a prominent place at the work site.

(4) Where required by law, LESSEE shall comply with CITY's disabled access requirements by bringing up to code and making accessible any areas of the Premises which deny access to disabled persons. All such improvements and alterations shall be at the sole cost of LESSEE.

(5) LESSEE shall include language in each Sublease agreement which indicates the sublessee's agreement to abide by the foregoing provisions. LESSEE and sublessees shall be individually responsible for their own ADA employment programs.

LESSEE understands that failure to comply with the above requirements and/or submitting false information in response to these requirements shall constitute a default under the Lease.

p. Insurance. Article 10 Insurance of the Sublease is deleted in its entirety and shall not apply to CITY as Landlord. Notwithstanding anything to the contrary in the Sublease, Section 6.2 Insurance from the Master Lease shall be substituted in place of Article 10 of the Sublease.

q. Interruption of Utilities. Article 6.3 Interruption of Utilities of the Sublease is deleted in its entirety and shall not apply to CITY as Landlord.

r. Late Payments. Article 25 Late Payments of the Sublease is deleted in its entirety and shall not apply to CITY as Landlord. Notwithstanding anything to the contrary in the Sublease, Section 3.8 Delinquent Rent and Audit Fees from the Master Lease shall be substituted in place of Article 25 of the Sublease.

8. No modification, amendment, waiver or release of any provision of this agreement or of any right, obligation, claim or cause of action arising thereunder shall be valid or binding for any purpose whatsoever unless in writing and duly executed by the party against whom the same is sought to be asserted.

9. In the event of any litigation regarding the Lease or Non-Disturbance Agreement, the prevailing Party shall be entitled to an award of reasonable legal costs, including court and attorney's fees.

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10. This agreement shall be binding upon and shall inure to the benefit of the parties and their respective heirs, legal representatives, successors, assigns and sublessees.

Executed this 23rd day of JULY, 2003.

LESSOR:

THE CITY OF SAN DIEGO,
a municipal corporation,

By: Carol A. Chiodo

For the City Manager, by Tim C. Rothans CAROL A. CHODO
Deputy Real Estate Assets Director

Date: July 23, 2003

LESSEE:

ARENA GROUP 2000, LP
a California limited partnership

By: Arena Founders, L.P.
a California limited partnership,
Managing General Partner

By: Founders of Arena Group 2000
a California corporation,
General Partner

By: [Signature]

Name: RON HANSEN

Title: PRESIDENT

Date: 7-23-03

By: [Signature]

Name: RON HANSEN

Title: PRESIDENT

Date: 7-23-03

SUBTENANT:

BRINKER RESTAURANT CORPORATION,
a Delaware corporation

By: [Signature]

Name: GAY L. TOBIN

Title: VICE PRESIDENT

By: _____

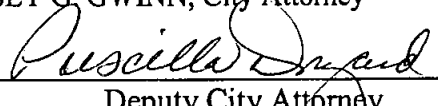
Name: _____

Title: _____

APPROVED AS TO FORM AND LEGALITY

CASEY G. GWINN, City Attorney

Dated: 7/29/03

By: 
Deputy City Attorney

STATE OF CALIFORNIA)
) ss
COUNTY OF SAN DIEGO)

On July 14, 2003, before me, the undersigned, a notary public in and for said State, personally appeared Ron Hahn, 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.

Gloria G. Rodriguez
Notary Public

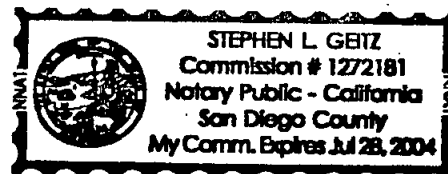


STATE OF CALIFORNIA)
) ss
COUNTY OF SAN DIEGO)

On July 25, 2003, before me, the undersigned, a notary public in and for said State, personally appeared Canon A. Chido, 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.

Stephen L. Geitz
Notary Public

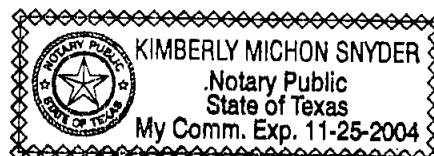


STATE OF CALIFORNIA TEXAS)
) ss
COUNTY OF ~~SAN DIEGO~~ DALLAS)

On July 9, 2003, before me, the undersigned, a notary public in and for said State, personally appeared Gay L. Tobin, V.P., 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.

Kimberly Michon Snyder
Notary Public



~~STATE OF CALIFORNIA)~~
~~) ss~~
~~COUNTY OF SAN DIEGO)~~

On _____, 2003, before me, ~~the undersigned~~, 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 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.

Notary Public

EXHIBIT A

PARCEL 2: (ASSESSOR'S PARCEL NO. 760-245-11)

THAT PORTION OF PUEBLO LOTS 312 AND 313 OF THE PUEBLO LANDS OF SAN DIEGO, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF BY JAMES PASCOE IN THE YEAR 1870, A CERTIFIED COPY OF WHICH WAS FILED NOVEMBER 14, 1921 IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, AND IS KNOWN AS MISCELLANEOUS MAP NO. 36, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE CENTERLINE OF INTERSECTION OF SPORTS ARENA BOULEVARD AND KEMPER STREET AS SHOWN AND DELINEATED ON ARENA PLAZA SUBDIVISION MAP NO. 6629 IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, RECORDED APRIL 20, 1970 IN THE OFFICE OF THE RECORDER OF SAN DIEGO COUNTY; THENCE ALONG THE CENTERLINE OF SPORTS ARENA BOULEVARD SOUTH $77^{\circ}23'37''$ EAST (RECORD NORTH $77^{\circ}52'25''$ WEST PER SAID MAP NO. 6629) 736.25 FEET; THENCE NORTH $12^{\circ}36'23''$ EAST 65.00 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF SAID SPORTS ARENA BOULEVARD AND THE TRUE POINT OF BEGINNING; THENCE LEAVING SAID NORTHERLY RIGHT-OF-WAY NORTH $12^{\circ}36'23''$ EAST 160.00 FEET; THENCE NORTH $26^{\circ}38'35''$ EAST 46.38 FEET; THENCE SOUTH $77^{\circ}23'37''$ EAST 224.75 FEET; THENCE SOUTH $12^{\circ}36'23''$ WEST 205.00 FEET TO SAID NORTHERLY RIGHT-OF-WAY LINE; THENCE WESTERLY ALONG SAID NORTHERLY RIGHT-OF-WAY LINE NORTH $77^{\circ}23'37''$ WEST 236.00 FEET TO THE TRUE POINT OF BEGINNING.

CONSENT TO SUBLEASE

The City of San Diego ("CITY"), as Lessor under that certain Lease Agreement ("MASTER LEASE") entered into with

ARENA GROUP 2000, LP

("LESSEE"), effective May 1, 2002, and filed in the Office of the City Clerk as Document No. RR-296248, hereby consents to that certain sublease ("SUBLEASE") made on June 1, 2003, by and between the above LESSEE and

BRINKER RESTAURANT CORPORATION, A DELAWARE CORPORATION

("SUBLESSEE") for the subleased premises attached hereto as Exhibit A. The SUBLEASE is attached hereto as Exhibit B and incorporated herein by this reference. In addition, this consent is subject to the following:

1. SUBORDINATION: The SUBLEASE shall be subordinate to the MASTER LEASE in all respects, notwithstanding any provision of this consent or the MASTER LEASE contrary to or in conflict with the SUBLEASE. The CITY is not bound by any term or condition in the SUBLEASE which in any way conflicts with or is additional to the provisions of the MASTER LEASE. In the event of a conflict between the MASTER LEASE and SUBLEASE, the terms of the MASTER LEASE shall prevail.
2. PERMITTED USE: SUBLESSEE shall use the premises only for the operation of a typical Chili's Grill & Bar restaurant which may include the preparation of food for takeout, off-site catering and the incidental (i) retail sale of general merchandise bearing the logo of Tenant's then Trade Name (as defined in the Sublease) and (ii) operation of a bar and/or cocktail lounge serving alcoholic beverages for on-Premises consumption. At any time after Tenant has opened for business as a Chili's Grill & Bar, tenant may use the Premises for the operation of a casual dining restaurant, which may include the preparation of food for take-out, off-site catering and the incidental (i) retail sale of general merchandise bearing the logo of Tenant's then Trade Name and (ii) operation of a bar/cocktail lounge serving alcoholic beverages for on-Premises consumption. All of which constitute the ("Permitted Use"). Any change to the Permitted Use will require prior written consent and approval of the CITY.
3. ASSIGNMENT AND SUBLETTING: SUBLESSEE shall not assign the SUBLEASE or sublet the premises or any part thereof without the prior written consent of the CITY. An assignment by operation of law shall automatically terminate the SUBLEASE.
4. IMPROVEMENTS/ALTERATIONS: SUBLESSEE agrees that major structural or architectural design alterations to approved improvements, structures, or installations may not be made on the leased premises without prior written approval by the City Manager and that such approval shall not be unreasonably withheld.
5. CITY APPROVAL STANDARD: SUBLESSEE agrees that the approval or consent of CITY wherever required in the MASTER LEASE or SUBLEASE shall mean the written approval or

consent of the City Manager without the need for further resolution by the City Council except as may otherwise be provided for. The City Manager's approval shall not be unreasonably withheld and shall be deemed given after sixty (60) days from CITY's receipt of a written request from SUBLESSEE unless CITY sends a written notice of disapproval or an extension of the sixty (60) day period to SUBLESSEE.

6. HOLD HARMLESS: SUBLESSEE shall assume the defense of, indemnify and hold harmless CITY from all claims, expenses and liability of every nature, directly or indirectly arising from, or alleged to have arisen from the SUBLEASE including the operations conducted by SUBLESSEE on the leased premises, the condition of the premises or from any act or omission of SUBLESSEE, its agents and invitee's; provided, this duty to indemnify and hold harmless shall not include any claims or liability arising from the sole negligence or sole willful misconduct of the CITY, its agents, officers, or employees.

7. INSURANCE: LESSEE or SUBLESSEE shall satisfy the insurance requirements referred to in Section 6.2 of the MASTER LEASE.

8. LEGAL PROCEEDING: Should it become necessary for the CITY to commence legal proceedings to collect rent, to recover possession or enforce any other provision of this SUBLEASE or the MASTER LEASE, the prevailing party shall be entitled to an award of reasonable legal costs, including court costs and attorney's fees.

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LESSOR:

Dated: July 23, 2003

THE CITY OF SAN DIEGO,
a municipal corporation,

By: Carol A. Chiodo

For the City Manager, by Tim C. Rothmans CAROL A. CHIODO
Deputy Real Estate Assets Director

LESSEE:

Dated: 7/13/03

ARENA GROUP 2000, LP
a California limited partnership

By: Arena Founders, L.P.
a California limited partnership,
Managing General Partner

By: Founders of Arena Group 2000
a California corporation,
General Partner

By: [Signature]
Name: Ken Hays
Title: President

By: [Signature]
Name: Ken Hays
Title: President

SUBLESSEE:

Dated: 7/9/03

BRINKER RESTAURANT CORPORATION,
a Delaware corporation

By: [Signature]
Name: JAY L. TOBIN
Title: VICE PRESIDENT

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM AND LEGALITY

CASEY G. GWINN, City Attorney

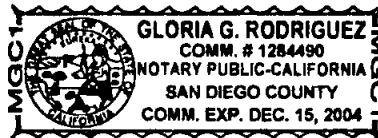
By: [Signature]
Deputy City Attorney

Dated: July 23, 2003

STATE OF CALIFORNIA)
) ss
COUNTY OF SAN DIEGO)

On July 14, 2003, before me, the undersigned, a notary public in and for said State, personally appeared Ron Sahn, 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.

Gloria G. Rodriguez
Notary Public



STATE OF CALIFORNIA)
) ss
COUNTY OF SAN DIEGO)

On July 25, 2003, before me, the undersigned, a notary public in and for said State, personally appeared Carol A. Chiodo, 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.

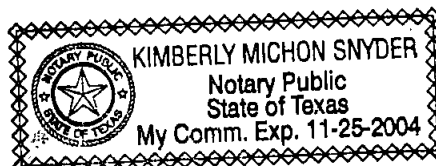
Stephen L. Geitz
Notary Public



STATE OF CALIFORNIA Texas)
) ss
COUNTY OF ~~SAN DIEGO~~ Dallas)

On July 9, 2003, before me, the undersigned, a notary public in and for said State, personally appeared Gay L. Tassin, V.P., 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.

Kimberly Michon Snyder
Notary Public



STATE OF CALIFORNIA

)

) ss

COUNTY OF SAN DIEGO

)

On _____, 2003, before me, the undersigned, 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 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.

Notary Public

EXHIBIT A

PARCEL 2: (ASSESSOR'S-PARCEL NO. -760-245-11-)

THAT PORTION OF PUEBLO LOTS 312 AND 313 OF THE PUEBLO LANDS OF SAN DIEGO, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF BY JAMES PASCOE IN THE YEAR 1870, A CERTIFIED COPY OF WHICH WAS FILED NOVEMBER 14, 1921 IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, AND IS KNOWN AS MISCELLANEOUS MAP NO. 36, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS.:

BEGINNING AT THE CENTERLINE OF INTERSECTION OF SPORTS ARENA BOULEVARD AND KEMPER STREET AS SHOWN AND DELINEATED ON ARENA PLAZA SUBDIVISION MAP NO. 6629 IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, RECORDED APRIL 20, 1970 IN THE OFFICE OF THE RECORDER OF SAN DIEGO COUNTY; THENCE ALONG THE CENTERLINE OF SPORTS ARENA BOULEVARD SOUTH $77^{\circ}23'37''$ EAST (RECORD NORTH $77^{\circ}52'25''$ WEST PER SAID MAP NO. 6629) 736.25 FEET; THENCE NORTH $12^{\circ}36'23''$ EAST 65.00 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF SAID SPORTS ARENA BOULEVARD AND THE TRUE POINT OF BEGINNING; THENCE LEAVING SAID NORTHERLY RIGHT-OF-WAY NORTH $12^{\circ}36'23''$ EAST 160.00 FEET; THENCE NORTH $26^{\circ}38'35''$ EAST 46.38 FEET; THENCE SOUTH $77^{\circ}23'37''$ EAST 224.75 FEET; THENCE SOUTH $12^{\circ}36'23''$ WEST 205.00 FEET TO SAID NORTHERLY RIGHT-OF-WAY LINE; THENCE WESTERLY ALONG SAID NORTHERLY RIGHT-OF-WAY LINE NORTH $77^{\circ}23'37''$ WEST 236.00 FEET TO THE TRUE POINT OF BEGINNING.

EXHIBIT B

SUBLEASE

[ATTACHED]

EXHIBIT B

SUMMARY OF BASIC GROUND SUBLEASE INFORMATION

TERMS <u>(References are to the Lease)</u>	<u>DESCRIPTION</u>
1. Date:	<u>6/</u> , 2003
2. Landlord:	ARENA GROUP 2000 L.P., a California limited partnership
3. Tenant:	BRINKER RESTAURANT CORPORATION, a Delaware corporation
4. Shopping Center Development (Article 1):	That certain retail development located in San Diego, California as generally depicted on <u>Exhibit A-1</u> and legally described on <u>Exhibit A-2</u> to the Lease (the " Shopping Center "). Subject to the terms and conditions hereof, the Shopping Center may be subject to future expansion and modification. The Shopping Center is currently adjacent to property operated as the San Diego Sports Arena and certain other improvements which development is legally described on <u>Exhibit A-3</u> to the Lease and is hereinafter referred to as the " Development ."
5. Premises and Improvements (Article 1):	
5.1 Premises:	That certain real property consisting of approximately 48,352 square feet, located within the Shopping Center as generally depicted on <u>Exhibit A-4</u> to the Lease. The Premises are legally described in <u>Exhibit A-5</u> attached hereto.
5.2 Improvements:	That certain single-story building (" Building ") containing approximately 5,995 square feet (but not exceeding 6,000 square feet) together with appurtenant improvements to be constructed by Tenant.
6. Lease Term (Article 2):	
6.1 Lease Term:	Fifteen (15) years, plus any partial month in which the Lease Commencement Date occurs.
6.2 Lease Commencement Date:	The earlier of (i) the date upon which Tenant initially opens for business to the public from the Premises, or (ii) one hundred eighty (180) days following satisfaction or waiver of the Tenant Contingencies set forth in Section 29.21 below.
6.3 Lease Expiration Date:	The last day of the month in which the fifteenth (15th) anniversary of the Lease Commencement Date occurs.
6.4 Options to Extend:	Two (2) successive options to extend the Lease Term for a period of five (5) years each and a third option for a period equal to the lesser of (i) five (5) years or (ii) the remaining term of the Master Lease described below.

7. Rent (Article 3):

7.1 Base Rent:

<u>Month of Lease Term</u>	<u>Annual Base Rent</u>	<u>Monthly Installment of Base Rent</u>
1-60	\$90,000.00	\$7,500.00
61-120	\$100,800.00	\$8,400.00
121-180	\$112,896.00	\$9,408.00
181-240 (Option)	\$126,443.52	\$10,536.96
241-300 (Option)	\$141,616.74	\$11,801.40
301-End of Lease Term (Option)	\$158,610.74	\$13,217.56

7.2 Percentage Rent:

Three percent (3%) of Tenant’s Gross Sales (as defined in Section 3.2.3 below) from the Premises during each calendar year in excess of the “Breakpoint” applicable during such calendar year, as more particularly set forth in Section 3.2 of the Lease.

8. Intentionally Deleted.

9. Use:

9.1 Permitted Use (Article 5):

Initially, operation of a typical Chili’s Grill & Bar restaurant which may include the preparation of food for take-out, off-site catering and the incidental (i) retail sale of general merchandise bearing the logo of Tenant’s then Trade Name (as defined in Section 9.2 below) and (ii) operation of a bar and/or cocktail lounge serving alcoholic beverages for on-Premises consumption. At any time after Tenant has opened for business as a Chili’s Grill & Bar, Tenant may use the Premises for the operation of a casual dining restaurant, which may include the preparation of food for take-out, off-site catering and the incidental (i) retail sale of general merchandise bearing the logo of Tenant’s then Trade Name and (ii) operation of a bar/cocktail lounge serving alcoholic beverages for on-Premises consumption. The foregoing is subject to the provisions set forth in Article 5 hereof and is further subject to Tenant’s ability to change Tenant’s Permitted Use to another restaurant use in accordance with the requirements of Section 5.1 below.

9.2 Trade Name (Article 5):

Initially, “Chili’s Grill & Bar,” but subject to change within the purview of the Permitted Use.

10. Addresses of Landlord and Tenant
(Article 22).

10.1 Address of Tenant:

Brinker Restaurant Corporation
6820 LBJ Freeway
Dallas, Texas 75240
Attention: Property Accounting
Chili's #952 (Sports Arena, CA)
Telephone: (972) 770-9884
Facsimile: (972) 628-8485

With a copy to:

Brinker International, Inc.
6820 LBJ Freeway
Dallas, Texas 75240
Attention: General Counsel
Telephone: (972) 770-9394
Facsimile: (972) 770-9465

10.2 Address of Landlord:

Arena Group 2000 L.P.
3500 Sports Arena Boulevard
San Diego, California 92110
Attention: Ronald E. Hahn
Telephone: (619) 225-9813
Facsimile: (619) 224-3010

With a copy to:

Law Offices of William J. Harris
777 South Highway 101, Suite 123
Solana Beach, California 92075
Attention: William J. Harris, Esq.
Telephone: (858) 350-0570
Facsimile: (858) 350-0577

11. Brokers (Article 24):

Landlord's Broker: Flocke & Avoyer
Tenant's Broker: Retail Insite

12. Guarantor (Section 29.20 and
Exhibit I):

Brinker International, Inc.,
a Delaware corporation

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EXHIBIT H	- Memorandum of Ground Sublease
EXHIBIT I	- Guaranty of Lease

GROUND SUBLEASE

This Ground Sublease, which includes the preceding Summary of Basic Ground Sublease Information (the "**Summary**") attached hereto and incorporated herein by this reference (the Ground Sublease and Summary are collectively referred to herein as the "**Lease**"), dated as of the date set forth in Section 1 of the Summary, is made by and between ARENA GROUP 2000 L.P., a California limited partnership ("**Landlord**"), and BRINKER RESTAURANT CORPORATION, a Delaware corporation ("**Tenant**"). In the event of a conflict between the terms of the Summary and the terms of this Ground Sublease, the terms of this Ground Sublease shall prevail.

ARTICLE 1

PREMISES, SHOPPING CENTER, DEVELOPMENT AND COMMON AREAS

1.1 Premises, Shopping Center, Development, Common Areas and Master Lease

1.1.1 The Premises. Upon and subject to the terms hereinafter set forth in this Lease, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the premises generally described in Section 5 of the Summary (the "**Premises**"), together with Tenant's non-exclusive rights to use the Common Areas described below.

1.1.2 The Improvements. The term "**Improvements**" as used herein shall mean the improvements to be constructed by Tenant which shall consist of the Building described in Section 5.2 of the Summary and the other improvements to be constructed by Tenant within the "Tenant Work Limit Line" depicted on Exhibit A-6, all in accordance with Exhibit E attached hereto ("**Work Letter**").

1.1.3 The Shopping Center. The Premises are located within the Shopping Center described in Section 4 of the Summary. It is anticipated that the Shopping Center will initially contain the three pads ("**Pad Parcels**") and certain access driveways ("**Access Driveways**") as generally depicted on Exhibit A-7 attached hereto; provided, however, Landlord may, but shall not be obligated to, expand the Shopping Center in the future with additional improvements (as more particularly set forth in Section 1.1.5 below), subject to the limitations contained in this Lease, including, but not limited to, the requirement that if Landlord expands the Shopping Center and enters into the REA referred to in Article 5 below, Landlord must obtain Tenant's reasonable approval of such REA as more particularly provided in Section 5.2.1 below.

1.1.4 Common Areas. Tenant shall have the non-exclusive right to use in common with other tenants in the Shopping Center, and subject to the Rules and Regulations and REA referred to in Article 5 of this Lease, those portions of the Shopping Center including, without limitation, the Access Driveways, which are provided, from time to time, for use in common by Landlord, Tenant, its customers, occupants, invitees, employees, shippers, suppliers, contractors, agents, and any others authorized by Tenant ("**Tenant Parties**"), and any other tenants of the Shopping Center, whether or not those areas are open to the general public (such areas, together with such other portions of the Shopping Center reasonably designated by Landlord are collectively referred to herein as the "**Common Areas**"). Tenant acknowledges that a portion of the Common Areas may be located on the Premises (but outside of the Building and appurtenant improvements described in Section 5.7 below), and to the extent located thereon, Tenant's use of such portion of the Premises shall be non-exclusive; provided, however, that Landlord acknowledges and agrees that, so long as permitted by law, Tenant may designate up to six (6) parking spaces within the Common Areas located on the Premises as being for the non-exclusive use of "to go" customers. As more particularly provided below, it is the agreement of the parties that Tenant maintain the entire Premises, including its Improvements and all other improvements located thereon, in good condition, order and repair in a first class manner similar to other high quality shopping centers in the vicinity of the Shopping Center ("**Comparable Centers**") and in accordance with the requirements of this Lease. Landlord shall keep, or cause to be kept, the Common Areas (except for the Common Areas on Tenant's Premises) in good order, condition and repair in a high quality manner similar to other Comparable Centers and in compliance with all Applicable Laws, and in accordance with the requirements of this Lease, subject to Tenant's maintenance, repair and other obligations contained herein.

1.1.5 Landlord's Use and Operation of the Development, Shopping Center and Common Areas. Landlord reserves the right from time to time, upon reasonable notice to Tenant (except in the event of an emergency) (i) to close temporarily any of the Common Areas in connection with the performance by Landlord of its repair and maintenance obligations or to prevent the acquisition of prescriptive rights; (ii) to make changes to the Common Areas, including, without limitation, changes in the location, size, shape and number of street entrances, driveways, ramps, entrances, exits, passages, stairways and other ingress and egress, direction of traffic, landscaped areas, loading and unloading areas, and walkways; (iii) to add additional buildings and improvements to the Common Areas and Shopping

Center; (iv) to designate land outside the Shopping Center to be part of the Shopping Center, and in connection with the improvement of such land to add additional buildings and Common Areas to the Shopping Center; (v) to use the Common Areas while engaged in making additional improvements, repairs or alterations to the Shopping Center or to any adjacent land, or any portion thereof; and (vi) to do and perform such other acts and make such other changes in, to or with respect to the Development, Shopping Center and Common Areas or the expansion thereof as Landlord may, in the exercise of sound business judgment, reasonably deem to be appropriate. Tenant further acknowledges and understands that the Development currently includes the operation of the San Diego Sports Arena, a swap meet and additional uses. In connection therewith, the occupants, contractors, agents, employees and invitees of the Development may have the right to use the Common Areas (including the Access Driveways) in connection with the use and operation of, and activities from, the Development.

Notwithstanding anything contained in this Lease to the contrary, Landlord agrees not to, without Tenant's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed (if the following requirements are satisfied) (i) materially interfere with the conduct of Tenant's business from the Premises or ingress or egress to and from the Premises or the parking area serving the Premises, (ii) materially change the primary access points to and from the Premises or the parking area serving the Premises, or (iii) make any other changes to the Common Areas within "**Tenant's Control Area**" as shown on Exhibit A-8.

Landlord hereby covenants and agrees not to construct or maintain, or permit any other party to construct or maintain, without Tenant's consent, which consent shall not be unreasonably withheld, any building, barrier or signs on or within the No Build Area ("**No Build Area**") depicted on Exhibit A-6; provided, however, Landlord shall be permitted to locate within the No Build Area directional signs or other improvements either depicted on Exhibit A-1, constructed as part of Landlord's Work (as defined below) pursuant to Exhibit E or other improvements normally and customarily found in Comparable Centers; provided, however, any such signs or improvements shall not materially and adversely interfere with Tenant's or Tenant Parties' access to, or use of, the Shopping Center or the Premises. Notwithstanding the foregoing, Landlord and Tenant agree that the foregoing covenant shall only encumber the portions of the Development owned or controlled by Landlord (*i.e.* Arena Group 2000 and its successors and assigns) pursuant to Landlord's existing Sports Arena operating agreement with respect to the balance of the Development. For purposes of illustration only, at such time as Landlord or its affiliate no longer operate the balance of the Development, pursuant to Landlord's separate operating agreements with Master Landlord, such covenant shall no longer be effective with respect to such portions of the Development no longer controlled by Landlord or its affiliate pursuant to such operating agreement(s).

1.1.6 Master Lease. Landlord is the lessee of the Development under a Ground Lease dated as of April 19, 2002 ("**Master Lease**"), with The City of San Diego ("**Master Landlord**"). Tenant acknowledges and agrees that this Lease is and shall be subject and subordinate to the Master Lease and any and all amendments and modifications thereto (subject to the requirement that Tenant be delivered the Master Lease SNDA described in Article 18 below).

1.2 Improvement of Premises

The Improvements shall be constructed in accordance with the Work Letter. Landlord will be responsible for the work described in the Work Letter as "Landlord's Work" and Tenant will be responsible for the construction of the Improvements (including the Building and all other work within the Tenant Work Limit Line or otherwise necessary for Tenant's occupancy and operation of its Permitted Use). All such work by Landlord and Tenant shall be designed, approved, performed, and completed in compliance with the provisions of the Work Letter and this Lease. Except as specifically set forth in this Lease (including the Work Letter), Landlord shall not be obligated to provide for or pay for any improvement work or services related to the improvement of the Premises. Tenant also acknowledges that Landlord has made no representations or warranties regarding the condition of the Premises or the Shopping Center except as expressly set forth in this Lease (including the Work Letter).

1.3 Tenant Fees

It is the intent of Landlord and Tenant that Tenant be responsible for all fees exclusively allocable to Tenant's construction of the Building and other Tenant's Work constructed by Tenant and the operation of Tenant's business ("**Tenant Fees**"). Tenant shall be responsible for payment of all such Tenant Fees directly to the appropriate governmental agencies. It is possible that certain governmental agencies may require that certain of the Tenant Fees be payable upon issuance of a permit for the Landlord's Work. If Landlord is required to pay for any of the Tenant Fees, then Landlord shall notify Tenant and obtain Tenant's consent before making such payments, and Tenant shall, within thirty (30) days following an invoice therefor, reimburse Landlord for the same as Additional Rent (as defined below).

ARTICLE 2

LEASE TERM

2.1 Initial Term

The terms and provisions of this Lease shall be effective as of the date of this Lease, except for the provisions of this Lease relating to the payment of Rent and the Lease Term (as defined below) hereof. The Lease Term shall be as set forth in Section 6.1 of the Summary, shall commence on the dates set forth in Section 6.2 of the Summary (the "**Lease Commencement Date**"), and shall terminate on the date set forth in Section 6.3 of the Summary (the "**Lease Expiration Date**"), unless this Lease is sooner terminated as hereinafter provided. Promptly after the commencement of the Lease Term, Landlord and Tenant shall execute the Confirmation of Lease Term Dates substantially in the form attached hereto as Exhibit B, confirming the Lease Commencement Date and Lease Expiration Date.

2.2 Options to Extend

Landlord hereby grants to Tenant (individually, "**Extension Option**" and collectively, "**Extension Options**") three (3) successive options to extend the Lease Term for a period of five (5) years each (individually, "**Option Term**" and collectively, "**Option Terms**"), except that the third (3rd) Option Term shall be for a period not to exceed the lesser of (i) five (5) years or (ii) the remaining term of the Master Lease (so that this Lease shall not be extended to a term beyond the term of the Master Lease). Each Extension Option must be exercised, if at all, by written notice ("**Option Notice**") delivered by Tenant to Landlord not less than nine (9) months prior to the end of the initial Lease Term or the then existing Option Term, as the case may be. Further, the Extension Options shall, at Landlord's election, become null and void and of no further force and effect if Tenant is in default (after written notice from Landlord and beyond Tenant's opportunity to cure) under this Lease at the time Tenant attempts to exercise such Extension Option or, following such exercise, prior to the commencement of the applicable Option Term. The Extension Options are personal to Tenant and may not be exercised by any person or entity other than Tenant or a Transferee approved or permitted under Article 14 below. Provided Tenant has properly and timely exercised the applicable Extension Option, the Lease Term shall be extended for the period specified above, and all terms, covenants and conditions of the Lease shall remain unmodified and in full force and effect except that Base Rent (as defined in Article 3 below) payable by Tenant during each Option Term shall be adjusted as set forth in Section 7.1 of the Summary. The term of this Lease, as may be extended by any Option Term, is hereinafter collectively referred to as the "**Lease Term**."

ARTICLE 3

BASE RENT AND PERCENTAGE RENT

3.1 Base Rent

Except as otherwise provided herein, Tenant shall pay, without prior notice or demand, to Landlord or Landlord's agent at the management office of the Development, or at such other place as Landlord may from time to time designate in writing upon notice to Tenant, in currency or a check for currency which, at the time of payment, is legal tender for private or public debts in the United States of America, initial base rent ("**Base Rent**") as set forth in Section 7.1 of the Summary, payable in equal monthly installments in advance on or before the first day of each and every month during the Lease Term, without any setoff or deduction whatsoever, except as otherwise expressly provided in this Lease to the contrary. The Base Rent during the balance of the initial Lease Term and each Extension Option shall thereafter be adjusted as set forth in Section 7.1 of the Summary. The Base Rent for the first full month of the Lease Term shall be paid on the Lease Commencement Date. If any Rent payment date (including the Lease Commencement Date) falls on a day of the month other than the first day of such month or if any payment of Rent is for a period which is shorter than one month, the Rent for any fractional month shall accrue on a daily basis for the period from the date such payment is due to the end of such calendar month or to the end of the Lease Term at a rate per day which is equal to, 1/365 of the applicable annual Rent. All other payments or adjustments required to be made under the terms of this Lease that require proration on a time basis shall be prorated on the same basis.

3.2 Percentage Rent

3.2.1 Calculation of Percentage Rent. In addition to the Base Rent payable by Tenant, Tenant shall pay to Landlord, as Additional Rent, commencing on the Lease Commencement Date and continuing during the balance of the Lease Term and at all times and in the manner hereinafter set forth without demand, notice, setoff or deduction, percentage rent ("**Percentage Rent**") equal to the positive amount, if any, by which (i) three percent (3%) ("**Percentage Rent Factor**") of Tenant's Gross Sales (as defined in Section 3.2.3 below) from or with respect to the Premises during each calendar year, exceed

(ii) the total Base Rent payable with respect to such calendar year ("the **"Breakpoint"**"). For the purpose of computing the Percentage Rent due during the first and last fractional calendar years in which Percentage Rent is payable, the Base Rent for each such period shall be prorated in the same ratio as the number of days in such period bears to 365. The Percentage Rent shall be payable by Tenant to Landlord, from and after the Lease Commencement Date, on an annual basis, as set forth in Section 3.2.2 below.

3.2.2 Payment of Percentage Rent. Tenant shall deliver to Landlord within thirty (30) days after the end of each Lease Year a written statement showing in reasonable detail and by month the Gross Sales for the preceding calendar year. Such annual statements shall be certified to be correct by an officer, managing member or general partner of Tenant or by all individuals doing business as Tenant (as the case may be). If the Gross Sales for such calendar year exceeds the Breakpoint with respect to such calendar year, such Gross Sales statement shall be accompanied by payment to Landlord of an amount equal to the calculated Percentage Rent (as stipulated in Section 3.2.1).

3.2.3 Gross Sales. "Gross Sales" shall be construed to include the entire amount of the sale price, whether for cash or otherwise, of all sales (including rentals) of food, beverages, merchandise and services and of all other revenue derived from the business conducted at, in, upon or from or with respect to the Premises although said orders may be delivered or filled elsewhere, and including all sales by any franchisee, sublessee, concessionaire, licensee, vending machine, coin operated machine, or otherwise on the Premises; provided that a sale made on redemption of gift certificates sold or issued by Tenant shall be deemed to have been made with respect to the Premises only with respect to gift certificates redeemed at the Premises. No deduction shall be allowed for uncollected or uncollectible credit accounts. Gross Sales shall not include, however: (i) any sums (other than any commission or service fee to Tenant) shown separately from the price, collected and paid out for any sales tax, use, or excise tax or similar tax, imposition or assessment levied, imposed or assessed by any governmental authority which Tenant is required to remit to such authority; (ii) the amount of returns to shippers or suppliers; (iii) the amount of merchandise sold which is thereafter returned by the purchaser and accepted by Tenant; (iv) sales of fixtures or other capital items owned and sold by Tenant outside the ordinary course of business; (v) cash refunds made to customers in the ordinary course of business; (vi) the portion of receipts from sales from any vending machine not owned by Tenant or any affiliate of Tenant to the extent such receipts are retained by such unrelated vending machine owner and not paid to Tenant or such affiliate; (vii) receipts from sales of meals to employees of Tenant who work at the Premises consumed on the Premises in the course of said employee's employment, provided such sales are registered and recorded separately from other sales and do not in any event exceed, in the aggregate, two percent (2%) of Tenant's Gross Sales from the Premises during any calendar year; (viii) service charges made, collected and turned over to Tenant's employees working at the Premises in lieu of said employees receiving tips or gratuities from patrons and (ix) credit card service fees, charges or discounts. Each sale upon an installment or credit basis shall be included and treated as a sale for the full price in the month in which such sale is made regardless of whether (or the time when) Tenant shall receive payment.

3.2.4 Gross Sales - Records. Full, true and accurate records from which Gross Sales in any Lease Year may be readily and correctly determined shall be kept by Tenant at the Premises or Tenant's corporate offices in accordance with all the requirements of this Section 3.2 and otherwise in accordance with good accounting practices and standards, consistently followed, until at least the third (3rd) anniversary of the end of such calendar year. Landlord or anyone designated by Landlord shall, upon reasonable notice and from time to time, have access to such records during business hours for the purpose of examining and reviewing Tenant's accounting records and procedures with respect to Gross Sales.

3.2.5 Gross Sales - Audit.

3.2.5.1 As the bona fide reporting of Gross Sales and the due payment of Percentage Rent are essential to Landlord, in addition to its rights specified in Section 3.2.4, within twelve (12) accounting months after Landlord's receipt of Tenant's accounting records with respect to Gross Sales, Landlord shall be entitled, in good faith and with reasonable notice from time to time during normal business hours at Tenant's corporate offices, to have all or any of the accounting records of Tenant affecting the determination of Gross Sales specially audited or examined by an independent certified public accountant designated by Landlord, and who may be required by Landlord to report to Landlord such accountant's opinion as to whether Tenant has accurately reported Gross Sales, and the amount of Gross Sales and of Percentage Rent payable for any period. At the expiration of any such twelve (12) month period following Landlord's receipt of Tenant's Gross Sales accounting records, Landlord shall not be entitled to question the accuracy of any such accounting records.

3.2.5.2 If such independent certified public audit or examination shall disclose any overpayment or underpayment of Percentage Rent, Landlord shall deliver a copy of such accountant's report to Tenant and Landlord shall forthwith repay to Tenant any amount therein set out as an overpayment of Percentage Rent or Tenant shall forthwith pay to Landlord any amount therein set out as an underpayment of Percentage Rent, as the case may be.

3.2.5.3 All costs of any special audit or examination under Section 3.2.5.1 (excluding travel and lodging costs) shall be payable by Tenant to Landlord on demand if Gross Sales for any period as reasonably and conclusively determined by such accountant is greater by three percent (3%) or more than as reported by Tenant or if such audit or examination shows that Tenant has failed to maintain its accounting records substantially in accordance with the requirements of this Section 3.2 so that the accuracy of Tenant's Gross Sales statement cannot reasonably be determined.

3.2.5.4 The acceptance by Landlord of any statement of Gross Sales delivered by Tenant or any payment of Percentage Rent based thereon or on any accountant's determination or Landlord's estimate, shall not be deemed to relieve Tenant from its obligations to comply with the provisions of this Lease or from the consequences of any default thereunder, nor be a waiver by Landlord of any of the obligations of Tenant or any of the rights of Landlord under this Lease.

3.2.6 Violation of Radius Restriction. In addition to Landlord's remedies set forth in Section 5.4 and elsewhere in the Lease, in the event Tenant should violate the covenant set forth in said Section 5.4, Landlord may, without limiting Landlord's remedies, at its option and for so long as Tenant is operating said other business, include "Gross Sales" of such other business in the "Gross Sales" transacted from the Premises for the purpose of computing the Percentage Rent due hereunder.

ARTICLE 4

ADDITIONAL RENT

4.1 General Terms; "Net" Lease

As set forth in this Article 4, in addition to paying the Base Rent and Percentage Rent specified in Article 3 of this Lease, Tenant shall pay Tenant's Share (as defined in Section 4.3.1 below) of all Access Driveway Operating Expenses. Such payments by Tenant, together with any and all other amounts payable by Tenant to Landlord pursuant to the terms of this Lease, are hereinafter collectively referred to as the "Additional Rent", and Base Rent, Percentage Rent, and Additional Rent are sometimes herein collectively referred to as "Rent." All amounts due under this Article 4 as Additional Rent shall be payable for the same periods and in the same manner as the Base Rent. Except as otherwise expressly provided in this Lease to the contrary, if Base Rent is abated during the Lease Term, no such abatement shall apply to Tenant's obligation to pay Additional Rent. Subject to Article 19, without limitation on other obligations of Tenant which survive the expiration of the Lease Term, the obligations of Tenant to pay Rent which accrues during the Lease Term shall survive the expiration of the Lease Term. Landlord and Tenant acknowledge that, except as otherwise provided to the contrary in this Lease, this Lease shall be a "TRIPLE NET" lease and that as such, the provisions contained in this Lease are intended to pass on to Tenant or reimburse Landlord for all costs and expenses reasonably associated with Tenant's lease and use of the Premises, and Tenant's operation therefrom. To the extent such costs and expenses payable by Tenant cannot be charged directly to, and paid by, Tenant, such costs and expenses shall be paid by Landlord but reimbursed by Tenant, including Tenant's obligation to pay Tenant's Share of Access Driveway Operating Expenses, as more particularly set forth in this Article 4 below.

4.2 Definitions of Key Terms Relating to Additional Rent

As used in this Article 4, the following terms shall have the meanings hereinafter set forth:

4.2.1 "Expense Year" shall mean each calendar year in which any portion of the Lease Term falls, through and including the calendar year in which the Lease Term expires; provided, however, an Expense Year shall only cover the actual period of time during the Lease Term so that Tenant will not be responsible for paying any costs and expenses incurred by Landlord prior to or after the Lease Term.

4.2.2 "Access Driveway Operating Expenses" shall mean all expenses, costs and amounts of every kind and nature reasonably incurred during any Expense Year because of or in connection with managing, maintaining, repairing, replacing, restoring, insuring or operating the (i) Access Driveways, or any portions thereof and (ii) any landscaping setbacks maintained by Landlord. Further, Access Driveway Operating Expenses shall also include any (i) Taxes (as defined below) payable with respect to the Access Driveways and (ii) the cost associated with the hiring of parking attendants as may be reasonable necessary to control and/or direct traffic during Development events (including events at the Sports Arena). In addition, Access Driveway Operating Expenses shall include an administrative fee payable to Landlord equal to eleven percent (11%) of the total of the aforementioned Access Driveway Operating Expenses for each Expense Year. Notwithstanding the foregoing, as more particularly provided in Article 28 below, Tenant shall have the right, upon reasonable prior written notice to Landlord, to, at Tenant's sole cost and expense, control traffic and parking on Tenant's Premises during Sports Arena events and, in such event, the cost of the implementation of such parking control

system incurred otherwise by Landlord shall not be included in the Access Driveway Operating Expenses payable by Tenant hereunder. Landlord may cause any or all of said services to be provided by an independent contractor(s) or by affiliates of Landlord.

4.2.3 **"Taxes"** shall mean any form of tax, assessment (general or special), lien, bond obligation, license fee, possessory interest tax, license tax, tax or excise on rent, or any other levy, charge or expense, together with any statutory interest thereon, imposed or required at any time by any federal, state, county or city authority having jurisdiction, or any political subdivision thereof, or any school, agricultural, lighting, drainage or other improvement or special assessment district thereof (hereinafter individually and collectively referred to as **"Governmental Agencies"**), on any interest of Landlord or Tenant or both (including any legal or equitable interest of Landlord or its mortgagee, if any) in the Premises, including, without limitation: (a) any impositions by Governmental Agencies (whether or not such impositions constitute tax receipts) or any other payments to Governmental Agencies (whether involuntarily imposed by any such Governmental Agencies or voluntarily agreed to by Landlord) in substitution, partially or totally, of any impositions now or previously included within the definition of real property taxes, it being acknowledged that Taxes shall include any governmental or private assessments or the Development or Shopping Center's contribution towards a governmental or private cost/sharing agreement for the purpose of augmenting or improving the quality of services and amenities normally provided by governmental agencies; (b) any impositions allocable to or measured by the area of the Premises, or the realty underlying the Premises, or any rental payable hereunder, including, without limitation, any gross income tax or excise tax levied by the federal, state, county or city government, or any political subdivision thereof, with respect to the receipt of such rent, or upon or with respect to the possession, leasing, operating, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises, or any portion thereof; (c) any impositions upon this Lease or any document to which Tenant is a party, creating or transferring an interest or an estate in the Premises; and (d) any and all costs (including, without limitation, the fees of experts, tax consultants and attorneys) incurred by Landlord should Landlord reasonably elect to negotiate or contest the amount of said Taxes in formal or informal proceedings before the taxing Governmental Agency; provided, however, Taxes shall in no event include (w) Landlord's general income, profits, corporation, franchise, inheritance, estate, capital gains, succession or gift taxes, (x) documentary transfer taxes or other taxes imposed in connection with the sale, transfer or financing of the Development or any interest therein, (y) any real property taxes which, although currently payable, relate to previous periods (such as "escape assessments"), and (z) any penalty resulting from the nonpayment or underpayment of real property taxes or failure to file any tax returns when due. Notwithstanding anything to the contrary contained herein, Taxes, as used herein, shall not include any taxes attributable to any property other than the Premises and the Access Driveways.

4.3 Calculation and Payment of Additional Rent

4.3.1 Calculation and Payment of Additional Rent. For every Expense Year ending or commencing within the Lease Term, Tenant shall pay to Landlord, in the manner set forth in Section 4.3.2 below, and as Additional Rent, an amount equal to the Tenant's Share of Access Driveway Operating Expenses for the actual Access Driveway Operating Expenses incurred during or with respect to the Lease Term. As used herein, **"Tenant's Share"** of Access Driveway Operating Expenses shall be determined by multiplying total Access Driveway Operating Expenses during any Expense Year by the fraction arrived at by dividing the land area of the Premises (as depicted on Exhibit A-1) by the total land area of the Development. It is anticipated that Tenant's Share of Access Driveway Operating Expenses will initially equal approximately 2.95%. In the event either the land area of the Premises and/or the Development is expanded or reduced, Tenant's Share shall be appropriately adjusted and, as to the Expense Year in which such change occurs, Tenant's Share for such use shall be determined on the basis of the number of days during each Expense Year that each such Tenant's Share was in effect.

4.3.2 Estimate of Access Driveway Operating Expenses. Landlord shall, at least thirty (30) days prior to the beginning of each Expense Year, endeavor to give Tenant a yearly estimate of Access Driveway Operating Expenses (**"Estimate"**) which shall set forth Landlord's reasonable estimate of what the total amount of Access Driveway Operating Expenses for the then-current Expense Year will be (plus a reasonable contingency) and the estimated amount thereof payable by Tenant (**"Estimated Additional Rent"**); provided, however, Landlord's failure to timely provide Tenant with any such Estimate will not release Tenant from paying Tenant's Share of Access Driveway Operating Expenses. Tenant shall pay monthly, with the monthly Base Rent installments, an amount equal to one-twelfth (1/12) of the total Estimated Additional Rent set forth in the Estimate.

4.3.3 Statement of Actual Expenses and Payment by Tenant. Landlord shall give to Tenant no later than the first day of April following the end of each Expense Year, a statement (the **"Statement"**) which shall state the Access Driveway Operating Expenses incurred or accrued for such preceding Expense Year, which shall indicate the amount of Tenant's Share thereof. Within thirty (30) days of receipt of the Statement for each Expense Year ending or commencing during the Lease Term Tenant shall pay, with its next installment of Base Rent due, the full amount of Tenant's Share of the Access Driveway Operating Expenses for such Expense Year, less the amounts, if any, paid during such

Expense Year as Estimated Additional Rent. In the event such Statement indicates that Tenant is entitled to a refund, such refund shall be applied by Landlord to the next Estimated Additional Rent payable by Tenant hereunder. The failure of Landlord to timely furnish the Statement for any Expense Year shall not prejudice Landlord or Tenant from enforcing its rights under this Article 4. Even though the Lease Term has expired and Tenant has vacated the Premises, when the final determination is made of Tenant's Share of Access Driveway Operating Expenses for the Expense Year in which this Lease terminates, Tenant shall, within thirty (30) days of receipt of such final Statement, pay to Landlord an amount as calculated pursuant to the provisions of Section 4.3.1 of this Lease or in the event such final determination indicates that Tenant is entitled to a refund, such refund shall immediately be paid by Landlord to Tenant. The provisions of this Section 4.3.3 shall survive the expiration or earlier termination of the Lease Term.

4.4 Calculation and Payment of Taxes

Subject to the limitations or exclusions in Section 4.2.4 above, in addition to Tenant's Share of Access Driveway Operating Expenses, Tenant shall pay to Landlord for each Expense Year ending or commencing with the Lease Term, (i) the amount of all Taxes assessed and levied on the Premises (including the Building and all Common Areas and other Improvements thereon) which Taxes are assessed and levied during the Lease Term and (ii) Tenant's Share of all Taxes, if any, assessed or levied on or against the Access Driveways (including any improvements thereon) which Taxes are assessed and levied during the Lease Term. During any period in which the Premises are not separately assessed, Tenant shall pay, as its share of Taxes, an amount equal to all Taxes payable with respect to all Improvements on the Premises plus Tenant's share of Taxes on the realty underlying the Premises. For purposes of this Section 4.4, Tenant's share of Taxes on the realty underlying the Premises shall equal the land square footage of the Premises divided by the total land square footage of the tax parcel of which the Premises comprises a part. Landlord shall deliver to Tenant, contemporaneously with the delivery of the bill therefor, the calculations and assumptions made by Landlord in determining Tenant's share of such Taxes in accordance with the terms and conditions of Section 4.2.3 regarding Landlord's statement. Tenant shall pay such Taxes prior to delinquency. Landlord shall furnish Tenant with copies of any appropriate tax bills and statements promptly following Landlord's receipt thereof. Tenant may pay such Taxes in installments in any case where payment in installments is permitted by the taxing authority and shall be liable only for Taxes payable for periods included within the Lease Term. Notwithstanding anything to the contrary, Tenant may contest with the appropriate taxing authority the amount of Taxes or the increases in Taxes applicable to the Premises which Tenant is obligated to pay; provided, however, Tenant shall (i) give Landlord written notice of any such intention to contest such Taxes, (ii) indemnify and protect Landlord from all liability on account of said contest (including, without limitation, any increase in tax liability to Landlord because of such contest, and, to the extent Landlord shall be required to be involved in any such contest by the appropriate taxing authority, all expenses incurred by Landlord as a consequence of such involvement), (iii) pay the contested amount "under protest" when due if required by the Master Lease, and (iv) in the event of a final determination adverse to Tenant, prior to enforcement, foreclosure or sale, pay to the taxing authority the amount involved together with all penalties, fines, interest, costs and expenses which may have accrued. Notwithstanding the foregoing, in no event shall Tenant have any right to contest any Taxes applicable to the Access Driveways.

4.5 Personal Property Taxes

Tenant shall pay before delinquency all taxes (including sales and use taxes), assessments, license fees and public charges levied, assessed or imposed upon its business operation as well as upon its merchandise, furniture, fixtures, equipment and other personal property; provided, however, Tenant shall have the right to contest the foregoing and shall not be required to pay such amounts in the event Tenant's contest is successful so long as Landlord and the Premises and Landlord's interest therein are not adversely affected thereby. In the event any such items of property are assessed with property of Landlord, such assessment shall be equitably divided between Landlord and Tenant.

4.6 Landlord's Books and Records

Within twelve (12) months after receipt of Landlord's annual Statement by Tenant, Tenant may, after reasonable notice to Landlord and during normal business hours, inspect at Landlord's offices Landlord's books and records that relate to Tenant's Rent and Access Driveway Operating Expenses for the period represented by such Statement; provided, however, that Tenant shall maintain all information contained in Landlord's books and records in strict confidence. If, after such inspection, Tenant disputes the amount of Rent or Access Driveway Operating Expenses set forth in the Statement, a certification as to the proper amount shall be made (at Tenant's expense, except as provided below) by an independent certified public accountant selected by Tenant and reasonably approved by Landlord. If such certification discloses an overpayment of Rent or Tenant's Share of Access Driveway Operating Expenses, Landlord shall refund such overpayment to Tenant within thirty (30) days. If such certification discloses an underpayment of Rent or Tenant's Share of Access Driveway Operating Expenses, Tenant shall pay such deficiency to Landlord within thirty (30) days. If such certification discloses that Landlord, in such Statement, has overstated the amount of Tenant's Rent or Share of Access Driveway

Operating Expenses by more than three percent (3%), the reasonable cost of such certification shall be paid by Landlord (excluding travel and lodging costs) together with a refund of the overpayment and interest for such overpaid amounts at the Interest Rate provided under this Lease. At the expiration of such twelve (12) month period, Tenant shall not be entitled to question the accuracy of any such Statement, except with respect to the calendar year for which a certification is in progress.

ARTICLE 5

USE OF PREMISES; OPENING FOR BUSINESS COVENANT AND LANDLORD'S RECAPTURE RIGHT

5.1 Permitted Use

Tenant shall have the right to use the Premises for the Permitted Use and under the Trade Name set forth in Section 9 of the Summary. Notwithstanding anything to the contrary contained in the Summary, Tenant agrees that the Premises shall not be used in any manner which violates any of the exclusives and use prohibitions set forth in Exhibit F attached hereto ("Existing Exclusives/Use Prohibitions"), nor any exclusive use which may be hereafter granted by Landlord (if it is different from the Permitted Use); provided, however, in no event will Landlord grant any use in the Shopping Center, other than the Existing Exclusives/Use Prohibitions, that will prevent or limit Tenant from using the Premises for the Permitted Use described in Section 9.1 of the Summary. Further, notwithstanding the foregoing, Landlord shall not unreasonably withhold its consent to a change in the Tenant's Permitted Use; provided, however (and without limiting other reasonable reasons for Landlord withholding its consent), the parties agree that it shall be reasonable under this Lease and under any applicable law for Landlord to withhold its consent to any proposed change in the Permitted Use wherein one or more of the following apply: (i) the proposed change in Permitted Use is not a restaurant use consistent with the character of the Shopping Center as a high quality Shopping Center; (ii) the proposed use is not permitted by the Master Lease and/or the REA (defined in Section 5.2.1 below) or (iii) the proposed use would cause a violation of the Existing Exclusives/Use Prohibitions set forth in Exhibit F attached hereto. Tenant acknowledges and agrees that the Master Lease contains a restriction that no subtenant (including Tenant hereunder) shall be permitted to conduct incidental uses not contemplated by the Permitted Use without the prior approval of the Master Landlord. Such incidental uses include, but are not limited to, cellular sites and kiosks. The Master Landlord's (and Landlord's) approval of such incidental uses may be subject to the requirement that Tenant pay Additional Rent for such unanticipated incidental use. Accordingly, in no event shall Tenant conduct any such incidental use without Landlord's (and the Master Landlord's) prior consent.

5.2 Duties and Quality Standards; Prohibited Conduct

5.2.1 Compliance with Rules and Regulations, Laws and REA. Tenant covenants and agrees that Tenant shall not use, and shall use its diligent efforts not to permit any of its officers, employees, agents, servants or contractors to use, and shall use its reasonable efforts not to permit its customers to use, the Premises or Common Areas or any part thereof for any use or purpose contrary to the provisions of the rules and regulations set forth in Exhibit C attached hereto, or any other rules and regulations reasonably promulgated by Landlord in connection with Tenant's use of the Premises for the Permitted Use (collectively, "Rules and Regulations") or in violation of the laws of the United States of America, the State of California, or the ordinances, regulations or requirements of the local municipal or county governing body or other lawful authorities having jurisdiction over the Development and/or Shopping Center (collectively, "Applicable Laws" or "Laws" whether capitalized or not) and all covenants, conditions, and restrictions relating to the Development and/or Shopping Center previously or hereafter recorded against the Shopping Center and any amendments or modifications thereto (collectively, "REA"). Landlord covenants and agrees for itself and its employees, agents and contractors to comply with the Rules and Regulations, Applicable Laws and the REA and shall use Landlord's commercially reasonable efforts to cause others to comply with such Rules and Regulations, Applicable Laws and the REA; provided, however, the foregoing shall not be construed or interpreted to require Landlord to have any obligations to Tenant with respect to indemnification or removal of Hazardous Substances or Hazardous Materials (as such terms are defined below) except as may be expressly provided in this Lease. Notwithstanding anything to the contrary herein, Landlord agrees that the Rules and Regulations and REA shall not be (i) modified or enforced in any way by Landlord so as to materially interfere with Tenant's use of, access and visibility to and from the Premises or materially increase Tenant's monetary obligations under this Lease (ii) discriminately enforced against Tenant. Further, it is anticipated that an REA will not be recorded against the Shopping Center prior to the date hereof. In the event Landlord expands the initial Shopping Center or otherwise elects to record an REA against the Shopping Center, Landlord shall deliver a copy of its proposed REA to Tenant prior to its recordation. Tenant shall have thirty (30) days after receipt of the proposed REA to deliver written notice to Landlord that Tenant reasonably believes such REA materially increases Tenant's obligations or materially decreases Tenant's rights under this Lease, in which event Landlord and Tenant shall work together in good faith to modify the REA as necessary so that Tenant's obligations will not be materially increased

nor its rights materially reduced. Subject to the foregoing, Tenant hereby agrees to subordinate its interest under this Lease to any such REA and any amendments, modifications, or supplements thereto provided Tenant's prior approval is obtained in accordance with the terms of this Section and Tenant receives adequate non-disturbance protection reasonably satisfactory to Tenant. Tenant's failure to notify Landlord in writing of Tenant's objection to the REA (or any subsequent amendments, modifications, or supplements) within said 30-day period shall constitute Tenant's approval of such REA.

5.2.2 Prohibited Conduct. Tenant shall not use or allow another person or entity or allow any of its employees, subtenants, concessionaires, subcontractors, agents or invitees to use any part of the Shopping Center or Premises for the storage, use, treatment, manufacture or sale of Hazardous Materials. Landlord acknowledges, however, that Tenant will maintain products in the Premises which are incidental to the operation and maintenance of its Premises (such as janitorial supplies), which products contain chemicals which may be categorized as Hazardous Materials. Landlord agrees that the use of such products in the Premises in compliance with all laws and in the manner which such products are designed to be used shall not be a violation by Tenant of this Section 5.2.2. Tenant and Landlord shall not cause, maintain or permit any nuisance in, on or about the Shopping Center, the Premises or Common Areas, nor shall Tenant and Landlord commit or suffer to be committed any waste in or upon the Shopping Center, the Premises or Common Areas. Tenant shall not conduct or advertise on or from or pertaining to the Premises or Common Areas any auction or closing-out wholesale business. Tenant, or Tenant's employees and agents, shall not solicit business in the Common Areas and shall not distribute any handbills or other advertising matter therein.

For purposes of this Lease, the term "**Hazardous Substances**" or "**Hazardous Materials**" shall mean any substance, material or matter (including, but not limited to, asbestos and petroleum, gasoline, crude oil or any products, by-products or fractions thereof) whose nature, quantity or manner of existence, use, management, control, handling, manufacture, creation, generation, storage, disposal, discharge, removal, treatment, containment, remediation or transportation (i) is or becomes injurious or potentially injurious to the environment, or to public health, safety or welfare, or (ii) is regulated or becomes regulated under any federal, state, county, municipal and local laws, statutes, rules, regulations and ordinances either in existence as of the date of this Lease or enacted or promulgated after the date of this Lease, (iii) may or does give rise to liability under any common law theory based on nuisance (private or public), waste, trespass, negligence, strict liability or tortious conduct, or (v) the presence of which requires investigation or remediation under any federal, state or local statute, regulation, ordinance, order, action, policy or common law.

The term "**Environmental Law(s)**" shall mean all applicable present and future statutes, regulations, rules, ordinances, codes, licenses, permits, orders, approvals, plans, authorizations, concessions, franchises, and similar items, of all governmental agencies, authorities, departments, commissions, boards, bureaus, or instrumentalities of the United States, states and political subdivisions thereof and all applicable judicial, administrative, and regulatory decrees, judgments, and orders relating to the protection of human health or the environment, including, without limitation: (i) All requirements, including, but not limited to, those pertaining to reporting, licensing, permitting, investigation, or remediation of emissions, discharges, releases, or threatened releases of Hazardous Substances, chemical substances, pollutants, contaminants, or hazardous or toxic substances, materials or wastes whether solid, liquid, or gaseous in nature, into the air, surface water, groundwater, or land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of Hazardous Substances, chemical substances, pollutants, contaminants, or hazardous or toxic substances, materials, or wastes, whether solid, liquid, or gaseous in nature; and (ii) All requirements pertaining to the protection of the health and safety of employees, tenants, or the public.

Notwithstanding anything to the contrary in this Lease, Landlord represents and warrants to Tenant that as of the date of this Lease, to Landlord's actual knowledge (without any independent investigation or inquiry) and subject to that certain Soils Report (Geotechnics Inc. dated 10/14/99); Soil Report (Comments Response letter, Pad B – Geotechnics dated 6/4/01); Environmental Report (L.D. Romine & Assoc. dated 9/24/99); and Environmental Letter (Pad B – Tetra Tech EM, Inc. dated 6/21/01), copies of which have been delivered to Tenant, the Shopping Center is free from any Hazardous Materials in levels violative of Environmental Laws.

5.2.3 Signs; Merchandising and Advertising. Subject to any required governmental approvals, approvals required under the Master Lease and Landlord's approval (which shall not be unreasonably withheld), Tenant shall be permitted certain Building identification signage with respect to the Premises which shall be designed and installed, at Tenant's sole cost and expense. Tenant shall submit to Landlord plans and specifications with respect to such Building signage concurrently with Tenant's submittal to Landlord of the Preliminary Plans described in the Work Letter. All such signage shall be furnished, maintained, and removed at the expiration of the Lease Term (with all damage caused by such removal to be repaired by Tenant), at Tenant's sole cost and expense. Tenant's right to the signage described above is personal to Tenant and may not be assigned or transferred to, or utilized by, any other person or entity, except an assignee of Tenant permitted or approved under Article 14 below.

Except as expressly permitted by this Section 5.2.3 and except for any other signage reasonably approved by Landlord, Tenant may not install any signs on the Premises (including the roof of the Premises), in the Common Areas or elsewhere in the Shopping Center or Development. Tenant may install interior window or door signs or advertising media or window or door lettering or placards only if they are professionally prepared and in compliance with the Master Lease and all applicable laws. Tenant shall not use any advertising media on the Building or elsewhere on the Premises that Landlord shall reasonably deem objectionable to it or to other tenants or occupants of the Shopping Center or Development, such as, without limiting the generality of the foregoing, loud speakers, phonographs, televisions, public address systems, sound amplifiers, radios, broadcasts or telecasts within the Shopping Center or Development, or permit in the Premises any entertainment or other activities in a manner seen or heard outside of the Premises or disturbing to tenants or other occupants of the Shopping Center or Development.

5.3 Opening for Business Covenant; Recapture Right

(a) Subject to Force Majeure (as defined in Section 29.13 below), Tenant covenants and agrees that Tenant shall open for business for at least one business day to the public fully fixtured and stocked under the initial Trade Name required under Section 8.2 of the Summary no later than the date which is two hundred ten (210) days after the Lease Commencement Date. Tenant shall not be required to continuously operate and shall not be required under any circumstance to operate on a twenty-four hours a day, seven days a week basis.

(b) Tenant shall have its exterior signs and exterior advertising displays adequately illuminated continually during Tenant's hours of operation.

(c) In the event Tenant fails to operate its business for the Permitted Use from the Premises for more than one hundred twenty (120) consecutive days, except while the Premises are untenable by reason of Force Majeure, or during temporary closures for remodeling or alterations (not to exceed ninety (90) days), Landlord shall have the right (but not the obligation) to terminate this Lease ("**Landlord's Termination Option**") and, in connection therewith, acquire all Improvements on the Premises, for the "Recapture Price" (as hereinafter defined). As used herein, the "**Recapture Price**" shall equal the then unamortized "hard costs" of the Building (amortized on a straight line basis over the initial 15-year Lease Term). Notwithstanding the foregoing, in no event shall the Recapture Price include any value attributable to Tenant's furniture, equipment and trade fixtures. Thirty (30) days prior to Landlord exercising Landlord's Termination Option, Landlord must provide written notice to Tenant of Landlord's intention to terminate the Lease ("**Recapture Notice**").

(d) Additionally, Landlord shall not be permitted to terminate the Lease pursuant to this Section 5.3 in the event the Recapture Notice is not delivered to Tenant prior to the time Tenant reopens for business, fully fixtured for the Permitted Use; provided, however, Landlord will not be deemed to have waived Landlord's rights to recapture the Premises with respect to any subsequent failure by Tenant to operate its business for the Permitted Use over the required duration of time.

(e) If Landlord elects to terminate this Lease (such election is called the "**Closing Election**"), then on the first business day (the "**Closing Date**") which is thirty (30) days after the Closing Election, Tenant shall deliver to Landlord, contemporaneously upon Landlord's payment of the Recapture Price to Tenant, (a) a quit claim deed to the Building and all other Improvements on the Premises being acquired by Landlord, duly executed and acknowledged by Tenant, dated as of the Closing Date, in form reasonably satisfactory to Landlord, (b) an agreement terminating this Lease as of the Closing Date, duly executed by Tenant and Landlord, in form reasonably satisfactory to Landlord, and (c) such other documents and instruments as Landlord may reasonably require. If this Lease is terminated pursuant to this Section 5.3 above, neither Landlord nor Tenant shall have any further liability or obligation to the other under this Lease except for obligations which this Lease expressly provides survive such termination.

5.4 Radius Restriction

Tenant covenants and warrants that it will not, during the Lease Term, directly or indirectly, operate or own the specific type of restaurant business substantially similar to the type of business actually being operated by Tenant hereunder, at the time of determination, within the "**Radius Restriction Boundary Area**" depicted on Exhibit A-9 attached hereto. This covenant shall be specifically enforceable by mandatory or prohibitory injunction by Landlord or the Master Landlord. If, during the Lease Term, Tenant or any parent, subsidiary or other affiliate of Tenant, violates the first sentence of this Section 5.4, then Landlord (in addition to Landlord's other rights and remedies available at law or in equity) shall, and continuing while Tenant is operating said other business, have the right to include the Gross Sales of such other business in the Gross Sales made from the Premises for the purpose of computing the Percentage Rent due hereunder. Tenant will provide Landlord with a statement of Tenant's

Gross Sales, in accordance with the provisions of Section 3.2.2 for each such business location operated by Tenant within said Radius Restriction Boundary Area.

5.5 Food Service Restrictions

Subject to compliance with all Applicable Laws and Tenant's Permitted Use of the Premises, Tenant shall be entitled to prepare food items within the Premises, utilizing existing kitchen equipment and ventilation systems or such other equipment and systems which are reasonably approved by Landlord (or otherwise installed by Tenant) in accordance with the provisions of the Work Letter. In any event, Tenant shall use all reasonable efforts to minimize obnoxious odors and noises in the Premises and to preclude any such odors and noises from being emitted therefrom, and all odors and fumes from the Premises shall only be emitted through such ventilation systems for the Premises approved by Landlord and all applicable governmental agencies.

5.6 Exclusive Use

To the extent allowed by Law, Landlord shall not cause or permit occupancy or operation in the Development (other than the Premises) which permits such space to be used by a Direct Competitor of Tenant. As used herein, "Direct Competitor" shall mean any Applebee's, TGI Friday's, Bennigan's and/or Red Robin restaurant, excluding the premises of any future "Anchor Tenant(s)". As used herein, "Anchor Tenant" shall mean a tenant or occupant of the Development whose premises contains a floor area in excess of 30,000 square feet. Notwithstanding the foregoing, Landlord and Tenant agree that the foregoing restriction shall only encumber the portions of the Development owned or controlled by Landlord (i.e. Arena Group 2000 and its successors and assigns) pursuant to Landlord's existing Sports Arena operating agreement with respect to the balance of the Development, but shall always, subject to the limitations contained in this Section 5.6, encumber the entire Shopping Center. For purposes of illustration only, at such time as Landlord or its affiliate no longer operate the balance of the Development, pursuant to Landlord's separate operating agreements with Master Landlord, such restriction shall no longer be effective with respect to such portions of the Development no longer controlled by Landlord or its affiliate pursuant to such operating agreement(s). The foregoing restriction shall automatically become null and void if (i) Tenant commits any material event of default under this Lease which is not cured with any applicable notice and cure period; or (ii) the Premises cease to be used as a typical Chili's Grill & Bar Restaurant for more than thirty (30) consecutive days (for reasons other than Force Majeure, casualty, remodeling or alterations). Tenant hereby agrees to indemnify, defend and hold Landlord harmless from and against all losses, costs, damages or expenses, including attorneys' fees, arising out of any claim or action that Landlord's agreement pursuant to the above exclusive constitutes a restraint of trade or gives rise to alleged violations of federal or state anti-trust laws or similar laws.

5.7 Prohibited Uses

Notwithstanding anything to the contrary contained in this Lease herein, in no event, except as provided below, shall Landlord or Tenant permit or cause any of the following uses be permitted in the Shopping Center:

5.7.1 any central or commercial laundry or dry cleaning plant, coin-operated laundry or laundromat; provided, however, this prohibition shall not be applicable to on-site service-oriented dry cleaners and launderers with pickup and delivery by the ultimate consumer, including nominal supporting facilities, as the same may be found in Comparable Centers;

5.7.2 any use which emits an offensive or obnoxious odor, fume, dust, vapor, noise or sound which can be heard or smelled outside of any Building in the Shopping Center or creates a fire, explosion or other hazard (including without limitation, the display or sale of explosives or fireworks), or constitutes a public or private nuisance, or any use which creates a noise or sound that is objectionable due to intermittence, beat, frequency, shrillness or loudness;

5.7.3 any excessive quantity of dust, dirt, or ash; provided, however, this prohibition shall not preclude the sale of soils, fertilizers, or other garden materials or building materials in containers if incident to the operation of a home improvement or general merchandise store;

5.7.4 any fire, explosion or other damaging or dangerous hazard, including the storage, display or sale of explosives or fireworks;

5.7.5 any manufacturing, distillation, refining, smelting, agriculture or mining operations;

5.7.6 any mobile home park, trailer court, labor camp, junk yard, stock yard or animal raising (except that this provision shall not restrict pet shops within the Shopping Center);

5.7.7 any drilling for and/or removal of subsurface substances;

5.7.8 any dumping, disposing, incinerating or reducing of garbage or refuse, other than in enclosed receptacles intended for such purpose located in areas not generally accessible to the public and at the rear of any building;

5.7.9 any cemetery, funeral parlor, mortuary or similar service establishment;

5.7.10 any veterinary hospital or animal raising facility (except that this prohibition shall not restrict pet stores); provided, however, the foregoing shall not prohibit the provision of veterinarian services as part of a retail pet store or pet supply operation;

5.7.11 any catering hall;

5.7.12 any fire sale, flea market or second-hand store, bankruptcy sale (unless pursuant to a court order) or auction operation; provided, however, the foregoing shall not prohibit retailers who may sell second hand items so long as such operation is customarily found in Comparable Centers (such as, but not limited to, Play It Again Sports);

5.7.13 any indecent or pornographic uses, massage parlor, a book store which is exclusively or primarily operated as an adult book store, peep show store, head shop store or any other similar store or club; and any business devoted to sale of articles or merchandise normally used or associated with illegal or unlawful activities, including, without limitation, the sale of paraphernalia used in connection with marijuana, cocaine or other controlled drugs or substances;

5.7.14 any skating rink, bowling alley, off-track betting facility, casino, card club, bingo parlor, gun range, or facility containing gaming equipment; provided, however, the foregoing is not intended to nor shall be deemed to prohibit the sale from any portion of the Shopping Center of any lottery tickets or similar legally permitted games of chance;

5.7.15 except as incidental to the use of a restaurant, any discotheque, bar, dance hall, pool hall or business primarily selling liquor; provided, however, such liquor restriction shall not be applicable to any convenience store located in the Shopping Center;

5.7.16 any automobile, truck, trailer, or recreational vehicle sales, leasing or display which is not entirely conducted inside of a Building, except Landlord may display or allow any other occupants to display vehicles within any Common Area, so long as such displays do not unreasonably interfere with the operations of other occupants or the use and operation of the Common Area;

5.7.17 any use which involves the sale, use or storage of Hazardous Materials or Hazardous Substances except to the extent customarily found in Comparable Centers and only to the extent such uses are in compliance with all Environmental Laws;

5.7.18 any church, synagogue, mosque or other place of worship; or

5.7.19 any apartment, home or other residential use.

Notwithstanding the provisions of this Section 5.7 (and Section 5.5), Landlord and Tenant acknowledge that restaurants operated on the Pad Parcels may emit food odors associated with the preparation of food items prepared therein and that such odors shall not constitute an offensive or obnoxious odor under this Section 5.7.

Notwithstanding the foregoing, the restrictions set forth in Section 5.7.14, 5.7.15 and 5.7.16 shall only be applicable with respect to the Pad Parcels. Further notwithstanding the provisions of this Section 5.7, Tenant acknowledges that gasoline dispensing facilities may be operated on the other Pad Parcels or other portions of the Shopping Center and that such operation will involve the use and sale of gasoline, oil and other petroleum derivatives and materials commonly associated with the operation of such gasoline dispensing facilities.

5.8 Building Height Limitations

No building or other structure (excluding any light poles) on the Pad Parcels shall exceed the lesser of (i) the maximum height permitted by Law or (ii) twenty eight feet (28'), which height shall be measured perpendicular from the finished floor elevation to the top of the roof structure, including any screening, parapet, architectural tower or entry elements, penthouse, mechanical equipment or similar appurtenance located on the roof of any such building. Notwithstanding the foregoing, in no event shall the height of Tenant's building (including any parapet and other architectural features) exceed twenty seven feet (27') from the finished pad for the Premises.

ARTICLE 6

SERVICES AND UTILITIES

6.1 Cleaning and Maintenance

During the Term, Tenant shall, at its own expense, keep the entire Premises, and all Improvements thereon (including the Common Areas located on the Premises but excluding the Access Driveways which Landlord shall maintain in accordance with the terms of this Lease), Tenant's drive-thru area, all signage on or with respect to the Premises, all sidewalks and walkways adjacent thereto and any loading docks and trash areas used by Tenant or serving the Premises, in a neat and clean condition, including, but not limited to, removal of debris and garbage from the Premises and such loading docks, cleaning of the exterior portions of the Premises and all windows, window frames and doors of the Premises. Tenant shall separately contract at its sole cost and expense for janitorial services with a reputable janitorial contractor in accordance with the maintenance standards set forth in this Lease.

6.2 Utilities

From and after the date of this Lease and subject to Landlord's obligations under Exhibit E, Tenant shall provide in the Premises at its own expense, heat, ventilation, air conditioning, water, gas, electricity, steam and other utilities. All such utilities shall be separately metered at Tenant's sole cost and expense and Tenant shall make payment directly to the entities providing such utilities and services.

6.3 Interruption of Utilities

Tenant agrees that Landlord shall not be liable for damages, by abatement of Rent or otherwise, for failure, delay, diminution or interruption of any utilities or services for any reason other than Landlord's gross negligence or intentional misconduct and such failure, delay, diminution or interruption shall not be deemed to constitute an eviction or disturbance of Tenant's use and possession of the Premises or relieve Tenant from paying Rent or performing any of its obligations under this Lease; provided, however, Landlord shall use commercially reasonable efforts to restore and maintain all such utilities and services to the extent same are located outside of the Premises and are under Landlord's control, subject to reimbursement by Tenant of Tenant's Share of the cost thereof as an Access Driveway Operation Expense. Notwithstanding anything to the contrary contained herein, Landlord shall endeavor to give Tenant at least twenty four (24) hours prior written notice of any likely interruption of utilities of which Landlord is made aware. Notwithstanding anything to the contrary contained herein, in the event that (a) the ability to operate at the Premises is materially impaired as the result of any utility interruption caused by Landlord or any of Landlord's agents, employees, suppliers or contractors damaging any of Tenant's utilities lines, and (b) if Tenant is required to close the Premises during business hours, or Tenant's ability to operate at the Premises is materially impaired for a period of more than forty eight (48) consecutive hours, or the Premises is rendered wholly or partially untenable, each as a result of such utility interruption, then Tenant shall be entitled to a proportionate abatement of Base Rent during such period as the Premises (or any material portion thereof) is closed as a result of such utility interruption.

6.4 After Hours Lighting

To the extent not previously performed as part of Landlord's Work, Tenant, at Tenant's sole cost and expense, shall cause the exterior lighting located on the Premises to be separately metered to Tenant's Building. Tenant will cause such exterior lighting on its Premises to remain on, at a minimum, during the normal hours of operation of the Shopping Center and at least at a security lighting level during other hours of darkness. In the event Tenant no longer operates a business from the Premises, Tenant will cause sufficient lighting on its Premises to remain on during hours of darkness so that the Access Driveways located adjacent to the Premises are adequately lit.

ARTICLE 7

REPAIRS

7.1 Tenant's Repairs. Tenant shall, at its sole cost and expense, reasonably maintain the entire Premises (including, but not limited to, the Building and all Common Areas and other Improvements now or hereafter located thereon), in good order and condition, at reasonable intervals as needed including: (i) repainting the Improvements (interior and exterior), and cleaning window coverings and carpets and other floor coverings; (ii) making any and all reasonably necessary repairs and replacements to the entire Premises (including all improvements thereon), structural and nonstructural, ordinary and nonordinary; and (iii) keeping the Premises in such condition as to comply with the requirements of any governmental or quasi-governmental authority having jurisdiction.

7.2 Landlord's Repairs. Notwithstanding anything to the contrary in this Article, Landlord shall repair and maintain or cause to be repaired and maintained in good order, condition and repair the Common Areas of the Shopping Center (including, but not limited to, the Access Driveways except for the Common Areas located on the Premises which shall be maintained by Tenant as provided above). Landlord shall also repair and maintain in good order, condition and repair, all utility lines and facilities that serve the Shopping Center and Premises to the extent located within the Common Areas and the cost thereof shall be an Access Driveway Operating Expense except to the extent such utility lines and facilities exclusively serve the Premises, in which event Tenant shall reimburse Landlord, as Additional Rent, for the cost of such repairs and maintenance within thirty (30) days after being billed for the same, unless such repairs are performed by the responsible utility company in which event Tenant shall pay such utility company directly for the cost of such repairs. As more particularly provided above, Landlord shall repair and maintain, or cause to be repaired or maintained, the Access Driveways and the costs incurred in connection therewith shall be Access Driveway Operating Expenses for which Tenant shall reimburse Landlord for Tenant's Share pursuant to Article 4 of this Lease. Except as otherwise provided herein, Tenant waives and releases its right to make repairs at Landlord's expense under Sections 1941 and 1942 of the California Civil Code or under any similar law, statute or ordinance now or hereafter in effect. Except as otherwise specifically provided in this Article 7, Landlord shall have no obligation to make any repairs, alterations or improvements to the Premises.

ARTICLE 8

ADDITIONS AND ALTERATIONS

8.1 Alterations

Tenant may not make any improvements, alterations, additions or changes (collectively, the "Alterations") to the Improvements without first procuring the prior written consent of Landlord to such Alterations, which consent shall be requested by Tenant not less than sixty (60) days prior to the commencement thereof, and which consent shall not be unreasonably withheld, conditioned or delayed by Landlord; provided, however, that Tenant may, at Tenant's sole cost and expense and upon ten (10) days prior notice to Landlord (but without requiring Landlord's consent), make Alterations to the Improvements which: (i) do not materially affect the exterior of the Improvements; (ii) do not materially affect any part of the Shopping Center outside of the Improvements; and (iii) do not adversely affect the proper functioning of any of the mechanical, electrical, sanitary or other service systems or installations of the Shopping Center; provided, however, notwithstanding anything to the contrary in the foregoing, Tenant shall be permitted to make any legally permitted Alterations without requiring Landlord's consent (but with notice), so long as Tenant's Alterations (i) do not materially diminish the overall value of the Improvements and are otherwise aesthetically compatible with the balance of the Shopping Center and (ii) will not result in a breach of the Master Lease or a violation of any REA approved by Tenant as provided above. The initial construction of the Improvements shall be governed by the terms of the Work Letter and not the terms of this Article 8.

8.2 Manner of Construction

Tenant shall construct such Alterations and perform such repairs in conformance with any and all applicable federal, state, county or municipal laws, rules and regulations and pursuant to, if required, a valid building permit, issued by the City of San Diego, all in conformance with any reasonable construction rules and regulations Landlord may reasonably impose. All work with respect to any Alterations must be done in a good and workmanlike manner and diligently prosecuted to completion to the end that the Premises shall at all times be a complete unit except during the period of work. In performing the work of any such Alterations, Tenant shall use its diligent efforts to have the work performed in such manner so as to minimize any obstruction to access to the Shopping Center or any portion thereof, by any other tenant of the Shopping Center, and so as not to obstruct the business of Landlord or other tenants in the Shopping Center, or interfere with the labor force working in the Shopping Center. In addition to Tenant's obligations under Article 9 of this Lease, upon completion of

any material Alterations for which Landlord's consent is required, Tenant agrees to cause a Notice of Completion to be recorded in the office of the Recorder of the County of San Diego in accordance with Section 3093 of the Civil Code of the State of California or any successor statute, and Tenant shall deliver to the Shopping Center management office a reproducible copy of the "red-lined," marked plans and drawings of the Alterations.

8.3 Construction Insurance

In addition to the requirements of Article 10 of this Lease, in the event that Tenant makes any material Alterations in excess of \$50,000, prior to the commencement of such Alterations, if Tenant shall use a contractor to make such material Alterations, (i) Tenant shall provide Landlord with evidence that Tenant or Tenant's contractor carries "Builder's Special Form" insurance in an amount equal to the cost of construction of such material Alterations, and such other insurance as Landlord or Landlord's lender may reasonably require, it being understood and agreed that all of such Alterations shall be insured by Tenant pursuant to Article 10 of this Lease immediately upon completion thereof and (ii) to the extent required under the Master Lease, Tenant will obtain a lien and completion bond in an amount sufficient to ensure the lien free completion of such Alterations and otherwise in compliance with the Master Lease.

8.4 Landlord's Property

Subject to Section 15.2 below, all Alterations shall be at the sole cost of Tenant and shall, at the expiration or earlier termination of this Lease, be left behind without any obligation to remove and become the property of Landlord, unless Tenant removes such Alterations prior to the expiration of the Lease Term in which case Tenant shall repair any damage to the Premises caused by such removal. If Tenant fails to repair any damage caused by the removal of any Alterations, Landlord may do so and may charge the cost thereof to Tenant. Tenant hereby indemnifies and holds Landlord harmless from any liability, cost, obligation, expense or claim of lien in any manner relating to the installation, placement, removal or financing of any Alterations, improvements, fixtures and/or equipment in, on or about the Premises.

ARTICLE 9

COVENANT AGAINST LIENS

Except as set forth in Section 14.5 of this Lease, Tenant has no authority or power to cause or permit any lien or encumbrance of any kind whatsoever, whether created by act of Tenant, operation of law or otherwise, to attach to or be placed upon the Shopping Center or Premises, and any and all liens and encumbrances created by Tenant shall attach to Tenant's interest only. Landlord shall have the right at all times to post and keep posted on the Premises any notice which it deems necessary for protection from such liens. Tenant covenants and agrees not to suffer or permit any lien of mechanics or materialmen or others to be placed against the Shopping Center or the Premises, or any portion thereof, with respect to work or services claimed to have been performed for or materials claimed to have been furnished to Tenant or the Premises, and, in case of any such lien attaching or notice of any lien, Tenant covenants and agrees to cause it to be immediately released and removed of record or bond against such lien in a manner reasonably acceptable to Landlord. In the event that such lien is not released and removed or bonded against in a manner reasonably acceptable to Landlord on or before the date occurring fifteen (15) days after notice of such lien is delivered by Landlord to Tenant, Landlord, at its sole option, may immediately take all action reasonably necessary to release and remove such lien, without any duty to investigate the validity thereof, and all sums, costs and expenses, including reasonable attorneys' fees and costs, incurred by Landlord in connection with such lien shall be deemed Additional Rent under this Lease and shall immediately be due and payable by Tenant.

ARTICLE 10

INSURANCE

10.1 Indemnification

Except for the negligence or willful misconduct of the other party hereto, each party shall indemnify, protect, defend and hold harmless the other and the other's agents, beneficiaries, employees, and lenders, if any, from and against any and all claims, loss of rents and/or damages, costs, liens, judgments, penalties, attorney's and consultant's fees, expenses and liabilities (collectively, "Claims") arising out of, involving, or dealing with respectively, the operation of the Shopping Center by Landlord or the occupancy of the Premises by Tenant, the making of any improvements or alterations by either party, the conduct of Landlord or its other lessees, or the conduct of Tenant's business, any act, omission, or neglect of either party, its agents, contractors, employees or invitees, and out of any default or breach by either party in the performance of any obligation on their part to be performed under this Lease. The foregoing shall include, but not be limited to, the defense or pursuit of any claim or action or proceeding

involved therein, and whether or not litigated and/or reduced to judgment, and whether well-founded or not. The parties agreement to this cross-indemnity is not intended and shall not relieve any insurance carrier of its obligation under policies required to be carried by either party pursuant to provisions of this Lease. The provisions of this Section 10.1 shall survive the expiration or sooner termination of this Lease with respect to any Claims occurring prior to such expiration or termination.

10.2 Tenant's Insurance

Tenant shall maintain the following coverages in the following amounts.

10.2.1 Commercial General Liability Insurance covering the insured against claims of bodily injury, personal injury and property damage arising out of Tenant's operations, assumed liabilities or use of the Premises, including a Broad Form Commercial General Liability endorsement covering the insuring provisions of this Lease and the performance by Tenant of the indemnity agreements set forth in Section 10.1 of this Lease, for limits of liability not less than:

Bodily Injury and Property Damage Liability	\$3,000,000 each occurrence \$3,000,000 annual aggregate
Personal Injury Liability	\$3,000,000 each occurrence \$3,000,000 annual aggregate

10.2.2 Physical Damage Insurance covering the Premises, including, but not limited to, (i) the Building and all other Improvements and all Common Areas located on the Premises and (ii) all furniture, trade fixtures, air conditioning, heating and ventilation equipment and systems, equipment, merchandise, inventory and all other similar items located within the Premises. Such insurance shall be written on a "Special Form" of physical loss or damage basis, for the full replacement cost value new without deduction for depreciation of the covered items, with deductibles reasonably acceptable to Landlord and in amounts that meet any co-insurance clauses of the policies of insurance and shall include a vandalism and malicious mischief endorsement, and sprinkler leakage coverage.

10.2.3 Worker's Compensation insurance in compliance with all applicable laws and Employer's Liability Insurance in the amount of at least \$100,000 or such greater amount as may be required by law.

10.2.4 Loss of income and extra expense insurance in such amounts as will reimburse Tenant for direct or indirect loss of earnings attributable to all perils commonly insured against by prudent retail tenants or attributable to prevention of access to the Premises or Shopping Center as a result of such perils. Notwithstanding the foregoing, Tenant may self-insure this risk, in which event such self-insurance shall be deemed to include a full waiver of subrogation, and Tenant hereby waives any right it may have against Landlord with respect to any damage or loss which would otherwise have been covered by the insurance coverage described in this Section 10.2.

10.2.5 Insurance covering the full replacement costs of all plate glass located at the Premises. Tenant may self-insure this risk, in which event such self-insurance shall be deemed to include a full waiver of subrogation, and Tenant hereby waives any right it may have against Landlord with respect to any damage or loss which would otherwise have been covered by the insurance coverage described in this Section 10.2.

10.2.6 Liquor liability insurance coverage in limits not less than the limits for the insurance carried pursuant to Section 10.2.1 above.

10.3 Landlord's Insurance

As part of Access Driveway Operating Expenses, Landlord shall carry such insurance with respect to the Shopping Center, of the types and amounts reasonably deemed to be appropriate based on practices of prudent owners of Comparable Centers; provided, however, Landlord shall carry Commercial General Liability Insurance in a coverage amount at least equal to the minimum coverage required by Tenant with a Policyholders Rating of not less than A- and a Financial Rating of Class VIII, or better, in Best's Key Rating Guide, in a total amount of not less than the full replacement cost value new without deduction for depreciation of the Access Driveways. Tenant shall be named as an additional insured under such liability policy. Tenant acknowledges that the insurance permitted to be carried by Landlord as part of Access Driveway Operating Expenses may include rental interruption insurance. Subject to Tenant's right to use the Premises for the Permitted Use, Tenant shall neither use the Premises nor permit the Premises to be used or acts to be done therein which will (i) materially increase the premium of any insurance carried by Landlord with respect to the Shopping Center; (ii) cause a cancellation of or be in conflict with any such insurance policies; (iii) result in a refusal by insurance companies of good standing to insure the Shopping Center in amounts reasonably satisfactory to

Landlord; or (iv) unreasonably subject Landlord to any liability or responsibility for injury to any person or property by reason of any operation being conducted in the Premises. Tenant shall, at Tenant's expense, comply as to the Premises with all normal, reasonable and customary insurance company requirements pertaining to the use of the Premises. If Tenant's conduct or use of the Premises causes any increase in the premium for such insurance policies then Tenant shall reimburse Landlord for any such increase. Tenant, at Tenant's expense, shall comply with all normal, reasonable and customary rules, orders, regulations or requirements of the American Insurance Association (formerly the National Board of Fire Underwriters) and with any similar body.

10.4 Form of Policies

The minimum limits of policies of insurance required of Tenant under this Lease shall in no event limit the liability of Tenant under this Lease. Such insurance shall (i) name Landlord, Landlord's lender(s) (to the extent Landlord has provided such lenders' information to Tenant in writing) and the Master Landlord as additional insureds thereunder; (ii) specifically cover the liability assumed by Tenant under this Lease, including, but not limited to, Tenant's obligations under Section 10.1 of this Lease; (iii) be issued by an insurance company having a policyholder's rating of not less than "A-" and a financial rating of Class VIII or better as reflected in the most recent addition of Best's Insurance Guide or which is otherwise acceptable to Landlord and licensed to do business in the State of California; (iv) be primary insurance as to all claims thereunder (pertaining to Tenant's actions causing liability) and provide that any insurance carried by Landlord is not excess and is non-contributing with any insurance requirement of Tenant (pertaining to Tenant's actions causing liability); (v) provide that said insurance shall not be canceled or coverage changed unless thirty (30) days' prior written notice shall have been given to Landlord, Master Landlord and any mortgagee of Landlord or Master Landlord; and (vi) contain a cross-liability endorsement or severability of interest clause acceptable to Landlord. Tenant shall deliver said certificates thereof to Landlord on or before the date Tenant takes possession of the Premises, and at least thirty (30) days before the expiration dates thereof. Subject to Tenant's rights under Section 10.7 below, in the event Tenant shall fail to procure such insurance, or to deliver such certificates, Landlord may, at its option, after thirty (30) days written notice to Tenant, procure such policies for the account of Tenant, and the cost thereof (and a reasonable administrative fee) shall be paid to Landlord within thirty (30) days after delivery to Tenant of bills therefor. Landlord and Tenant's obligations to carry the insurance required under this Article 10 may be satisfied by inclusion of the Premises within the coverage of a so-called "blanket" or umbrella policy or policies of insurance, provided that the coverage afforded Landlord or Tenant (as the case may be) will not be diminished by reason thereof and that the requirements set forth in this Article 10 are otherwise satisfied.

10.5 Subrogation

Landlord and Tenant agree to have their respective insurance companies issuing property damage insurance waive any rights of subrogation that such companies may have against Landlord or Tenant, as the case may be. Landlord and Tenant hereby waive any right that either may have against the other on account of any loss or damage to their respective property to the extent such loss or damage is required to be insured against hereunder or is otherwise insured under policies of insurance for fire and all risk coverage, theft, or other similar insurance.

10.6 Additional Insurance Obligations.

Subject to Tenant's rights under Section 10.7 below, Tenant shall carry and maintain during the entire Lease Term, at Tenant's sole cost and expense, increased amounts of the insurance required to be carried by Tenant pursuant to this Article 10, and such other commercially reasonable types of insurance coverage and in such commercially reasonable amounts covering the Premises and Tenant's operations therein, as may be reasonably requested by Master Landlord, Landlord or Landlord's lender(s), but in no event shall (i) such increased amounts of insurance or such other types of insurance be in excess of that required by reasonably prudent landlords of Comparable Centers and (ii) such coverage include earthquake and flood coverage unless such coverage is required by Landlord's lender or Master Landlord and customarily carried by similarly situated restaurant tenants in Comparable Centers.

10.7 Self-Insurance.

So long as permitted under the Master Lease, the Master Lease NDA (as defined in Article 18 below), or any other documents or agreements executed with Master Landlord, Tenant may satisfy the insurance requirements referred to in this Article 10 in whole or in part, through a plan of self-insurance maintained by Tenant from time to time, provided Tenant or Guarantor (i) shall have and maintain a tangible net worth of at least One Hundred Million Dollars (\$100,000,000), (ii) upon Landlord's request, shall furnish to Landlord reasonable evidence of such tangible net worth, (iii) shall agree to assume all duties, obligations and responsibilities of an insurance company with respect to any claim made under such self-insurance program, (iv) to the extent otherwise required under this Lease, shall indemnify, defend, protect and hold harmless Landlord and any other person that Tenant and

Guarantor may be required hereunder to name as an additional insured against and from any and all losses or liabilities as to which Section 10.4 otherwise requires Tenant to carry insurance; and (v) in addition to the waivers stated in Section 10.1, Tenant hereby waives any rights it may have against Landlord and Landlord's employees, agents and contractors on account of any loss or damage occasioned to Tenant or its property or the Premises or the contents thereof arising from any damage to person or property as to which Tenant self-insures (except to the extent caused by the acts or omissions of Landlord or its agents, employees, contractors or suppliers). The term "tangible net worth" as used herein, shall be defined in accordance with generally accepted accounting principles.

ARTICLE 11

DAMAGE AND DESTRUCTION

11.1 Repairs and Restoration

Tenant shall promptly notify Landlord of any damage to the Premises resulting from fire or any other casualty. In the event of the damage or destruction of the Premises which is covered by a casualty covered by any insurance maintained, or required to be maintained, by Tenant, Tenant shall forthwith proceed to repair, restore, replace or rebuild all Improvements located on the Premises, including, but not limited to, the Building and all Common Areas located thereon, to substantially the same condition in which the same were immediately prior to such damage or destruction. Tenant shall also be responsible for the amount of any deductible under such insurance policies. Tenant shall diligently prosecute said work to completion without delay or interruption, except for events beyond the reasonable control of Tenant. In connection with such repairs, Tenant shall, prior to the commencement of construction, submit to Landlord, for Landlord's review and approval, all plans, specifications and working drawings relating thereto. Such submittal of plans for construction of improvements shall be performed in substantial compliance with the terms of Article 8 hereof. Notwithstanding the foregoing or anything in this Article 11 to the contrary, Landlord and Tenant agree that, as between Landlord and Tenant (but subject to Section 6.3 of the Master Lease and Landlord's rights under Section 5.3 above), Tenant shall have no obligation to rebuild the Premises in the event of a fire or other casualty, however, in no event shall Tenant's obligations to pay Base Rent and all Additional Rent hereunder be abated or otherwise affected as a result of any fire or other casualty, except as otherwise provided in Section 11.2 below.

11.2 Destruction During Last Three Years of Lease Term

Notwithstanding the foregoing, if such damage or destruction (i) shall occur within the last three (3) years of the Lease Term (as may be extended pursuant to Section 2.2 above), and (ii) shall amount to ten percent (10%) or more of the replacement cost of the Building (exclusive of foundations and footings), this Lease may be terminated at the election of Tenant, provided that written notice of such election is delivered to Landlord within ninety (90) days after the occurrence of such damage or destruction. Upon termination as aforesaid, Tenant shall, if required by Landlord, demolish the remaining Improvements and remove all debris from the Premises and this Lease and the Term thereof shall cease and come to an end, any unearned Rent or other charges paid in advance by Tenant shall be refunded to Tenant, Tenant shall pay all Rent properly apportioned up to such date of termination, and the parties shall be released hereunder, and each to the other, from all liability and obligations thereafter arising.

11.3 Waiver of Statutory Provisions

The provisions of this Lease, including this Article 11, constitute an express agreement between Landlord and Tenant with respect to any and all damage to, or destruction of, all or any part of the Premises or the Shopping Center, and any statute or regulation of the State of California, including, without limitation, Sections 1932(2) and 1933(4) of the California Civil Code, with respect to any rights or obligations concerning damage or destruction in the absence of an express agreement between the parties, and any other statute or regulation, now or hereafter in effect, shall have no application to this Lease or any damage or destruction to all or any part of the Premises or the Shopping Center.

ARTICLE 12

NONWAIVER

No waiver of any provision of this Lease shall be implied by any failure of Landlord or Tenant to enforce any remedy on account of the violation of such provision, even if such violation shall continue or be repeated subsequently, any waiver by Landlord or Tenant of any provision of this Lease may only be in writing. Additionally, no express waiver shall affect any provision other than the one specified in such waiver and then only for the time and in the manner specifically stated. No receipt of monies by Landlord from Tenant after the termination of this Lease shall in any way alter the length of the Lease Term or of Tenant's right of possession hereunder, or after the giving of any notice shall reinstate, continue or extend

the Lease Term or affect any notice given Tenant prior to the receipt of such monies, it being agreed that after the service of notice or the commencement of a suit, or after final judgment for possession of the Premises, Landlord may receive and collect any Rent due, and the payment of said Rent shall not waive or affect said notice, suit or judgment.

ARTICLE 13

CONDEMNATION

13.1 Permanent Taking

If all or a material portion of the Improvements, Premises, Access Driveways, or other portions of the Shopping Center essential for Tenant's operation and use permitted hereby (collectively, "**Tenant's Rights**") are taken by power of eminent domain or condemned by any competent authority ("**Condemnor**") for any public or quasi-public use or purpose (including, but not limited to, by means of Master Landlord's early termination right contained in the Master Lease), or if access to the Premises is permanently and substantially impaired as a result of such taking, such that Tenant's business operations on the Premises are substantially interfered with, Tenant shall have the option to terminate this Lease upon thirty (30) days' notice to Landlord, provided such notice is given no later than ninety (90) days after the date of such taking. All Rent shall be apportioned as of the date of such termination, or the date of such taking, whichever shall first occur. If any part of Tenant's Rights shall be taken, and this Lease shall not be so terminated, the Base Rent shall be equitably adjusted. Tenant hereby waives any and all rights it might otherwise have pursuant to Section 1265.130 of The California Code of Civil Procedure.

13.2 Temporary Taking

Notwithstanding anything to the contrary contained in this Article 13, in the event of a temporary taking of all or any portion of the Premises for a period of one hundred twenty (120) days or less, then Tenant shall not have the right to terminate this Lease and Rent shall not be abated but Tenant shall be entitled to seek and retain any award payable for such temporary taking.

13.3 Allocation of Award

13.3.1 In the event of any condemnation or taking of the Premises, such award with respect to the Premises shall be allocated between the Landlord and Tenant in the following order of priority:

(i) First, to Landlord an amount equal to the fair market value of the Premises, excluding the leasehold Improvements constructed thereon ("**Tenant's Improvements**"), and valued as if the land was not encumbered by this Lease.

(ii) Second, to Tenant an amount equal to (a) the fair market value of Tenant's Improvements taken by the Condemnor, provided, such amount shall not exceed the then unamortized "hard costs" of the building, amortized on a straight line basis over the initial 15-year Lease Term, excluding any value attributable to Tenant's furniture, equipment and trade fixtures (but only to the extent payable under the Master Lease); provided, however, in the event such condemnation or taking occurs during the first ten (10) years of the Lease Term, Tenant shall be entitled to receive the entire award paid by Condemnor for the fair market value of Tenant's Improvements, (b) any and all allowable relocation costs or loss, including loss of business and costs associated with moving Tenant's merchandise, furniture, movable fixtures, leasehold improvements and equipment to a new location (subject to the limitations contained in Section 13.3.2 below) and (c) any loss of goodwill (subject to the limitations contained in Section 13.3.2 below).

(iii) Third, the balance of the award shall be split equally (*i.e.*, 50% to each party) between Landlord and Tenant.

13.3.2 Notwithstanding anything to the contrary in this Article 13, Landlord and Tenant acknowledge and agree that after the earlier to occur of (i) the date which is twenty one (21) years after commencement of the term of the Master Lease or (ii) the date which is twenty (20) years after the commencement date for the third Pad Parcel sublease, if Condemnor properly exercises its condemnation rights or Master Landlord terminates the Master Lease pursuant to its early termination right contained in the Master Lease, then Tenant shall not be entitled to any amounts for "good will" or Tenant's relocation costs arising out of the Condemnor's condemnation or taking of the Premises.

13.4 Bay-to Bay Link

Tenant acknowledges that the long term master planning of the overall Development currently reflects an approximately 200 foot wide potential easement for the City of San Diego's

proposed "Bay-to-Bay" link. The time for implementation of such easement is unknown at this time. In the event such Bay-to-Bay link is constructed on the Development and Landlord is unable to maintain sufficient parking to accommodate Tenant's parking requirements pursuant to the terms of this Lease and parking guidelines established by the City of San Diego, a taking shall be deemed to have occurred. Except for any award which may be payable to Tenant pursuant to Section 13.3 above, Tenant hereby waives any claim against the Landlord or Master Landlord for damages, including, but not limited to, lost profits or loss of leasehold value. Notwithstanding anything to the contrary in this Section, if the Bay-to-Bay link is implemented in a way as to adversely and materially affect Tenant's use of, access and visibility to and from, the Premises or adversely affects Tenant's parking, then Tenant shall, in addition to any other rights provided to Tenant under this Lease, have the right to terminate this Lease upon thirty (30) days written notice to Landlord.

ARTICLE 14

ASSIGNMENT AND SUBLETTING

14.1 Transfers

Subject to Section 14.5 herein, Tenant shall not, without the prior written consent of Landlord, assign or otherwise transfer this Lease or any interest hereunder, permit any assignment, or other transfer of this Lease or any interest hereunder by operation of law, sublet the Premises or any part thereof, or permit the use of the Premises by any persons other than Tenant and its employees (all of the foregoing are hereinafter sometimes referred to collectively as "**Transfers**" and any person to whom any Transfer is made or sought to be made is hereinafter sometimes referred to as a "**Transferee**"). If Tenant desires Landlord's consent to any Transfer, Tenant shall notify Landlord in writing, which notice (the "**Transfer Notice**") shall include (i) the proposed effective date of the Transfer, which shall not be less than fifteen (15) days before nor more than one hundred twenty (120) days after the date of delivery of the Transfer Notice, (ii) a description of the portion of the Premises to be transferred (the "**Subject Space**"), (iii) all of the material terms of the proposed Transfer, and (iv) current financial statements of the proposed Transferee prepared by an officer, partner or owner thereof, and any other information reasonably required by Landlord to determine the financial responsibility, character and business experience of the proposed Transferee, nature of such Transferee's business and proposed use of the Subject Space, and such other information as Landlord may reasonably require. Any Transfer made without Landlord's prior written consent shall, at Landlord's option, be null, void and of no effect, and shall, at Landlord's option, constitute a default by Tenant under Section 19.1 of this Lease.

14.2 Landlord's Consent

Landlord shall not unreasonably withhold, condition, or delay its consent to any proposed Transfer of the Subject Space to the Transferee on the terms specified in the Transfer Notice. Without limitation as to other reasonable grounds for withholding consent, the parties hereby agree that it shall be reasonable under this Lease and under any applicable law for Landlord to withhold consent to any proposed Transfer where one or more of the following apply:

14.2.1 The Transferee's contemplated use of the Subject Space following the Transfer is not consistent with the Permitted Use (subject to Tenant's right to request that Landlord reasonably approve a change in Tenant's Permitted Use in accordance with Section 5.1 above);

14.2.2 The Transferee lacks sufficient business experience to operate a successful business from the Premises;

14.2.3 The Transferee has both: (a) a financial worth which is not of a reasonable financial worth and/or financial stability in light of the responsibilities under this Lease, and (b) a financial worth which is less than Tenant's financial worth at the time of this Lease or on the date consent is requested, whichever is less;

14.2.4 The proposed Transferee's proposed use (if other than the Permitted Use) would cause a violation of another lease for space in the Shopping Center or Development, or would give an occupant of the Shopping Center or Development a right to cancel its lease or bring an action against Landlord; or

14.2.5 The proposed Transfer or proposed Transferee is not permitted by the Master Lease or approved by Master Landlord to the extent such approval is required thereunder.

If Landlord consents to any Transfer pursuant to the terms of this Section 14.2, Tenant may within 120 days after Landlord's consent, but not later than the expiration of said period, enter into such Transfer of the Premises or portion thereof, upon substantially the same terms and conditions as are set forth in the Transfer Notice furnished by Tenant to Landlord pursuant to Section 14.1 of this Lease.

14.3 Effect of Transfer

If Landlord consents to a Transfer, (i) the terms and conditions of this Lease shall in no way be deemed to have been waived or modified, (ii) such consent shall not be deemed consent to any further Transfer by either Tenant or a Transferee, and (iii) Tenant shall deliver to Landlord, promptly after execution, a copy of the assignment or sublease or similar transfer document. Further no Transfer relating to this Lease or agreement entered into with respect thereto, whether with or without Landlord's consent (including a Transfer to a Permitted Transferee, as defined below), shall relieve Tenant, or any Guarantor of this Lease, from liability under this Lease. Notwithstanding the foregoing sentence or anything else to the contrary in this Lease, in the event Transferee and/or its Affiliate, provided such Affiliate agrees to execute and deliver to Landlord a guaranty of lease substantially similar to the Guaranty of Lease attached hereto as Exhibit I ("**Affiliate Guarantor**") has (i) a minimum tangible net worth equal to at least Fifty Million Dollars (\$50,000,000.00) and (ii) a total of twenty-five (25) stores and/or restaurants, Tenant shall be relieved from liability under this Lease arising from and after such Transfer, provided Transferee (and/or its Affiliate Guarantor, as the case may be) executes and delivers to Landlord an instrument in form and content satisfactory to Landlord and executed by Tenant and such Transferee (and/or its Affiliate Guarantor, as the case may be).

14.4 Additional Transfers; Permitted Transfers

For purposes of this Lease, the term "**Transfer**" shall also include (i) if Tenant is a partnership or limited liability company, the withdrawal or change, voluntary, involuntary or by operation of law, of fifty percent (50%) or more of the general partners or members (as the case may be), or the dissolution of the partnership or limited liability company without immediate reconstitution thereof, and (ii) if Tenant is a closely held corporation (i.e., whose stock is not publicly held and not traded through an exchange or over the counter), (A) the dissolution, merger, consolidation or other reorganization of Tenant, (B) the sale or other transfer of more than an aggregate of fifty percent (50%) of the voting shares of Tenant (other than to immediate family members by reason of gift or death) within a twelve (12)-month period or (c) subject to the terms of Section 14.5, the sale, mortgage, hypothecation or pledge of more than an aggregate of fifty percent (50%) of the value of the unencumbered assets of Tenant within a twelve (12)-month period. Notwithstanding the foregoing sentence or anything else in this Lease to the contrary, Tenant shall have the right without Landlord's consent (but upon thirty (30) days prior notice) to enter into a Transfer to any entity controlling, controlled by or under common control with Tenant or to any entity succeeding to substantially all of the assets of Tenant as a result of a consolidation or merger, or to any entity to which all or substantially all of the assets of Tenant have been sold ("**Permitted Transferee**"), provided that (i) within fifteen (15) days after the effective date of any such transfer, the assignee or sublessee executes and delivers to Landlord an instrument in form and content reasonably satisfactory to Landlord and executed by Tenant and such assignee, sublessee, or transferee, as the case may be.

14.5 Leasehold Mortgages

14.5.1 Delivery of Mortgage. Landlord hereby consents to the execution, delivery, performance and recordation of a mortgage or deed of trust, assignment of rents and leases, security agreement and fixture filing (collectively, the "**Leasehold Mortgage**"), in favor of a bank, insurance company, recognized leasehold financing company or other institutional lender (a "**Leasehold Mortgagee**") including encumbering among other things, Tenant's Improvements and Tenant's interest in the Lease, and Landlord agrees that the execution, delivery, performance and recordation, as applicable, of the Leasehold Mortgage (including UCC-1 Financing Statements) will not constitute a breach of or default under this Lease. Landlord represents that, with the exception of the Master Landlord and any mortgagee of Landlord, no other consents are required by Landlord with respect to Tenant's execution and delivery of the Leasehold Mortgage. The provisions of this Subsection 14.5.1 apply only from and after the date Tenant notifies Landlord of a Leasehold Mortgage granted by Tenant and the address of the Leasehold Mortgagee for notice purposes. Tenant hereby agrees to reimburse Landlord for all reasonable costs and expenses (including, but not limited to, attorneys' fees), not to exceed two thousand dollars (\$2,000), reasonably incurred by Landlord in connection with Landlord's review, approval and documentation of any Leasehold Mortgage and any amendments thereto or assignments thereof.

14.5.2 Subordination of Landlord. Landlord hereby subordinates to the lien of the Leasehold Mortgage (including UCC-1 Financing Statements), any lien of Landlord in the leasehold improvements and personalty of Tenant (but not the land) provided for in this Lease and any statutory or processory liens, including, without limitation, rights of levy or distraint for rent, Landlord may have or assert under this Lease against any of the assets of the Tenant under this Lease. Landlord hereby consents to any Leasehold Mortgagee entering the Premises for the purpose of exercising its rights and remedies under the Leasehold Mortgage including, without limitation, removing equipment, trade fixtures and other personal property from the Premises; provided, however such Leasehold Mortgagee shall repair any

damage resulting from such removal as soon as reasonably possible thereafter (and in no event later than thirty (30) days after the expiration or earlier termination of this Lease).

14.5.3 Obligations of Leasehold. Except where the Leasehold Mortgagee has become the Tenant hereunder or taken possession of the Premises and Improvements pursuant to the Leasehold Mortgage, no liability for the payment of rent or performance of any Tenant's covenants and agreements hereunder shall attach to or be imposed upon Leasehold Mortgagee (other than any obligations expressly assumed by Leasehold Mortgagee), all such liability being hereby expressly waived by Landlord; provided, however, that this Subsection 14.5.3 shall not limit or restrict Landlord's remedies against Tenant.

14.5.4 Notice Requirements. In the event Landlord sends any notice to Tenant (each a "Notice"), including, without limitation, a notice of default or notice of termination due to default, Landlord will send a contemporaneous, duplicate copy of such notice to the Leasehold Mortgagee at the address of the Leasehold Mortgagee specified by Tenant pursuant to Subsection 14.5.1.

Landlord will accept the Leasehold Mortgagee's cure of any default by Tenant tendered within any applicable cure period under this Lease (provided, however, with respect to each default under the Lease which can be cured by the payment of money, either to Landlord or to third-parties, in accordance with the terms and conditions of this Lease (each a "**Monetary Default**")), the Leasehold Mortgagee shall have at least (i) ten (10) days from the date of the Leasehold Mortgagee's receipt of a Notice of such Monetary Default, or (ii) the same amount of days that Tenant has under this Lease to cure such Monetary Default, whichever is greater, to cure such Monetary Default. With respect to defaults under this Lease other than Monetary Defaults (each a "**Nonmonetary Default**") that the Leasehold Mortgagee is reasonably incapable of curing due to the nature of the Nonmonetary Default or pending the Leasehold Mortgagee's foreclosure under the Leasehold Mortgage, Landlord's right to terminate this Lease (including, but not limited to, Landlord's right to recapture the Premises pursuant to Section 5.3 above) as a consequence thereof (but not any other remedy of Landlord) shall be postponed for so long as the Leasehold Mortgagee (i) notifies Landlord within the cure period specified herein for such Nonmonetary Default of its intention either to cure the default or foreclose the Leasehold Mortgage, and (ii) the Leasehold Mortgagee diligently and continuously seeks to effect the cure and/or to foreclose the Leasehold Mortgage and seeks a replacement tenant to cure such default, and (iii) shall pay or cause Tenant to pay all Rent and other amounts becoming due hereunder on a timely basis. No action taken by Landlord to terminate this Lease shall be effective unless Landlord shall send to Tenant and the Leasehold Mortgagee a Notice of such intended action and the greater of the applicable cure periods set forth in this Lease for such default to be cured and the applicable minimum cure period described in this Section for the Leasehold Mortgagee to cure such default shall have passed without the applicable Monetary Default and/or Nonmonetary Default being cured. No Nonmonetary Default under this Lease which the Leasehold Mortgagee is reasonably capable of curing shall be grounds for termination of this Lease as against the Leasehold Mortgagee unless Landlord shall send to the Leasehold Mortgagee a Notice with respect to such Nonmonetary Default and Leasehold Mortgagee has not, in good faith, taken steps, within the time permitted under this Lease, to cure the same or to prosecute to completion with reasonable diligence and continuity within the applicable cure periods specified in this Lease.

14.5.5 New Lease. In the event this Lease shall be terminated for any reason other than the Leasehold Mortgagee's failure to perform its obligations under this Lease after the foreclosure of a Leasehold Mortgage, including, without limitation, a termination as a result of a bankruptcy by Tenant, then upon the request by the Leasehold Mortgagee made within thirty (30) days following such termination, Landlord shall promptly enter into a new lease for the Premises with the Leasehold Mortgagee or its assignee which new lease (i) shall be effective as of the date of the termination of this Lease, (ii) shall be for a term expiring as of the last day of the term of this Lease (including any option periods) in effect at the time of Landlord's termination, and (iii) except as otherwise set forth herein, shall be on the same terms and conditions as this Lease (including any provisions for renewal or extension of the term of this Lease); provided the Leasehold Mortgagee or such assignee, as the case may be, shall be required, as a condition to the effectiveness of such new lease, to cure all Monetary Defaults under the Lease, if any.

14.5.6 Power of Attorney. Landlord acknowledges that the Leasehold Mortgage may contain a power of attorney for Tenant in favor of the Leasehold Mortgagee pursuant to which the Leasehold Mortgagee shall have the right to exercise certain of Tenant's rights as Tenant under the Lease, either: (i) upon the occurrence of an "Event of Default" (as defined in the Leasehold Mortgage); or (ii) with respect to the exercise of renewal options. Tenant agrees to recognize such power of attorney and to accept performance by the Leasehold Mortgagee or its assignee of Tenant's rights as Tenant under this Lease pursuant to such power of attorney; provided, however, this Subsection shall not limit any other provisions of this Lease, and provided further, the Leasehold Mortgagee or its assignee shall not be deemed to have assumed Tenant's obligations as Tenant under this Lease by virtue of the Leasehold Mortgagee or its assignee exercising its rights under such power of attorney unless and until the

Leasehold Mortgagee or its assignee has completed a foreclosure of the Leasehold Mortgage or accepted an assignment of the Lease in lieu of foreclosure as contemplated below.

14.5.7 Assignment by Leasehold Mortgagee. The Leasehold Mortgagee shall have the right to assign its right, title and interest in the Leasehold Mortgage to any third party which is not affiliated with Tenant (or otherwise prohibited under the Master Lease) without Landlord's consent but with notice to Landlord and, in the event of such assignment, such assignee shall accept this Lease subject to the terms and conditions hereof. Until the Leasehold Mortgagee or its assignee has completed a foreclosure of the Leasehold Mortgage or accepted an assignment of this Lease in lieu of foreclosure or otherwise taken possession of the Premises, neither the Leasehold Mortgagee nor its assigns shall be deemed by virtue of this Section to have assumed any of Tenant's obligations under this Lease and Tenant shall be responsible for all obligations under this Lease. After any such foreclosure or acceptance of an assignment of lease in lieu of foreclosure, the Leasehold Mortgagee or its assignee, as the case may be, shall be deemed by virtue of such conveyance to have assumed all of the Tenant's obligations accruing under this Lease from and after the date of such conveyance. The Leasehold Mortgagee shall have the right to assign its right, title and interest in this Lease or any new lease to any third party which is not affiliated with Tenant (without Landlord's consent) so long as the assignee delivers to Landlord a written assumption agreement signed by the assignee wherein the assignee assumes the obligations of the Tenant under this Lease or the new lease from and after the date of such assignment. Upon any such assumption of the Tenant's obligations under this Lease or the new lease by an assignee of the Leasehold Mortgagee, the Leasehold Mortgagee shall be automatically released of all of its obligations thereafter arising under this Lease or the new lease, if any.

14.5.8 Statement from Landlord. Within twenty (20) days after a request by the Leasehold Mortgagee, Landlord shall provide the Leasehold Mortgagee with a signed statement made to the best of Landlord's knowledge without independent inquiry, indicating whether or not to Landlord's actual knowledge, without investigation or inquiry, any defaults exist under this Lease and such other factual matters concerning the Premises and this Lease as the Leasehold Mortgagee may reasonably request. Upon twenty (20) days request from Tenant or the Leasehold Mortgagee, Landlord shall execute a commercially reasonable estoppel certificate consistent with the terms of this Section 14.5 whereby Landlord consents to the hypothecation of Tenant's interests herein and the recordation of a leasehold mortgage; recognizes the Leasehold Mortgagee's right to foreclose and become Tenant of the Premises, with all of the rights of Tenant in and to this Lease; agrees to provide the Leasehold Mortgagee a copy of all default notices and demands served on Tenant, and agrees to grant the Leasehold Mortgagee a thirty (30) day cure period (or longer, if Tenant's cure period is longer under the Lease or if a reasonable cure would take longer than thirty (30) days); agrees to permit the Leasehold Mortgagee to take possession of the Premises, subject to the terms of this Lease or issue a new Lease as set forth in this Article 14, or to assign the leasehold to a third party, and to be relieved thereafter of any obligations hereunder; and such other matters as are customarily included in an Estoppel Certificate.

14.5.9 Leasehold Amendments. No amendment to this Lease or agreement between Landlord and Tenant subordinating Tenant's interest in the Lease, reducing the term of this Lease, or canceling, surrendering or otherwise modifying any material economic provisions of this Lease shall be effective without the prior written consent of the Leasehold Mortgagee which consent shall not be unreasonably withheld or delayed. Landlord will not consent to any assignment, subletting or additional encumbrances of this Lease by Tenant without the prior written approval of the Leasehold Mortgagee, if Landlord is otherwise entitled to withhold its consent thereto.

14.5.10 Interpretation. If any provisions of this Lease are in conflict with any of the provisions of this Section 14.5, the provisions of this Section 14.5 shall control as between Landlord and the Leasehold Mortgagee, but not between Landlord and Tenant.

ARTICLE 15

SURRENDER OF PREMISES; OWNERSHIP AND REMOVAL OF TRADE FIXTURES

15.1 Surrender of Premises

No act or thing done by Landlord or any agent or employee of Landlord during the Lease Term shall be deemed to constitute an acceptance by Landlord of a surrender of the Premises unless such intent is specifically acknowledged in a writing signed by Landlord. The delivery of keys to the Premises to Landlord or any agent or employee of Landlord shall not constitute a surrender of the Premises or effect a termination of this Lease, whether or not the keys are thereafter retained by Landlord, and notwithstanding such delivery Tenant shall be entitled to the return of such keys at any reasonable time upon request until this Lease shall have been properly terminated. The voluntary or other surrender of this Lease by Tenant, whether accepted by Landlord or not, or a mutual termination hereof, shall not work

a merger, and at the option of Landlord shall operate as an assignment to Landlord of all subleases or subtenancies affecting the Premises.

15.2 Removal of Tenant Property by Tenant

Upon the expiration of the Lease Term, or upon any earlier termination of this Lease, Tenant shall, subject to the provisions of this Article 15, quit and surrender possession of the Premises to Landlord in good order and condition, reasonable wear and tear, obsolescence and casualty excepted. Upon such expiration or termination, Tenant shall, without expense to Landlord, remove or cause to be removed from the Premises all debris and rubbish, and such items of furniture, equipment, furnishings, signs, trade fixtures, and other personal property owned by Tenant or installed or placed by Tenant at its expense in the Premises, and Tenant shall repair at its own expense all damage to the Premises resulting from such removal. Notwithstanding the foregoing, Tenant acknowledges that Master Landlord has certain rights under the Master Lease to require that the Improvements be removed at the end of the Lease Term. In the event Master Landlord makes such election then, notwithstanding anything to the contrary contained herein, Tenant will cause its Improvements to be removed in compliance with the terms of the Master Lease and Landlord and Tenant will equally share the reasonable cost of such removal.

15.3 Landlord's Lien Waiver

Landlord, within twenty (20) days after request from Tenant, shall execute and deliver any document reasonably required by any supplier, lessor, or lender in connection with the granting, creating, or perfecting by Tenant of a security interest in and to Tenant's movable personal property (including, but, not limited to, Tenant's food, inventory, supplies, merchandise, fixtures, machinery and equipment but specifically excluding any such personal property paid for by Landlord) and any proceeds therefrom, pursuant to which Landlord shall subordinate any rights it may have or acquire with respect to said personal property of Tenant, and any proceeds therefrom, if the supplier, lessor, or lender agrees in writing that: (i) it will remove that property from the Premises on or before the expiration of the Lease Term and (ii) it will, at its sole cost and expense, make whatever restoration to the Premises that is necessitated by such removal. Landlord hereby waives any and all lien rights it may have in Tenant's personal property, regardless whether such lien rights arise by statute or otherwise.

ARTICLE 16

HOLDING OVER

If Tenant holds over after the expiration of the Lease Term hereof, with or without the express or implied consent of Landlord, such tenancy shall be from month-to-month only, and shall not constitute a renewal hereof or an extension for any further term, and in such case Base Rent shall be payable at a monthly rate equal to one hundred fifty percent (150%) of the Base Rent applicable during the last rental period of the Lease Term under this Lease. Such month-to-month tenancy shall be subject to every other applicable term, covenant and agreement contained herein. Nothing contained in this Article 16 shall be construed as consent by Landlord to any holding over by Tenant, and Landlord expressly reserves the right to require Tenant to surrender possession of the Premises to Landlord as provided in this Lease upon the expiration or other termination of this Lease. The provisions of this Article 16 shall not be deemed to limit or constitute a waiver of any other rights or remedies of Landlord provided herein or at law. If Tenant fails to surrender the Premises upon the termination or expiration of this Lease, in addition to any other liabilities to Landlord accruing therefrom, Tenant shall protect, defend, indemnify and hold Landlord harmless from all loss, costs (including reasonable attorneys' fees) and liability resulting from such failure.

ARTICLE 17

ESTOPPEL CERTIFICATES

Within fifteen (15) days following a request in writing by Landlord, Tenant shall execute and deliver to Landlord an estoppel certificate, which, as submitted by Landlord, shall be substantially in the form of Exhibit D-1, attached hereto (or such other form as may be reasonably required by any prospective mortgagee or purchaser of the Shopping Center, or any portion thereof), indicating therein any exceptions thereto that may exist at that time, and shall also contain any other information reasonably requested by Landlord, Landlord's mortgagee or prospective mortgagee or Master Landlord. Landlord shall deliver to Tenant an estoppel certificate in accordance with the terms of Section 14.5.8 of this Lease.

ARTICLE 18

SUBORDINATION

This Lease shall be subject and subordinate to all present and future ground or underlying leases (including the Master Lease) of the Premises or the Shopping Center and to the lien of any mortgage or trust deed, now or hereafter in force against the Premises or the Shopping Center, if any, and to all renewals, extensions, modifications, consolidations and replacements thereof, and to all advances made or hereafter to be made upon the security of such mortgages or trust deeds, unless the holders of such mortgages or trust deeds, or the lessors under such ground lease or underlying leases, require in writing that this Lease be superior thereto. Notwithstanding the foregoing, the subordination of this Lease to ground or underlying leases and present and future mortgages or trust deeds shall be conditioned upon delivery to Tenant of an SNDA (as defined below). Tenant covenants and agrees in the event any proceedings are brought for the foreclosure of any such mortgage or deed in lieu thereof or in the event the Master Lease is terminated, to attorn to any ground lessor or purchaser or any successors thereto upon any such foreclosure sale or deed in lieu thereof if so requested to do so by such purchaser or ground lessor, and to recognize such purchaser as the lessor under this Lease; provided that such purchaser or ground lessor shall recognize this Lease and that Tenant's right to possession of the Premises under this Lease shall not be disturbed so long as Tenant performs all of the duties and obligations of Tenant hereunder. Tenant waives the provisions of any current or future statute, rule or law, which may give or purport to give Landlord or Tenant any right or election to terminate or otherwise adversely affect this Lease and the obligations of Tenant hereunder in the event of any foreclosure proceeding or sale. Tenant acknowledges that Master Landlord and any mortgagee, deed of trust, trustee or beneficiary shall have the right to subordinate at any time its interest in this Lease and leasehold estate to that of Tenant, without Tenant's consent. Tenant shall, within ten (10) business days after written request is received, execute and deliver such documents as Master Landlord or any mortgagee may reasonably deem necessary to evidence or confirm the subordination or superiority of this Lease to any such mortgages, trust deeds, ground leases or underlying leases, subject to Tenant's obtaining from such Master Landlord or mortgagee or beneficiary a commercially reasonable non-disturbance agreement in recordable form executed by such mortgagee or beneficiary providing that, as long as Tenant is not in default hereunder, this Lease shall remain in effect for the full Lease Term (an "SNDA"). Notwithstanding the foregoing, so long as the Master Lease is in existence, the SNDA to be entered into with Master Landlord shall be substantially in the form attached hereto as Exhibit G-1 ("Master Lease NDA"); provided further, that the SNDA to be entered into for the benefit of Tenant and U.S. Bank ("U.S. Bank"), Landlord's existing lender with respect to the Development, shall be substantially in the form attached hereto as Exhibit G-2.

ARTICLE 19

DEFAULTS; REMEDIES

19.1 Events of Default by Tenant

The occurrence of any of the following shall constitute a default of this Lease by Tenant:

19.1.1 Any failure by Tenant to pay any Rent or any other charge required to be paid under this Lease, or any part thereof, within five (5) days after written notice from Landlord to Tenant that such payment is due; or

19.1.2 A Transfer in violation of Article 14 hereof; or

19.1.3 Any failure by Tenant to observe or perform any other provision, covenant or condition of this Lease to be observed or performed by Tenant where such failure continues for thirty (30) days after written notice thereof from Landlord to Tenant; provided however, if the nature of such default is such that the same cannot reasonably be cured within a thirty (30) day period, Tenant shall not be deemed to be in default if it diligently commences such cure within such period and thereafter diligently proceeds to rectify and cure said default as soon as possible; or

19.1.4 To the extent permitted by law, a general assignment by Tenant or any guarantor of the Lease for the benefit of creditors, or the filing by or against Tenant or any guarantor of any proceeding under an insolvency or bankruptcy law, unless in the case of a proceeding filed against Tenant or any guarantor the same is dismissed within ninety (90) days, or the appointment of a trustee or receiver to take possession of all or substantially all of the assets of Tenant or any guarantor, unless possession is restored to Tenant or such guarantor within ninety (90) days, or any execution or other judicially authorized seizure of all or substantially all of Tenant's assets located upon the Premises or of Tenant's interest in this Lease, unless such seizure is discharged within ninety (90) days; or

The notices provided for in this Section 19.1 shall be in lieu of, and not in addition to, any notice required under California Code of Civil Procedure Section 1161 or any similar or successor law.

19.2 Landlord's Remedies Upon Default by Tenant

Upon the occurrence of any event of default by Tenant, Landlord shall have, in addition to any other remedies available to Landlord at law or in equity, the option to pursue any one or more of the following remedies, each and all of which shall be cumulative and nonexclusive, without any notice or demand whatsoever.

19.2.1 Terminate this Lease, in which event Tenant shall immediately surrender the Premises to Landlord, and if Tenant fails to do so, Landlord may, without prejudice to any other remedy which it may have for possession or arrearages in rent, enter upon and take possession of the Premises and expel or remove Tenant and any other person who may be occupying the Premises or any part thereof, without being liable for prosecution or any claim or damages therefor; and Landlord may recover from Tenant the following:

(i) The worth at the time of award of any unpaid rent which has been earned at the time of such termination; plus

(ii) 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; plus

(iii) The worth at the time of award of the amount by which the unpaid rent for the balance of the Lease Term after the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus

(iv) Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom; and

(v) At Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable law.

The term "rent" as used in this Section 19.2 shall be deemed to be and to mean all sums of every nature required to be paid by Tenant pursuant to the terms of this Lease, whether to Landlord or to others. As used in Paragraphs 19.2.1(i) and (ii), above, the "worth at the time of award" shall be computed by allowing interest at the Interest Rate set forth in Article 25 of this Lease. As used in Paragraph 19.2.1(iii) above, the "**worth at the time of award**" 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%).

19.2.2 Landlord shall have the remedy described in California Civil Code Section 1951.4 (lessor may continue lease in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has the right to sublet or assign, subject only to reasonable limitations). Accordingly, if Landlord does not elect to terminate this Lease on account of any default by Tenant, Landlord may, from time to time, without terminating this Lease, enforce all of its rights and remedies under this Lease, including the right to recover all Rent as it becomes due.

19.3 Sublessees of Tenant

If Landlord elects to terminate this Lease on account of any default by Tenant as set forth in this Article 19, Landlord shall have the right to terminate any and all subleases, licenses, concessions or other consensual arrangements for possession entered into by Tenant and affecting the Premises or may, in Landlord's sole discretion, succeed to Tenant's interest in such subleases, licenses, concessions or arrangements. In the event of Landlord's election to succeed to Tenant's interest in any such subleases, licenses, concessions or arrangements, Tenant shall, as of the date of notice by Landlord of such election, have no further right to or interest in the rent or other consideration receivable thereunder and, from and after Landlord's election, Tenant shall have no further liability therefrom arising under such sublease, license, concession or arrangement.

19.4 Efforts to Relet

For the purposes of this Article 19, Tenant's right to possession shall not be deemed to have been terminated by efforts of Landlord to relet the Premises, by its acts of maintenance or preservation with respect to the Premises, or by appointment of a receiver to protect Landlord's interests

hereunder. The foregoing enumeration is not exhaustive, but merely illustrative of acts which may be performed by Landlord without terminating Tenant's right to possession.

19.5 Landlord Default

Landlord shall not be in default hereunder unless Landlord fails to perform the obligations required of Landlord within a reasonable time, but in no event later than thirty (30) days after notice by Tenant to Landlord and to the holder of any first mortgage or deed of trust covering the Premises, whose name and address shall have theretofore been furnished to Tenant, specifying wherein Landlord has failed to perform such obligation; provided, however, that if the nature of Landlord's obligation is such that it would be unreasonable to wait until thirty (30) days to satisfy such obligation, then Landlord shall be in default if Landlord fails to perform such obligation within the required reasonable time; provided further however, if more than thirty (30) days are required for performance, then Landlord shall not be in default if Landlord commences performance within such 30-day period and thereafter diligently prosecutes the same to completion. Notwithstanding the foregoing, if Tenant provides notice to Landlord of the need for repairs and/or maintenance or any other obligations which are Landlord's obligations under the Lease and Landlord fails to commence to undertake such action as required by the terms of this Lease within said thirty (30) day period, then Tenant may proceed to take the required action upon delivery of an additional five (5) day notice to Landlord specifying that Tenant is taking such required action upon Landlord's failure to do so within the specified five day period, and if such action was required under the terms of this Lease to be taken by Landlord, then Landlord shall reimburse Tenant for all of Tenant's reasonable costs and expenses in taking such action. Except as expressly stated in the Lease, nothing herein contained shall be interpreted to mean that Tenant is excused from paying Rent due hereunder as a result of any default by Landlord. Additionally, in the event of a default by Landlord, Tenant shall not be entitled to recover damages for lost profits caused by such default nor terminate this Lease, unless the Landlord default involves an intentional breach by Landlord of Section 5.6 or the applicable provisions of Section 1.1.5 with respect to the Tenant's Control Area, which breach is not cured within the applicable cure period set forth above. Landlord hereby covenants and agrees to abide by its obligations as ground lessee under the Master Lease so as not to commit a default thereunder; provided, however, the foregoing covenant shall be limited only to matters within Landlord's reasonable control and a default under the Master Lease triggered by a party other than Landlord shall not constitute a violation of the foregoing covenant.

ARTICLE 20

COVENANT OF QUIET ENJOYMENT

Landlord covenants that Tenant shall, during the Lease Term, peaceably and quietly have, hold and enjoy the Premises subject to the terms, covenants, conditions, provisions and agreements hereof without interference by any persons lawfully claiming by or through Landlord.

ARTICLE 21

ATTORNEYS' FEES

If either party commences litigation against the other for the specific performance of this Lease, for damages for the breach hereof or otherwise for enforcement of any remedy hereunder, the prevailing party shall be entitled to recover from the other party such reasonable attorneys' and other consultants' fees and costs as may have been incurred, including costs of any appeal.

ARTICLE 22

NOTICES

All notices, demands, statements, designations, approvals or other communications (collectively, "Notices") given or required to be given by either party to the other hereunder shall be in writing, shall be sent by United States certified or registered mail, postage prepaid, return receipt requested, or delivered personally (including by means of any reputable overnight courier service) to Landlord and Tenant at the appropriate address set forth in Section 10 of the Summary, or to such other place as Landlord or Tenant may from time to time designate in a Notice to the other party. Any Notice will be deemed given on the date it is mailed as provided in this Article 22 or upon the date personal delivery is made. If Tenant is notified of the identity and address of the holder of any deed of trust or ground or underlying lessor (including Master Landlord), Tenant shall give to such mortgagee or ground or underlying lessor written notice of any default by Landlord under the terms of this Lease by registered or certified mail, and such mortgagee or ground or underlying lessor shall be given a reasonable opportunity to cure such default prior to Tenant's exercising any remedy available to Tenant; provided, however, in no event shall the time period permitted to cure such default exceed thirty (30) days unless the nature of such default is such that the same cannot reasonably be cured within a thirty (30) day period in which event such period shall be

extended so long as such mortgagee or ground or underlying lessor diligently proceeds to rectify and cure such default as soon as possible.

ARTICLE 23

DEVELOPMENT OF THE SHOPPING CENTER AND DEVELOPMENT

Subject to the terms and conditions hereof (including, but not limited to, Sections 1.1.4 and 1.1.5 above), Landlord reserves the right to subdivide and/or redevelop all or a portion of the Shopping Center and/or Development. Subject to the Tenant's rights and the limitations set forth in this Lease, Tenant agrees to execute and deliver, upon demand by Landlord and in the form requested by Landlord, any additional documents reasonably necessary to conform this Lease to the circumstances resulting from a subdivision and any and all maps in connection therewith. Nothing contained herein shall be deemed or construed to limit or otherwise affect Landlord's right to transfer all or any portion of the Shopping Center and/or Development or any other of Landlord's rights described in this Lease. Tenant acknowledges that portions of the Shopping Center and/or Development may be under construction following Tenant's occupancy of the Premises, and that such construction may result in levels of noise, dust, obstruction of access, etc. which are in excess of that present in a fully constructed Shopping Center. Tenant hereby waives any and all Rent offsets or claims of constructive eviction which may arise in connection with such construction provided, however, Landlord shall use Landlord's commercially reasonable efforts to minimize disruption to Tenant's business caused by any such construction activities to the maximum extent reasonably possible.

ARTICLE 24

BROKERS

Landlord and Tenant hereby warrant to each other that, except for the brokers listed in Section 11 of the Summary (to which brokers Landlord shall pay a commission at Landlord's sole cost and expense pursuant to a separate agreement), they have had no dealings with any real estate broker or agent in connection with the negotiation of this Lease, and that they know of no other real estate broker or agent who is entitled to a commission in connection with this Lease. Each party agrees to indemnify and defend the other party against and hold the other party harmless from any and all claims, demands, losses, liabilities, lawsuits, judgments, and costs and expenses (including without limitation reasonable attorneys' fees) with respect to any other leasing commission or equivalent compensation alleged to be owing on account of any dealings with any real estate broker or agent, occurring by, through, or under the indemnifying party.

ARTICLE 25

LATE PAYMENTS

Tenant hereby acknowledges that late payment by Tenant to Landlord of Rent (including Percentage Rent, if applicable) or other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which is extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Landlord by the terms of any mortgage or deed of trust covering the Premises. Accordingly, if any installment of Rent or any other sum due from Tenant shall not be received by Landlord or Landlord's designee within five (5) days after due, then Tenant shall pay to Landlord a late charge equal to three percent (3%) of the overdue amount. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs that Landlord will incur by reason of the late payment of Rent by Tenant. Acceptance of such late charge by Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder. The late charge shall be deemed Additional Rent and the right to require it shall be in addition to all of Landlord's other rights and remedies hereunder or at law and shall not be construed as liquidated damages or as limiting Landlord's remedies in any manner. In addition to the late charge described above, any Rent or other amounts owing hereunder which are not paid within five (5) days after due shall bear interest ("**Interest Rate**") from the date when due until paid at a rate per annum equal to the lesser of (i) five percent (5%) per annum in excess of the then prime rate charged by Bank of America (or its successor) or (ii) the highest rate permitted by applicable law. Notwithstanding the foregoing to the contrary, for the first time in any calendar year that Tenant has failed to pay any installment of Rent, the foregoing late charge shall not apply unless Tenant has failed to make such payment within five (5) days after receipt of Landlord's written notice of such delinquency. Landlord shall not be required to give Tenant such notice more than one (1) time in any calendar year prior to assessing such late charge.

ARTICLE 26

LANDLORD'S RIGHT TO CURE DEFAULT

26.1 Landlord's Cure

If Tenant shall fail to perform any of its obligations under this Lease, within a reasonable time after such performance is required by the terms of this Lease, Landlord may, but shall not be obligated to, after fifteen (15) business days prior written notice to Tenant (except in the case of an emergency), make any such payment or perform any such act on Tenant's part without waiving its rights based upon any default of Tenant and without releasing Tenant from any obligations hereunder.

26.2 Tenant's Reimbursement

Except as may be specifically provided to the contrary in this Lease, Tenant shall pay to Landlord, within fifteen (15) days after delivery by Landlord to Tenant of statements therefor: (i) sums equal to expenditures reasonably made and obligations incurred by Landlord in connection with the remedying by Landlord of Tenant's defaults pursuant to the provisions of Section 26.1; (ii) sums equal to all losses, costs, liabilities, damages and expenses referred to in Article 10 of this Lease and (iii) sums equal to all expenditures made and obligations incurred by Landlord in collecting or attempting to collect the Rent or in enforcing or attempting to enforce any rights of Landlord under this Lease or pursuant to law following any event of default by Tenant for which any applicable notice and cure period has expired, including, without limitation, all reasonable legal fees and other reasonable amounts so expended. Tenant's obligations under this Section 26.2 shall survive the expiration or sooner termination of the Lease Term.

ARTICLE 27

ENTRY BY LANDLORD

Landlord reserves the right at all reasonable times and upon not less than 48 hours prior written notice to Tenant (except in the case of an emergency, if notice is not practicable under the circumstances) to enter the Premises to (i) inspect them; (ii) show the Premises to prospective purchasers, mortgagees or to the ground or underlying lessors; (iii) show the Premises to prospective tenants during the last nine (9) months of the Lease Term; (iv) post notices of nonresponsibility; (v) perform services required of Landlord; or (vi) perform any covenants of Tenant which Tenant fails to perform. Landlord may make any such entries without the abatement of Rent and may take such reasonable steps as required to accomplish the stated purposes; provided, however, each such entry shall be made in reasonable manner which, to the maximum extent reasonably possible, does not interfere with Tenant's business operations (especially during the peak lunch and dinner periods) or security systems, and Landlord or its agents shall be accompanied by Tenant or its agents to the extent such agent is made available by Tenant. Any entry into the Premises by Landlord in the manner hereinbefore described shall not be deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an actual or constructive eviction of Tenant from any portion of the Premises.

ARTICLE 28

PARKING

Throughout the Lease Term but subject to the provisions of this Article 28, Tenant and Tenant Parties shall have the right to the non-exclusive use of all non-exclusive parking areas of the Shopping Center included in the Common Areas for the parking of motor vehicles. Tenant acknowledges that all of Tenant's parking spaces are to be used on a non-exclusive, first-come, first-served basis by all owners, landlords, tenants, occupants, licensees, invitees and permittees of the Shopping Center. Tenant's parking rights shall be subject to the terms of this Lease and reasonable parking rules and regulations adopted by Landlord from time to time including, but not limited to, the parking rules and regulations set forth in Exhibit C attached hereto. Landlord agrees that throughout the Lease Term, Tenant and Tenant Parties shall be entitled to park free of charge, subject to such fees or exactions as may be imposed by any government agency or authority. Notwithstanding the foregoing, because of the close proximity of the Premises to the currently existing Sports Arena operations, to reasonably control traffic and parking, it may be necessary during or prior to Sports Arena events for Landlord to implement a parking control system (including, if reasonably necessary, use of parking attendants during events). Tenant hereby consents to, and agrees to cooperate with, the implementation of such system, which costs shall be included as part of the Access Driveway Operating Expenses hereunder. Notwithstanding the foregoing, Tenant shall have the right, upon reasonable written notice to Landlord, to, at Tenant's sole cost and expense, implement the control of traffic and parking on Tenant's own Premises during such Sports Arena events, in which event Landlord shall have no obligations or responsibilities to Tenant with respect to parking or traffic issues during such events, and during the period of time Tenant so controls traffic and parking on its Premises, no costs associated with such Sports Arena event traffic and parking control

incurred otherwise by Landlord shall be included in Access Driveway Operating Expenses payable by Tenant hereunder. Tenant shall use reasonable efforts to not permit or allow any vehicles that belong to or are controlled by Tenant or Tenant's suppliers, shippers, customers, or invitees to be loaded, unloaded, or parked in areas other than the Premises for such activities. If Tenant or its employees fail to park their cars on the Premises, Landlord may charge Tenant Twenty Five Dollars (\$25.00) per car per day for each day or partial day that any car is parked in any area other than those designated; provided, however, Landlord agrees to give Tenant notice of the first violation of this provision in each twelve (12) month period. Tenant shall reasonably cooperate with Landlord in providing necessary information to Landlord to confirm Tenant and its employees' compliance with the requirements of this Article 28. Tenant shall have two (2) hours thereafter within which to correct the violation; if said violation is not corrected within said period, then the aforesaid charge shall thereafter be levied and Tenant shall pay the same and Landlord shall have the right to cause such vehicle to be towed, at Tenant's sole cost and expense, from the Premises. After notice of such second (2nd) violation in any given twelve (12) month period, no prior notice of any subsequent violation shall be required. All amounts due under provisions of this Section shall be payable by Tenant upon demand by Landlord and shall constitute Additional Rent. Landlord may delegate its responsibilities hereunder to a parking operator, in which case such parking operator shall have the rights of control attributed hereby to Landlord.

ARTICLE 29

MISCELLANEOUS PROVISIONS

29.1 Terms

The necessary grammatical changes required to make the provisions hereof apply either to corporations or partnerships or individuals, men or women, as the case may require, shall in all cases be assumed as though in each case fully expressed. Also, whenever the word "including" is used in this Lease, it shall mean "including, without limitation."

29.2 Binding Effect

Subject to all other provisions of this Lease, each of the provisions of this Lease shall extend to and shall, as the case may require, bind or inure to the benefit not only of Landlord and of Tenant, but also of their respective successors or assigns, provided this clause shall not permit any assignment by Tenant contrary to the provisions of Article 14 of this Lease.

29.3 Transfer of Landlord's Interest

Tenant acknowledges that, after the completion of all of Landlord's Work, Landlord has the right to transfer all or any portion of its interest in the Shopping Center and/or Development and in this Lease, and Tenant agrees that in the event of any such transfer and upon assumption of Landlord's obligations in writing by the transferee, Landlord shall automatically be released from all liability under this Lease for the performance of obligations accruing after the date of such transfer, and Tenant agrees to look solely to such transferee for the performance of such subsequent obligations hereunder after the date of transfer.

29.4 Landlord Exculpation

It is expressly understood and agreed that notwithstanding anything in this Lease to the contrary, and notwithstanding any applicable law to the contrary, the liability of Landlord hereunder (including any successor landlord hereunder) and any recourse by Tenant against Landlord shall be limited solely and exclusively to the interest of Landlord in and to the Development, and neither Landlord, nor any of its constituent partners or subpartners, shall have any personal liability therefor, and Tenant, on behalf of itself and all persons claiming by, through or under Tenant, hereby expressly waives and releases Landlord and such partners and subpartners from any and all personal liability.

29.5 Captions

The captions of Articles and Sections are for convenience only and shall not be deemed to limit, construe, affect or alter the meaning of such Articles and Sections.

29.6 Relationship of Parties

Nothing contained in this Lease shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent, partnership, joint venturer or any association between Landlord and Tenant, it being expressly understood and agreed that neither the method of computation of Rent nor any act of the parties hereto shall be deemed to create any relationship between Landlord and Tenant other than the relationship of landlord and tenant.

29.7 Shopping Center Name and Signage

Landlord shall have the right at any time to change the name of the Shopping Center and/or Development (or portions thereof).

29.8 Time of Essence

Time is of the essence of this Lease and each of its provisions.

29.9 Partial Invalidity

If any term, provision or condition contained in this Lease shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term, provision or condition to persons or circumstances other than those with respect to which it is invalid or unenforceable, shall not be affected thereby, and each and every other term, provision and condition of this Lease shall be valid and enforceable to the fullest extent possible permitted by law.

29.10 Financial Statements

Tenant agrees that it shall promptly furnish Landlord, from time to time but not more than once per twelve (12) month period, upon Landlord's written request, current financial statements reflecting Tenant's and Guarantor's financial condition. Such financial statements shall be prepared in accordance with generally accepted accounting principles and, if such is the normal practice of Tenant or Guarantor, shall be audited by an independent certified public accountant. Notwithstanding the foregoing, for so long as Tenant or Guarantor is a corporation publicly traded on a national securities exchange and regulated by the U.S. Securities and Exchange Commission, Tenant's or Guarantor's (as the case may be) publicly available financial statements shall satisfy the obligations under this Section 29.10 with respect to such publicly traded entity. Landlord and Tenant acknowledge that Guarantor is currently a publicly traded company and that, as a result thereof, no financial statements shall be required to be delivered by Tenant or Guarantor to Landlord as such financial statements are available from public sources including, but not limited to, the internet; provided, however, at such time (i) as the Guaranty of Lease is no longer in effect or (ii) Guarantor is no longer a publicly traded company, then, at such time, the foregoing requirements to deliver financial statements shall be applicable with respect to Tenant.

29.11 Entire Agreement

It is understood and acknowledged that there are no oral agreements between the parties hereto affecting this Lease and this Lease supersedes and cancels any and all previous negotiations, arrangements, brochures, agreements and understandings, if any, between the parties hereto or displayed by Landlord to Tenant with respect to the subject matter thereof, and none thereof shall be used to interpret or construe this Lease. This Lease, the exhibits and schedules attached hereto, the Work Letter, and any side letter or separate agreement executed by Landlord and Tenant in connection with this Lease and dated of even date herewith, contain all of the terms, covenants, conditions, warranties and agreements of the parties relating in any manner to the rental, use and occupancy of the Premises and shall be considered to be the only agreements between the parties hereto and their representatives and agents. None of the terms, covenants, conditions or provisions of this Lease can be modified, deleted or added to except in writing signed by the parties hereto. All negotiations and oral agreements acceptable to both parties have been merged into and are included herein. There are no other representations or warranties between the parties, and all reliance with respect to representations is based totally upon the representations and agreements contained in this Lease.

29.12 Right to Lease

Except as expressly provided otherwise in the Lease, Landlord reserves the absolute right to effect such other tenancies in the Shopping Center as Landlord in the exercise of its sole business judgment shall determine to best promote the interests of the Shopping Center.

29.13 Force Majeure

Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain services, labor, or materials or reasonable substitutes therefor, governmental actions, civil commotions, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform, except with respect to the obligations imposed with regard to Rent and other charges to be paid by Tenant pursuant to this Lease (collectively, "**Force Majeure**"), notwithstanding anything to the contrary contained in this Lease, shall excuse the performance of such party for a period equal to any such prevention, delay or stoppage and, therefore, if this Lease specifies a time period for

performance of an obligation of either party, that time period shall be extended by the period of any delay in such party's performance caused by a Force Majeure.

29.14 Joint and Several

If there is more than one Tenant, the obligations imposed upon Tenant under this Lease shall be joint and several.

29.15 Authority

If Tenant or Landlord is a corporation or partnership, each individual executing this Lease on behalf of such party hereby represents and warrants that such party is a duly formed and existing entity qualified to do business in California and that such party has full right and authority to execute and deliver this Lease and that each person signing on behalf of such party is authorized to do so.

29.16 Waiver of Trial by Jury

Landlord and Tenant hereby each waive the right to trial by jury.

29.17 Governing Law; Venue

This Lease shall be construed and enforced in accordance with the laws of the State of California.

29.18 Submission of Lease

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

29.19 Memorandum of Sublease

Concurrently with the execution of this Lease, Landlord and Tenant shall execute and have acknowledged a memorandum of this Lease ("**Memorandum of Sublease**") in the form attached hereto as Exhibit H. The Memorandum of Sublease shall be recorded promptly thereafter in the Official Records of San Diego County, and Tenant shall pay any recording charges or other costs incurred in connection with the recordation thereof. Promptly upon the expiration or early termination of this Lease (including, but not limited to, termination of this Lease based on a failure of any of the Contingencies set forth above), Tenant shall execute and deliver to Landlord or Landlord's title company any documents reasonably required by Landlord or such title company to remove the Memorandum of Sublease from title. Such obligation shall survive the expiration or early termination of this Lease.

29.20 Guaranty of Sublease

This Lease is contingent upon Tenant's delivery to Landlord, concurrently with Tenant's delivery hereof, of a guaranty of sublease from Brinker International, Inc., a Delaware corporation, in the form of Exhibit I attached hereto.

29.21 Contingencies

Tenant's obligations under this Lease shall be subject to and contingent upon Tenant's written approval or written waiver of the following contingencies (collectively, "**Tenant Contingencies**"):

29.21.1 Permits. Tenant's receipt of, or satisfaction that Tenant will be able to receive, no later than May 31, 2003, all permits Tenant reasonably deems necessary ("**Permits**") to construct, use and operate the Improvements (including, but not limited to, any required conditional use permit). Landlord shall reasonably cooperate with Tenant in Tenant's pursuit of such Permits. Tenant agrees to diligently pursue all necessary Permits until receipt thereof; and

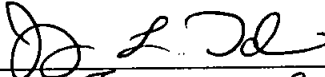
29.21.2 SNDA's; Consent to Sublease. Tenant's receipt, no later than forty-five (45) days after the date hereof, of an SNDA (as defined in Article 18) and related necessary Sublease approval documentation from all holders of superior interests in the Premises and Access Driveways, including, but not limited to, an SNDA and Consent to Sublease from Master Landlord and an SNDA from U.S. Bank. Landlord agrees to use Landlord's commercially reasonable efforts to obtain all such SNDA's as soon as reasonably possible after the date of this Lease and agrees to reasonably cooperate with Tenant in the pursuit thereof.

Tenant shall use reasonable efforts and due diligence to satisfy the Tenant's Contingencies set forth in Sections 29.21.1 through 29.21.2 above within the time frames set forth therein. Tenant shall pay for all costs incurred by it in satisfying or attempting to satisfy such conditions unless otherwise specified in this Lease. Tenant shall notify Landlord promptly upon waiver or satisfaction of each of the conditions set forth in said sections of this Lease. The Tenant Contingencies shall be deemed waived, unless within five (5) business days after the expiration of the applicable time period Tenant terminates this Lease by written notice to Landlord. If Tenant cancels this Lease pursuant to this provision, Landlord shall return all sums (if any) advanced by Tenant to Landlord and neither party shall have any further rights or obligations under this Lease except as otherwise expressly provided to the contrary. Notwithstanding anything else set forth above, Tenant's commencement of construction on the Premises shall act as and be deemed to be a waiver of each of the Tenant Contingencies set forth in Section 29.21 of this Lease.

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

“TENANT”

BRINKER RESTAURANT CORPORATION,
a Delaware corporation

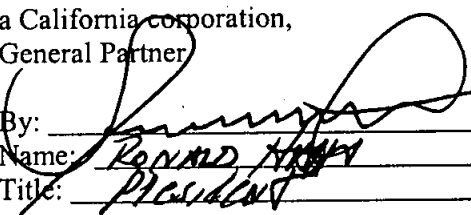
By: 
Name: JAY L. RUBIN
Title: VICE PRESIDENT

By: _____
Name: _____
Title: _____

“LANDLORD”

ARENA GROUP 2000 L.P.,
a California limited partnership

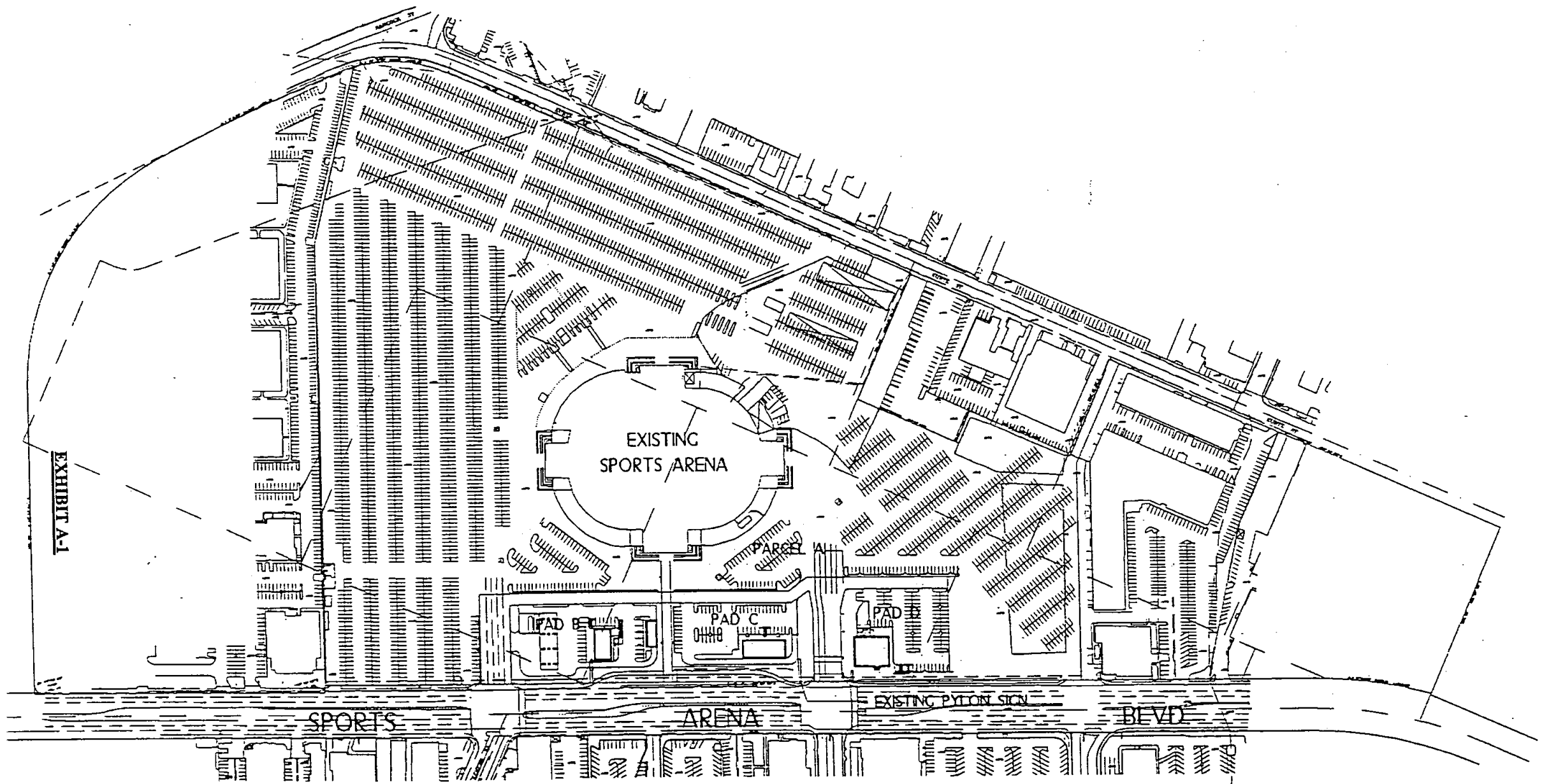
By: Arena Founders, L.P.,
a California limited partnership
Managing General Partner

By: Founders of Arena Group 2000,
a California corporation,
General Partner
By: 
Name: RONALD RUBIN
Title: PRESIDENT

By: _____
Name: _____
Title: _____

EXHIBIT A-1
SHOPPING CENTER PLAN

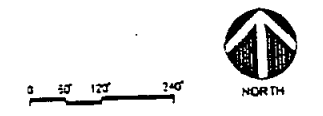
[ATTACHED]



LEASE EXHIBIT A

ARENA 2000

SPORTS ARENA MASTERSITE



SGPA ARCHITECTURE • PLANNING
SAN DIEGO SAN FRANCISCO

Project No. 980197-03

Date 4-18-02
Copyright 2002

1 OF 1



EXHIBIT A-2

SHOPPING CENTER LEGAL DESCRIPTION

[ATTACHED]

J-13575B

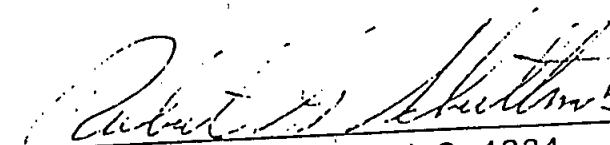
CITY LEASE PARCEL

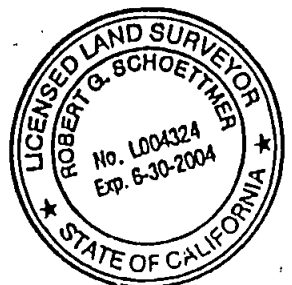
Parcel "A"

All of those portions of Pueblo Lots 311, 312, 313, 241 and 242 of the Pueblo Lands of San Diego, in the City of San Diego, County of San Diego, State of California, according to Map thereof by James Pascoe in the year 1870, a certified copy of which was filed November 14, 1921 in the Office of the County Recorder of San Diego County, and is known as Miscellaneous Map No. 36, being more particularly described as follows:

Beginning at the centerline intersection of Sports Arena Boulevard and Kemper Street as shown and delineated on Arena Plaza Subdivision Map No. 6629 in the City of San Diego, County of San Diego, State of California, recorded April 20, 1970 in the Office of the Recorder of San Diego County; thence along the centerline of Sports Arena Boulevard North 77°23'37" West (record North 77°52'25" West per said Map No. 6629) 53.74 feet; thence North 12°36'23" East 65.00 feet to a point on the Northerly Right-of-way line of said Sports Arena Boulevard and the TRUE POINT OF BEGINNING; thence North 12°36'23" East 199.03 feet; thence South 77°23'37" East 677.04 feet; thence North 65°44'11" East 51.62 feet; thence South 77°23'37" East 307.67 feet; thence South 12°36'23" West 25.00 feet; thence North 77°23'37" West 224.75 feet; thence South 26°38'35" West 46.38 feet; thence South 12°36'23" West 160.00 feet; thence North 77°23'37" West 60.00 feet; thence North 12°36'23" East 160.00 feet; thence North 03°09'24" East 42.41 feet; thence South 67°37'56" West 48.56 feet; thence North 77°23'37" West 262.25 feet; thence South 12°36'23" West 174.00 feet; thence North 77°23'37" West 20.00 feet; thence North 12°36'23" East 174.00 feet; thence North 77°23'37" West 335.00 feet; thence South 12°36'23" West 174.00 feet; thence North 77°23'37" West 66.00 feet to the TRUE POINT OF BEGINNING.

Containing 1.230 acres more or less.


Robert G. Schoettmer L.S. 4324 5-22-2001



jb/13575.001

J-13575B

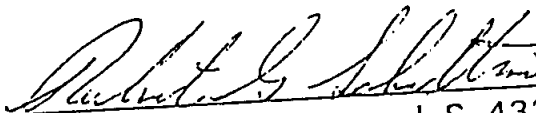
CITY LEASE PARCEL

Parcel "B"

All of those portions of Pueblo Lots 241, 242, 311, and 312 of the Pueblo Lands of San Diego, in the City of San Diego, County of San Diego, State of California, according to Map thereof by James Pascoe in the year 1870, a certified copy of which was filed November 14, 1921 in the Office of the County Recorder of San Diego County, and is known as Miscellaneous Map No. 36, being more particularly described as follows:

Beginning at the centerline intersection of Sports Arena Boulevard and Kemper Street as shown and delineated on Arena Plaza Subdivision Map No. 6629 in the City of San Diego, County of San Diego, State of California, recorded April 20, 1970 in the Office of the Recorder of San Diego County; thence along the centerline of Sports Arena Boulevard South $77^{\circ}23'37''$ East (record North $77^{\circ}52'25''$ West per said Map No. 6629) 12.26 feet; thence North $12^{\circ}36'23''$ East 65.00 feet to a point on the Northerly Right-of-way line of said Sports Arena Boulevard and the TRUE POINT OF BEGINNING; thence continuing North $12^{\circ}36'23''$ East 174.00 feet; thence South $77^{\circ}23'37''$ East 335.00 feet; thence South $12^{\circ}36'23''$ West 174.00 feet to said Northerly Right-of-way line; thence Westerly along said Northerly Right-of-way line North $77^{\circ}23'37''$ West 335.00 feet to the TRUE POINT OF BEGINNING.

Containing 1.338 acres more or less.

 5-22-2001
Robert G. Schoettmer L.S. 4324



jb/13575.001.

J-13575C

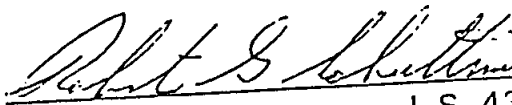
CITY LEASE PARCEL

Parcel "C"

All of that portion of Pueblo Lot 312 of the Pueblo Lands of San Diego, in the City of San Diego, County of San Diego, State of California, according to Map thereof by James Pascoe in the year 1870, a certified copy of which was filed November 14, 1921 in the Office of the County Recorder of San Diego County, and is known as Miscellaneous Map No. 36, being more particularly described as follows:

Beginning at the centerline intersection of Sports Arena Boulevard and Kemper Street as shown and delineated on Arena Plaza Subdivision Map No. 6629 in the City of San Diego, County of San Diego, State of California, recorded April 20, 1970 in the Office of the Recorder of San Diego County; thence along the centerline of Sports Arena Boulevard South $77^{\circ}23'37''$ East (record North $77^{\circ}52'25''$ West per said Map No. 6629) 367.25 feet; thence North $12^{\circ}36'23''$ East 65.00 feet to a point on the Northerly Right-of-way line of said Sports Arena Boulevard and the TRUE POINT OF BEGINNING; thence leaving said Northerly Right-of-way line North $12^{\circ}36'23''$ East 174.00 feet; thence South $77^{\circ}23'37''$ East 262.25 feet; thence North $67^{\circ}37'56''$ East 48.56 feet; South $03^{\circ}09'24''$ West 42.41 feet; thence South $12^{\circ}36'23''$ West 160.00 feet to said Northerly Right-of-way line; thence Westerly along said Northerly Right-of-way line North $77^{\circ}23'37''$ West 309.00 feet to the TRUE POINT OF BEGINNING.

Containing 1.248 acres more or less.


Robert G. Schoettmer L.S. 4324 5-22-2001



jb/13575.002

J-13575D

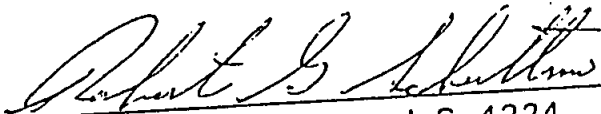
CITY LEASE PARCEL

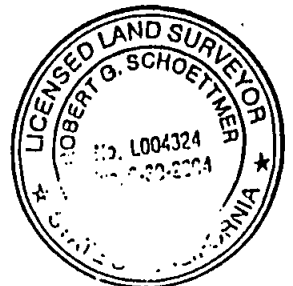
Parcel "D"

That portion of Pueblo Lots 312 and 313 of the Pueblo Lands of San Diego, in the City of San Diego, County of San Diego, State of California, according to Map thereof by James Pascoe in the year 1870, a certified copy of which was filed November 14, 1921 in the Office of the County Recorder of San Diego County, and is known as Miscellaneous Map No. 36, being more particularly described as follows:

Beginning at the centerline intersection of Sports Arena Boulevard and Kemper Street as shown and delineated on Arena Plaza Subdivision Map No. 6629 in the City of San Diego, County of San Diego, State of California, recorded April 20, 1970 in the Office of the Recorder of San Diego County; thence along the centerline of Sports Arena Boulevard South $77^{\circ}23'37''$ East (record North $77^{\circ}52'25''$ West per said Map No. 6629) 736.25 feet; thence North $12^{\circ}36'23''$ East 65.00 feet to a point on the Northerly Right-of-way line of said Sports Arena Boulevard and the TRUE POINT OF BEGINNING; thence leaving said Northerly Right-of-way North $12^{\circ}36'23''$ East 160.00 feet; thence North $26^{\circ}38'35''$ East 46.38 feet; thence South $77^{\circ}23'37''$ East 224.75 feet; thence South $12^{\circ}36'23''$ West 205.00 feet to said Northerly Right-of-way line; thence Westerly along said Northerly Right-of-way line North $77^{\circ}23'37''$ West 236.00 feet to the TRUE POINT OF BEGINNING.

Containing 1.105 acres more or less.


Robert G. Schoettmer L.S. 4324 5-22-2001



jb/13575.003

EXHIBIT A-3

DEVELOPMENT LEGAL DESCRIPTION

[ATTACHED]

EXHIBIT A-3
DESCRIPTION

PARCEL 1:

PORTIONS OF PUEBLO LOTS 241, 242, 259, 276, 311, 312, 313 AND 338 OF THE PUEBLO LANDS OF SAN DIEGO, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, State of California, ACCORDING TO MAP THEREOF MADE BY JAMES PASCOE, A COPY OF WHICH SAID MAP WAS FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, AND KNOWN AS MISCELLANEOUS MAP NO. 36, TOGETHER WITH LOT "A" AND A PORTION OF LOT "B" OF PUEBLO LOT 339, ACCORDING TO PARTITION MAP THEREOF ON FILE IN THE OFFICE OF THE COUNTY CLERK OF SAID COUNTY, IN AN ACTION ENTITLED "STEELE VS. STEELE", SUPERIOR COURT, CASE NO. 5620, TOGETHER WITH A PORTION OF CASS AND MC ELWEE SUBDIVISION, ACCORDING TO MAP THEREOF NO. 1581, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, DESCRIBED AS FOLLOWS:

COMMENCING AT THE POINT OF INTERSECTION OF THE SOUTHEASTERLY LINE OF PUEBLO LOT 312 WITH THE NORTHERLY LINE OF FRONTIER STREET, (NOW SPORTS ARENA BOULEVARD) AS DESCRIBED IN DEED TO FRONTIER ENTERPRISES, INC., RECORDED MARCH 5, 1941, IN BOOK 1143, PAGE 320 OF OFFICIAL RECORDS OF SAN DIEGO COUNTY; THENCE NORTHEASTERLY ALONG SAID SOUTHEASTERLY LINE TO A POINT OF INTERSECTION WITH A LINE WHICH IS DISTANT 15.00 FEET NORTHERLY, MEASURED AT RIGHT ANGLES TO THE NORTHERLY LINE OF SAID SPORTS ARENA BOULEVARD; THENCE SOUTH 77° 23' 46" EAST, A DISTANCE OF 371.52 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 12° 36' 14" EAST, A DISTANCE OF 476.74 FEET; THENCE NORTH 36° 37' 26" EAST, A DISTANCE OF 246.89 FEET TO THE NORTHEASTERLY LINE OF SAID PUEBLO LOT 338; THENCE NORTH 53° 27' 34" WEST, A DISTANCE OF 25.00 FEET TO THE MOST NORTHERLY CORNER OF SAID PUEBLO LOT 338; THENCE SOUTH 36° 37' 26" WEST ALONG THE NORTHWESTERLY LINE OF PUEBLO LOT 338, A DISTANCE OF 233.40 FEET TO THE MOST EASTERLY CORNER OF SAID LOT "A"; THENCE NORTH 53° 27' 44" WEST ALONG THE NORTHEASTERLY LINE OF SAID LOT "A"; A DISTANCE OF 233.41 FEET TO THE MOST NORTHERLY CORNER OF SAID LOT "A"; THENCE SOUTH 36° 33' 41" WEST ALONG THE NORTHWESTERLY LINE OF SAID LOT "A", A DISTANCE OF 74.98 FEET TO A POINT DISTANT NORTH 36° 33' 41" EAST, 158.40 FEET FROM THE MOST WESTERLY CORNER OF SAID LOT "A"; THENCE NORTH 53° 27' 19" WEST, 233.43 FEET TO A POINT IN THE NORTHWESTERLY LINE OF PUEBLO LOT 339 DISTANT SOUTH 36° 36' 21" WEST, 308.33 FEET FROM THE MOST NORTHERLY CORNER OF SAID PUEBLO LOT 339; THENCE NORTH 36° 36' 21" EAST ALONG THE NORTHEASTERLY LINE OF PUEBLO LOT 339, A DISTANCE OF 301.33 FEET TO A LINE WHICH IS PARALLEL WITH AND 7.00 FEET SOUTHWESTERLY TO AND MEASURED AT RIGHT ANGLES TO THE NORTHERLY PROLOGATION OF THE NORTHEASTERLY LINE OF SAID PUEBLO LOT 339; THENCE ALONG SAID PARALLEL LINE NORTH 53° 26' 49" WEST, A DISTANCE OF 786.16 FEET TO A POINT IN THE SOUTHEASTERLY LINE OF KURTZ STREET AS DEDICATED BY RESOLUTION NO. 197563 OF THE COUNCIL OF CITY OF SAN DIEGO, A COPY OF WHICH WAS RECORDED JULY 30, 1969 AS DOCUMENT NO. 137836 OF OFFICIAL RECORDS; THENCE ALONG THE BOUNDARY OF SAID KURTZ STREET AS FOLLOWS:

SOUTH 36° 32' 31" WEST, A DISTANCE OF 5.00 FEET; NORTH 53° 26' 49" WEST, A DISTANCE OF 307.00 FEET TO THE BEGINNING OF A 300.00 FOOT RADIUS CURVE, CONCAVE SOUTHWESTERLY; AND WESTERLY ALONG THE ARC OF SAID CURVE TO AND ALONG THE SOUTHERLY LINE OF HANCOCK STREET DEDICATED BY SAID RESOLUTION, THROUGH A CENTRAL ANGLE OF 39° 03' 30" AN ARC LENGTH OF 204.51 FEET; THENCE SOUTH 26° 51' 31" WEST, A DISTANCE OF 393.88 FEET; THENCE SOUTH 12° 35' 00" WEST, A DISTANCE OF 968.25 FEET TO SAID LINE WHICH IS PARALLEL WITH AND 15.00 FEET NORTHERLY OF THE NORTHERLY LINE OF FRONTIER STREET; THENCE ALONG SAID PARALLEL LINE SOUTH 77° 23' 46" EAST, A DISTANCE OF 402.50 FEET; THENCE NORTH 12° 36' 14" EAST, A DISTANCE OF 150.00 FEET; THENCE SOUTH 77° 23' 46" EAST, A DISTANCE OF 150.00 FEET; THENCE SOUTH 12° 36' 14" WEST, A DISTANCE OF 150.00 FEET; THENCE SOUTH 77° 23' 46" EAST, A DISTANCE OF 1,097.11 FEET TO THE TRUE POINT OF BEGINNING.

DESCRIPTION

PARCEL 2:

THOSE PORTIONS OF PUEBLO LOTS 241, 242 AND 311 OF THE PUEBLO LANDS OF SAN DIEGO, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF MADE BY JAMES PASCOE, A COPY OF WHICH SAID MAP WAS FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY AND KNOWN AS MISCELLANEOUS MAP NO. 36, DESCRIBED AS FOLLOWS:

COMMENCING AT THE POINT OF INTERSECTION OF THE SOUTHEASTERLY LINE OF PUEBLO LOT 312 WITH THE NORTHERLY LINE OF SPORTS ARENA BOULEVARD; THENCE NORTHWESTERLY ALONG SAID SOUTHEASTERLY LINE TO A POINT OF INTERSECTION WITH A LINE WHICH IS DISTANT 15.00 FEET NORTHERLY, MEASURED AT RIGHT ANGLES FROM THE NORTHERLY LINE OF SAID SPORTS ARENA BOULEVARD; THENCE NORTH $77^{\circ} 23' 46''$ WEST, A DISTANCE OF 725.59 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH $12^{\circ} 36' 14''$ EAST, A DISTANCE OF 150.00 FEET; THENCE NORTH $77^{\circ} 23' 46''$ WEST, A DISTANCE OF 150.00 FEET; THENCE SOUTH $12^{\circ} 36' 14''$ WEST, A DISTANCE OF 150.00 FEET; THENCE SOUTH $77^{\circ} 23' 46''$ EAST, A DISTANCE OF 150.00 FEET TO THE TRUE POINT OF BEGINNING.

EXHIBIT A-4

PREMISES

[ATTACHED]

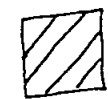
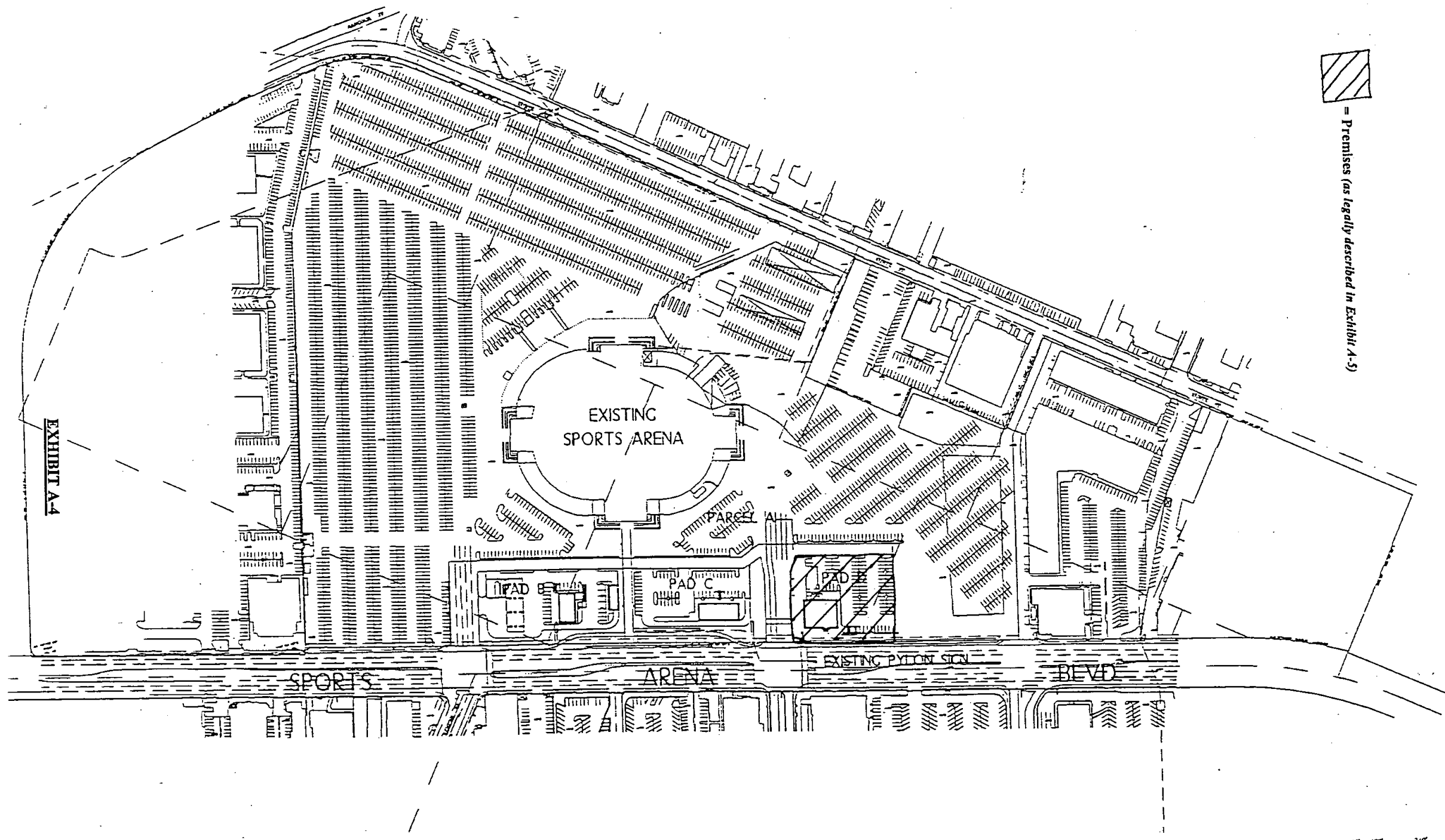
 = Premises (as legally described in Exhibit A-3)

EXHIBIT A-4

EXHIBIT A-4



LEASE EXHIBIT A

ARENA 2000

SPORTS ARENA MASTERSITE
SAN DIEGO, CALIFORNIA

0 50 100 150



1 OF 1

SGPA ARCHITECTURE • PLANNING
SAN DIEGO SAN FRANCISCO

Project No. 98019-P-03
Date: 4-18-02
Copyright: 2002



EXHIBIT A-5

PREMISES LEGAL DESCRIPTION

[ATTACHED]

EXHIBIT A-5

PARCEL 2: (ASSESSOR'S PARCEL NO. 760-245-11)

THAT PORTION OF PUEBLO LOTS 312 AND 313 OF THE PUEBLO LANDS OF SAN DIEGO, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF BY JAMES PASCOE IN THE YEAR 1870, A CERTIFIED COPY OF WHICH WAS FILED NOVEMBER 14, 1921 IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, AND IS KNOWN AS MISCELLANEOUS MAP NO. 36, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE CENTERLINE OF INTERSECTION OF SPORTS ARENA BOULEVARD AND KEMPER STREET AS SHOWN AND DELINEATED ON ARENA PLAZA SUBDIVISION MAP NO. 6629 IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, RECORDED APRIL 20, 1970 IN THE OFFICE OF THE RECORDER OF SAN DIEGO COUNTY; THENCE ALONG THE CENTERLINE OF SPORTS ARENA BOULEVARD SOUTH 77°23'37" EAST (RECORD NORTH 77°52'25" WEST PER SAID MAP NO. 6629) 736.25 FEET; THENCE NORTH 12°36'23" EAST 65.00 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF SAID SPORTS ARENA BOULEVARD AND THE TRUE POINT OF BEGINNING; THENCE LEAVING SAID NORTHERLY RIGHT-OF-WAY NORTH 12°36'23" EAST 160.00 FEET; THENCE NORTH 26°38'35" EAST 46.38 FEET; THENCE SOUTH 77°23'37" EAST 224.75 FEET; THENCE SOUTH 12°36'23" WEST 205.00 FEET TO SAID NORTHERLY RIGHT-OF-WAY LINE; THENCE WESTERLY ALONG SAID NORTHERLY RIGHT-OF-WAY LINE NORTH 77°23'37" WEST 236.00 FEET TO THE TRUE POINT OF BEGINNING.

EXHIBIT A-6

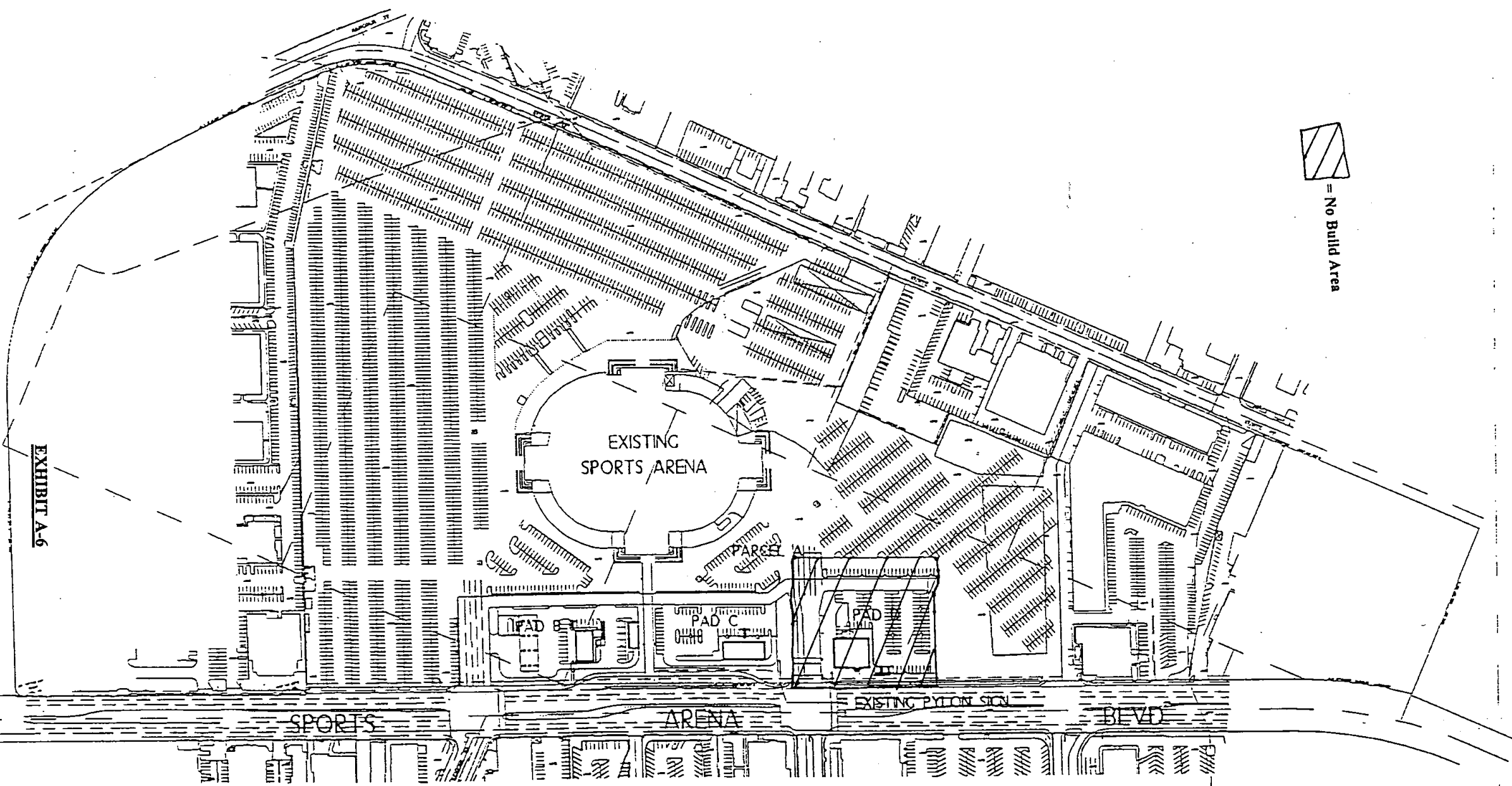
NO BUILD AREA

[ATTACHED]

EXHIBIT A-6

EXHIBIT A-6

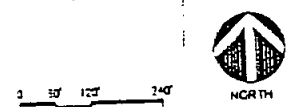
 = No Build Area



LEASE EXHIBIT A

ARENA 2000

SPORTS ARENA MASTERSITE



1 of 1

SGPA ARCHITECTURE • PLANNING
SAN DIEGO SAN FRANCISCO

Project No. 99019-2-03

Date: 4-18-02
Copyright: 2002



EXHIBIT A-7

ACCESS DRIVEWAYS

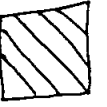
[ATTACHED]



EXHIBIT A-8

TENANT'S CONTROL AREA

[ATTACHED]



= Tenant's Control Area

EXISTING
SPORTS ARENA

PARCEL A

PAD B

PAD C

PAD D

EXISTING PYLON SIGN

SPORTS

ARENA

BLVD

EXHIBIT A-8

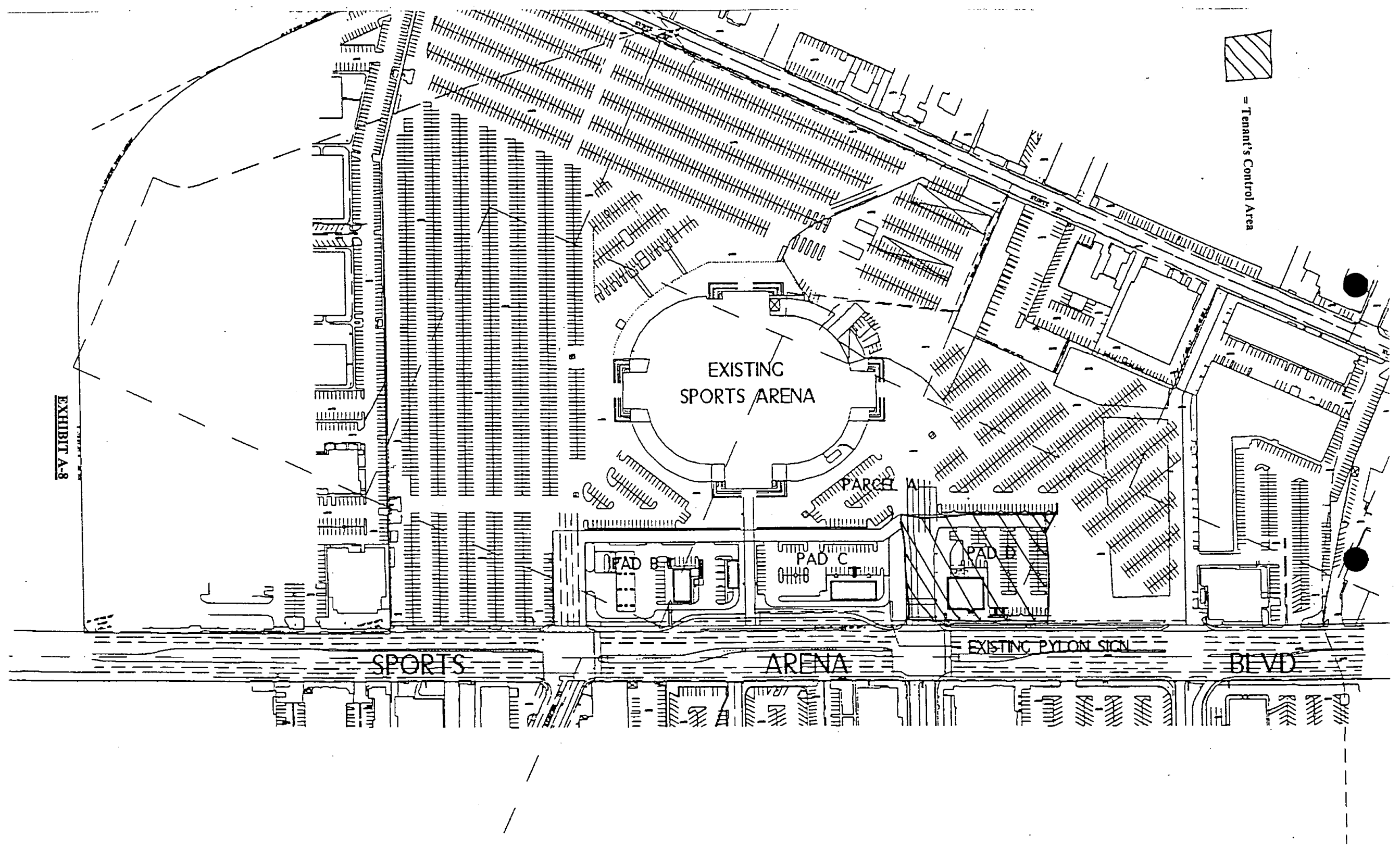
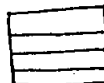
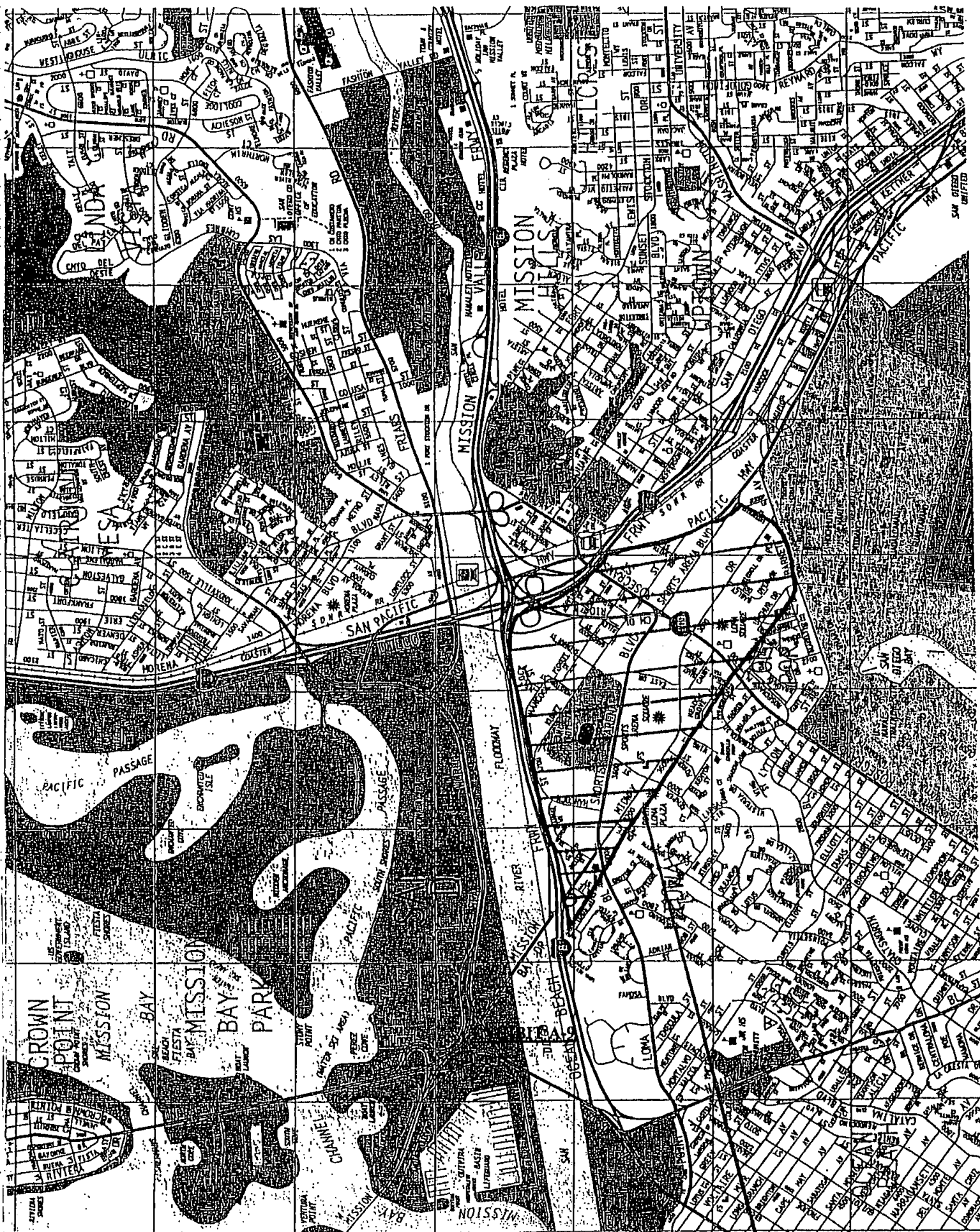


EXHIBIT A-9

RADIUS RESTRICTION BOUNDARY AREA

[ATTACHED]



= Radius Restriction Boundary Area

EXHIBIT B

CONFIRMATION OF LEASE TERM DATES

To: _____

Re: Ground Sublease dated _____, 200__ between _____
_____ ("Landlord"), and _____
_____ ("Tenant") concerning certain premises located at
_____, San Diego, California.

Gentlemen:

In accordance with the referenced Ground Sublease (the "Lease"), we wish to advise you and/or confirm as follows:

1. The Lease Term commenced on _____ for a term of _____ ending on _____. Tenant also has ____ () successive options to extend the Lease Term for _____ () years each.

2. Rent commenced to accrue on _____, in the initial amount of \$_____ per month for Base Rent, plus (a) Percentage Rent of three percent (3%) of Tenant's Gross Sales in excess of the Breakpoint (as defined in the Lease), plus (b) Tenant's Share of Access Driveway Operating Expenses and certain other charges, as more particularly provided in the Lease.

3. If the Lease Commencement Date is other than the first day of the month, the first billing will contain a pro rata adjustment. Each billing thereafter, with the exception of the final billing, shall be for the full amount of the monthly installment as provided for in the Lease.

4. Your rent checks should be made payable to _____
at _____.

"LANDLORD"

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Agreed to and Accepted as of
_____, 200__.

"TENANT"

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

EXHIBIT C

RULES AND REGULATIONS

Tenant shall faithfully observe and comply with the following Rules and Regulations. Landlord shall not be responsible to Tenant for the nonperformance of any of said Rules and Regulations by or otherwise with respect to the acts or omissions of any other tenants or occupants of the Shopping Center; provided, however, Landlord shall use its reasonable efforts to cause all other tenants and occupants of the Shopping Center to comply with the following rules and regulations and all such rules and regulations shall be enforced in a nondiscriminatory manner.

1. Any requests of Tenant shall be directed to the management office for the Shopping Center or at such office location designated by Landlord. Employees of Landlord shall not perform any work or do anything outside their regular duties unless under special instructions from Landlord.

2. Tenant shall not disturb, solicit, or canvass any occupant of the Shopping Center or Development and shall cooperate with Landlord and its agents to prevent such activities.

3. Except in connection with normal and customary equipment, goods and supplies used in connection with the operation of Tenant's restaurant business, Tenant shall not use or keep in or on the Premises or the Shopping Center or Development any kerosene, gasoline or other inflammable or combustible fluid or material.

4. Tenant shall not use, keep or permit to be used or kept, any foul or noxious gas or substance in or on the Premises, or permit or allow the Premises to be occupied or used in a manner offensive or objectionable to Landlord or other occupants of the Shopping Center or Development by reason of noise, odors, or vibrations, or interfere in any way with other tenants or those having business therein. Notwithstanding the foregoing, Landlord acknowledges that the operation of Tenant's restaurant business from the Premises in accordance with all applicable laws, the REA and in and the normal customary manner Tenant operates its similar restaurants in shopping centers similar to the Shopping Center shall not violate the foregoing rule.

5. The Premises shall not be used for lodging or for any illegal purposes.

6. 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 any of these Rules and Regulations.

7. All trash, rubbish, waste material and other garbage within the Premises shall be emptied by Tenant on a regular basis and disposed of in the Premises' trash containers in accordance with the Rules and Regulations and at Tenant's expense. Tenant shall not burn any garbage in or about the Premises or anywhere within the Shopping Center.

8. Tenant shall comply with all safety, fire protection and evacuation procedures and regulations reasonably established by Landlord or any governmental agency.

9. Tenant shall assume any and all responsibility for protecting the Premises from theft, robbery and pilferage, which includes keeping doors locked and other means of entry to the Premises closed during the hours and days Tenant is not required to be open for business to the public.

10. Tenant shall, at its sole cost and expense: (i) be responsible for properly cleaning and repairing any spills, waste or damage occasioned by deliveries to the Premises or the consumption of food, beverages and other items sold by Tenant; (ii) if found by Landlord to be reasonably necessary, install and operate mechanical, chemical or electrical insect traps, approved by Landlord in writing as to location and type, to eliminate all gnats, flies and insects from the Premises and adjacent portions of the Shopping Center; and (iii) cause all trash contained within the Premises to be emptied on a regular basis, and disposed of in trash container(s) located on the Premises.

Landlord reserves the right at any time to reasonably change or rescind any one or more of these Rules and Regulations, or to make such other and further reasonable, nondiscriminatory Rules and Regulations as may from time to time be necessary for the management, safety, care and cleanliness of the Premises, the Common Areas and the Shopping Center, and for the preservation of good order therein, as well as for the convenience of other occupants and tenants therein. Tenant shall be deemed to have read these Rules and Regulations and to have agreed to abide by them as a condition of its occupancy of the Premises.

EXHIBIT D

FORM OF TENANT'S ESTOPPEL CERTIFICATE

The undersigned as Tenant under that certain Ground Sublease (the "Lease") made and entered into as of _____, 200__ by and between _____, as Landlord, and the undersigned as Tenant, for Premises located at _____, San Diego, California, certifies as follows:

1. Attached hereto as Exhibit A is a true and correct copy of the Lease and all amendments and modifications thereto. The documents contained in Exhibit A represent the entire agreement between the parties as to the Premises.

2. The undersigned currently occupies the Premises described in the Lease.

3. The Lease Term commenced on _____, and the Lease Term expires on _____.

4. Base Rent became payable on _____. All monthly installments of Base Rent, all Additional Rent and all monthly installments of estimated Additional Rent have been paid when due through _____. The current monthly installment of Base Rent is \$ _____. Percentage Rent is payable annually, in an amount equal to three percent (3%) of Tenant's Gross Sales in excess of the Breakpoint less Base Rent payable during each calendar year.

5. The Lease is in full force and effect and has not been modified, supplemented or amended in any way except as provided in Exhibit A. Tenant shall not materially modify the documents contained in Exhibit A without the prior written consent of the holder of the first deed of trust on the Premises.

6. Tenant has not transferred, assigned, or sublet any portion of the Premises except as follows: _____.

7. All conditions of the Lease to be performed by Landlord necessary to the enforceability of the Lease have been satisfied and, to the best of Tenant's knowledge, Landlord is not in default thereunder, except as follows: _____

_____.

8. The current amount of the Security Deposit held by Landlord is: _____.

9. No rental has been paid more than thirty (30) days in advance.

10. As of the date hereof, there are no existing defenses or offsets that the undersigned has against Landlord nor, to the best of Tenant's knowledge, have any events occurred that would constitute a default on the part of Landlord under the Lease, except as follows: _____

_____.

11. The undersigned acknowledges that this Estoppel Certificate may be delivered to Landlord or to a prospective mortgagee, or a prospective purchaser, and acknowledges that said prospective mortgagee or prospective purchaser will be relying upon the statements contained herein in making the loan or acquiring the property of which the Premises are a part and that receipt by it of this certificate is a condition of making of such loan or acquisition of such property.

12. If Tenant is a corporation or partnership, each individual executing this Estoppel Certificate on behalf of Tenant hereby represents and warrants that Tenant is a duly formed and existing entity qualified to do business in California and that Tenant has full right and authority to execute and deliver this Estoppel Certificate and that each person signing on behalf of Tenant is authorized to do so.

Executed at _____ on the _____ day of _____, 200__.

“TENANT”

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

EXHIBIT E

WORK LETTER

This Work Letter shall set forth the terms and conditions relating to the construction of the Improvements on the Premises. This Work Letter is essentially organized chronologically and addresses the issues of the construction of the Premises, in sequence, as such issues will arise during the actual construction of the Improvements on the Premises. All capitalized terms used but not defined herein shall have the meanings given such terms in the Lease. All references in this Work Letter to Articles or Sections of "this Lease" shall mean the relevant portion of Articles 1 through 29 of this Ground Lease to which this Work Letter is attached as Exhibit E and of which this Work Letter forms a part, and all references in this Work Letter to Sections of "this Work Letter" shall mean the relevant portion of Sections 1 through 9 of this Work Letter.

RECITALS:

A. Landlord and Tenant have entered into a Ground Sublease (the "**Lease**") dated as of the date hereof, covering certain premises (the "**Premises**") more particularly described in the Lease. This Work Letter is attached to the Lease as Exhibit E. Capitalized terms not defined in this Work Letter shall have the meanings given to such terms in the Lease.

B. In consideration of the mutual covenants contained in the Lease and this Work Letter, Landlord and Tenant hereby agree as follows:

1. Tenant's Work. Reference herein to "**Improvements**" shall mean the Improvements as defined in the Lease, and all related improvements, including, without limitation, all other improvements within "**Tenant's Work Limit Line**" (defined below), Tenant's FF&E, all perimeter sidewalks and curbs around the Building, all signage for the Premises, a trash enclosure for the Premises and the restoration of any portions of the Common Areas of the Shopping Center installed by Landlord which are damaged, altered or affected by any work done by Tenant and any and all improvements to the Premises other than the Landlord's Work described below (collectively, "**Tenant's Work**" or "**Tenant Work**"). In no event shall the height of the Building (including any parapet and other architectural features) exceed twenty seven feet (27') from the finished pad for the Premises. "**Tenant's Work Limit Line**" is generally depicted on Exhibit A-1 to the Lease and depicts the area within which Tenant shall be solely responsible for performing all work except for the initial pad preparation to be performed by Landlord as part of Landlord's Work described below.

2. Landlord's Work. Landlord, at its sole cost and expense except as provided hereinbelow, shall deliver the Premises to Tenant with a building pad rough graded and compacted same to the specifications set forth in Landlord's grading plan ("**Grading Plan**"), a copy of which Tenant acknowledges previously receiving and approving. Landlord shall also cause to be constructed, at its sole cost and expense, except as provided below, certain on and off-site improvements outside of Tenant's Work Limit Line including, but not limited to, parking areas and driveways, striping, landscaping, curbs and gutters all in accordance with certain plans and specifications ("**Landlord Work Plans**"), which Landlord Work Plans were previously approved by Tenant. Further, Landlord shall, at Landlord's sole cost and expense, cause to be extended to Tenant's Work Limit Line, utilities, including water, electricity and sewer; provided, however, Tenant acknowledges that with respect to certain of such utilities such as telephone and electricity, Landlord will only provide the pipes or conduits as it will be Tenant's responsibility as part of Tenant's electrical contract to cause the extension of the actual utilities within such pipes or conduits. All of the foregoing work to be performed by Landlord, is hereinafter collectively referred to as "**Landlord's Work**" or "**Landlord Work**". Landlord and Tenant acknowledge that the foregoing Grading Plan and Landlord Work Plans are all subject to approval by the City of San Diego and may be modified in connection therewith and subject to Tenant's reasonable approval. Landlord shall perform Landlord's Work in accordance with all applicable laws and all regulations and requirements of, and all licenses and permits issued by, all municipal or other governmental bodies with jurisdiction. The Premises shall otherwise be delivered in an "AS-IS" condition. Tenant shall, at its sole cost and expense, field verify the "AS-IS" condition of the Premises, extend from Tenant's Work Limit Line as necessary and connect to such underground utility facilities to provide such services as may be necessary to complete Tenant's Work and install separate meters. Tenant shall pay any hook-up, meter or connection charges or permits, fees or assessments related to utilities serving the Premises. Notwithstanding anything to the contrary contained herein, Landlord and Tenant acknowledge and agree that Landlord's Work has previously been performed in full by Landlord.

3. Improvement Plans.

(a) Preliminary Plans. As soon as reasonable possible after the date hereof, Tenant shall cause its architect to prepare and submit to Landlord two (2) copies of preliminary plans and specifications and a site layout for Tenant's Work which shall include a floor plan of the Building to be constructed within Tenant's Pad and a general layout and description of Tenant's FF&E (collectively, "**Preliminary Plans**"). Landlord shall reasonably cooperate with Tenant, at no cost to Landlord, in connection with the preparation of such Preliminary Plans. Included in the Preliminary Plans will be the proposed location of Tenant's signs, the designation of materials, colors and elevations, the designation of the type and quality of the Improvements, a roof plan and a preliminary landscape plan. Within fifteen (15) business days following Landlord's receipt of the Preliminary Plans, Landlord shall review and approve or reasonably disapprove the Preliminary Plans. Landlord's approval shall not be unreasonably withheld. If Landlord disapproves the Preliminary Plans in whole or in part, Landlord shall inform Tenant of the reasons for such disapproval in writing and Tenant shall revise and resubmit the Preliminary Plans within ten (10) working days. Following Tenant's revision and resubmittal to Landlord of the Preliminary Plans, Landlord shall have ten (10) working days to review and either approve or disapprove the revised Preliminary Plans. The parties shall repeat the review and approval procedure described herein until they shall mutually agree on the Preliminary Plans.

(b) Submittal of Preliminary Plans. Promptly following approval of the Preliminary Plans by Landlord, Tenant shall, at its sole cost and expense, submit the Preliminary Plans to the Planning Department of the City of San Diego ("**Planning Department**") for review and approval. Tenant shall also, at its sole cost and expense, promptly prepare and submit to the Planning Department any studies, drawings and other documents or items and shall prepare and submit any revisions to the Preliminary Plans which may be required by the Planning Department in order to obtain the Planning Department's approval thereto; provided, however, that any revisions to the Preliminary Plans submitted by Tenant shall be subject to Landlord's approval, which approval shall not be unreasonably withheld. In connection therewith, Tenant shall deliver to Landlord any proposed revision to the Preliminary Plans prior to Tenant's submission of same for approval by the Planning Department. Within ten (10) days after receipt of any such proposed revision, Landlord shall either approve the same or deliver to Tenant its specific objections thereto together with a proposed solution to each objection.

(c) Final Plans. Promptly following approval of the Preliminary Plans by Landlord and the Planning Department, Tenant shall cause its architect to prepare and deliver to Landlord two (2) copies of final working drawings and specifications for the Improvements based upon and conforming in all respects to the approved Preliminary Plans (the "**Final Plans**"). Within fifteen (15) business days following Landlord's receipt of the Final Plans, Landlord shall approve or reasonably disapprove the Final Plans; provided, however, Landlord shall have no right to disapprove the Final Plans to the extent they are materially consistent with the Preliminary Plans approved by Landlord.

(d) Submittal of Final Plans. Promptly following Landlord's written approval of the Final Plans, Tenant, with the cooperation of Landlord (but at no additional expense to Landlord), shall (i) submit the Final Plans to the Planning Department and all other appropriate governmental agencies and prepare and submit to the same any applications, documents, studies, reports or other items necessary to obtain all approvals and permits required by law for the construction of Tenant's Work (collectively, the "**Building Permits**"); (ii) in all other respects diligently pursue the obtaining of the Building Permits; (iii) pay all necessary fees incidental to Tenant's Work; and (iv) furnish Landlord such evidence thereof as is reasonably satisfactory to Landlord. Tenant agrees to diligently and in good faith process any and all applications required from the city, county and any other governmental authority necessary to obtain the Building Permits.

(e) Plan Approval. If Landlord objects to the Preliminary Plans and/or the Final Plans or to any aspect thereof, Landlord and Tenant's design and/or construction representatives shall, promptly after Tenant's receipt of Landlord's notice of objections, meet and attempt in good faith to resolve Landlord's objections. If the parties are unable to resolve Landlord's objections to the Preliminary Plans and/or the Final Plans within thirty (30) days after Tenant has received notice of Landlord's objections, Tenant shall have the right to terminate this Lease. Landlord may provide Tenant with Landlord's approvals through Landlord's architect or designated construction representative. Notwithstanding the foregoing, in the event Landlord fails to approve or reasonable disapprove the (i) Preliminary Plans during the time period set forth in Sections 3(a) and 3(b) above and (ii) the Final Plans during the time period set forth in Section 3(c) above, Landlord shall be deemed to have approved the Preliminary Plans and Final Plans as so submitted. In the event Landlord disapproves the Preliminary Plans and/or Final Plans, Landlord's notice shall set forth, in reasonable detail, Landlord's specific objections thereto. If the parties have not agreed upon the Final Plans by October 1, 2003, then Landlord shall have the right to terminate this Lease. Notwithstanding the foregoing or anything in the Lease to the contrary, the Final Plans described in Schedule E-1 attached hereto are hereby approved by Landlord.

4. Construction of Tenant's Work. Promptly following approval of the Final Plans by Landlord and the Planning Department, Tenant shall enter into a construction contract (the "**Construction Contract**") with a duly qualified and licensed general contractor ("**Contractor**"), for the installation of Tenant's Work in accordance with the Final Plans. Tenant shall supervise the completion of such work and shall use diligent efforts to secure completion of Tenant's Work in a good and workmanlike manner in accordance with the Final Plans, the Construction Contract and the Work Schedule. Tenant agrees to use diligent efforts to cause construction of Tenant's Work to commence promptly following the issuance of Building Permits and cause the completion of Tenant's Work in accordance with the Work Schedule. Only to the extent required under the Master Lease, Tenant will obtain a lien and completion bond in an amount sufficient to ensure the lien free completion of Tenant's Work and otherwise in compliance with the Master Lease (and if not otherwise waived by the Master Landlord). At all times during the course of constructing Tenant's Work, Landlord shall have the right to enter upon the Premises to inspect Tenant's construction activities.

5. Installation of Tenant's FF&E. Following completion or concurrently with the construction of Tenant's Work, Tenant shall cause the Premises to be fully equipped with Tenant's FF&E in accordance with the Final Plans.

6. Payment of the Construction Costs of the Improvements. Tenant shall be responsible for all costs associated with Tenant's Work, including, but not limited to, the cost of (i) the hardscape and landscaping immediately adjacent to Tenant's Building, (ii) any loading and trash areas serving Tenant's Building, (iii) the architectural/engineering fees pertaining to Tenant's Building and (iv) any permits, fees or assessments related to Tenant's Building as may be imposed by governmental agencies.

7. Tenant Contribution. Notwithstanding anything to the contrary contained in this Lease, Tenant covenants and agrees to reimburse Landlord for Seventy Five Thousand Dollars (\$75,000.00) of the cost of Landlord's Work which is deemed to constitute Tenant's share of on- and off-site improvement costs (which shall also include the costs associated with demolishing, among other things, the existing improvements located within the Shopping Center) ("**Tenant's Contribution**"). Tenant's Contribution shall be paid by Tenant to Landlord within thirty (30) days after the later of (i) Landlord's substantial completion of Landlord's Work or (ii) full execution of this Lease, Tenant's receipt of the Master Landlord SNDA and satisfaction or waiver of the Tenant Contingencies set forth in Section 29.21 above.

8. Miscellaneous Construction Covenants.

(a) Diligent Construction. Tenant will promptly, diligently and continuously pursue construction of Tenant's Work to successful completion in full compliance with the Final Plans, the Construction Contract and this Work Letter. Landlord and Tenant shall cooperate with one another during the performance of Tenant's Work and Landlord's Work to effectuate such work in a timely and compatible manner.

(b) Compliance with Laws. Tenant will construct Tenant's Work in a safe and lawful manner. Tenant shall, at its sole cost and expense, comply with all applicable laws and all regulations and requirements of, and all licenses and permits issued by, all municipal or other governmental bodies with jurisdiction. Copies of all filed documents and all permits and licenses shall be provided to Landlord.

(c) Indemnification. Landlord and Tenant agree that their respective indemnities set forth in Section 10.1 of this Lease shall also apply with respect to any acts or omissions of such parties or their respective contractors, subcontractors, laborers, materialmen and suppliers.

(d) Insurance. Construction of the Improvements shall not proceed without Tenant first acquiring workers' compensation and comprehensive general public liability insurance and property damage insurance as well as "Special Form" builders' risk insurance, with minimum coverage of \$3,000,000 or issued by an insurance company meeting the requirements of the Lease. Not less than thirty (30) days before commencing the construction of Tenant's Work, certificates of such insurance shall be furnished to Landlord shall be submitted for Landlord's approval. All such policies shall provide that thirty (30) days prior notice must be given to Landlord before modification, termination or cancellation. All insurance policies maintained by Tenant pursuant to this Work Letter shall name Landlord and any lender with an interest in the Premises as additional insureds and comply with all of the applicable terms and provisions of the Lease relating to insurance. The Contractor shall be required to maintain the same insurance policies as Tenant, and such policies shall name Tenant, Landlord and any lender with an interest in the Premises as additional insureds.

(e) Additional Services. If the construction of Tenant's Work shall require that additional services or facilities (including, but not limited to, hoisting, cleanup or other cleaning

services, trash removal, field supervision, or ordering of materials) be provided by Landlord, then Tenant shall pay Landlord's reasonable cost therefor.

(f) Coordination of Labor. All of Landlord's and Tenant's contractors, subcontractors, employees, servants and agents must work in harmony with and shall not interfere with any labor employed by the other or its contractors.

(g) Coordination with Lease. Nothing herein contained shall be construed as (i) constituting Tenant as Landlord's agent for any purpose whatsoever, or (ii) a waiver by Landlord of any of the terms or provisions of the Lease. Any default by Tenant or Landlord with respect to any portion of this Work Letter shall be deemed a breach of the Lease for which the non-defaulting party shall have all the rights and remedies as in the case of a breach of said Lease.

(h) Approval of Plans. Landlord will not check Tenant drawings for building code compliance. Approval of the Final Plans by Landlord is not a representation that the drawings are in compliance with the requirements of governing authorities, and it shall be Tenant's responsibility to meet and comply with all Federal, state, and local code requirements. Approval of the Final Plans does not constitute assumption of responsibility by Landlord or its architect for their accuracy, sufficiency or efficiency, and Tenant shall be totally responsible for such matters.

(i) Tenant's Deliveries. Tenant shall deliver to Landlord, at least five (5) days prior to the commencement of construction of Tenant's Work, the date on which Tenant's Work will commence, together with the estimated dates of completion of Tenant's construction and fixturing work, and the date on which Tenant expects to be ready to open for business in the Building.

(j) Qualification of Contractors. All contractors engaged by Tenant shall be bondable, licensed contractors, possessing good labor relations, capable of performing quality workmanship and working in harmony with Landlord's general contractor and other contractors on the job. All work shall be reasonably coordinated with the general Shopping Center work.

(k) Temporary Facilities During Construction. Tenant shall provide and pay for all temporary utility facilities and the removal of debris, as necessary and required in connection with the performance of Tenant's Work. Storage of Tenant's contractors' construction materials, tools, equipment and debris shall be confined to the Premises and in areas which may be reasonably designated for such purposes by Landlord.

(l) Landlord Delay. The term "Landlord Delay" shall mean any delay in the completion of the Tenant Work which is due to any act or omission of Landlord (wrongful, negligent or otherwise), its agents or contractors (including acts or omissions while acting as agent or contractor for Tenant), including, but shall not be limited to any: (1) delay in the giving of authorizations or approvals by Landlord; (2) delay attributable to the acts or failures to act, whether willful, negligent or otherwise, of Landlord, its agents or contractors, where such acts or failures to act delay the completion of the Tenant Work; (3) delay attributable to the interference of Landlord, its agents or contractors with the completion of the Tenant Work or the failure or refusal of any such party to permit Tenant, its agents or contractors, priority access to and priority use of the Shopping Center or any facilities or services thereof, including access to and use of areas are required for the orderly and continuous performance of the work necessary to complete the Tenant Work; or (4) delay attributable to Landlord giving Tenant incorrect or incomplete information, documents, plans and specifications.

(m) Force Majeure Delay. The term "Force Majeure Delay" shall mean any delay in the completion of the Tenant Work or Tenant's opening of its business from the Premises which is attributable to any of the following: (1) delay or failure to perform attributable to any Force Majeure (as defined in the Lease); (2) delay in completing the plans and/or the construction of the Tenant Work because of changes in any Applicable Laws (including, without limitation, the ADA) or the interpretation thereof; or (3) delay attributable to lightning, earthquake, fire, storm, hurricane, tornado, flood, washout, explosion, or any other similar industry-wide or Shopping Center-wide cause beyond the reasonable control of the party from whom performance is required, or any of its contractors or other representatives.

9. Delay in Lease Commencement Date. Notwithstanding anything to the contrary contained herein, the Lease Commencement Date shall be extended by one (1) day for each day of delay in the substantial completion of the Tenant Work or the opening of the Premises for business by Tenant, including, but not limited to, the design and construction of the Tenant Work, which is directly or indirectly caused by Landlord Delay or Force Majeure Delay.

SCHEDULE E-1

FINAL PLANS

1. Civil drawings prepared by RHL dated 12-13-02, sheets C103, C104, C105, C106, C107, C201, C202
2. Landscaping drawings prepared by Closson & Closson dated 12-16-02, sheets L101, L102, L103, L201
3. Architectural drawings prepared by Gerdes, Henrichson, & Associates dated 12-16-03, sheets A001, A101, A111, A121, A131, A141, A151, A201, A202, A301, A302, A303, A401, A402, A403, A501, A502, A601, I101, I111, I112
4. Kitchen drawings prepared by Brinker International dated 12-16-02, sheets K101, K201, K211, K301, K401, K501, K502
5. Mechanical, Electrical, and Plumbing drawings prepared by Purdy-McGuire Inc. dated 12-16-02, sheets PME1, PME2, PME3, P101, P111, P201, P202, M101, M201, M202, M301, M303, E101, E111, E201, E202, E301, T101, T111
6. Structural drawings prepared by Ronald A. Roberts Associates dated 12-16-02, sheets S101, S102, S103, S201, S202, S203

EXHIBIT F

EXISTING EXCLUSIVES/USE PROHIBITIONS

Arena Fuels, LLC. Landlord's lease with Arena Fuels, LLC provides, in part: "Landlord shall not lease space in the Shopping Center (other than the Premises) which permits such space to be used by a Direct Competitor of Tenant. As used herein, "Direct Competitor" means a business that uses its premises primarily for any of the Exclusive Uses, excluding (a) the San Diego Sports Arena, and (b) any Gasoline Dispensing Facilities operated by a Major Occupant of the Shopping Center. As used herein, "Major Occupant" shall mean an occupant of the Shopping Center whose premises contain a floor area in excess of 40,000 square feet; provided, however, any such Major Occupant shall not operate a Convenience Store and/or car wash in connection with the operation of such Gasoline Dispensing Facilities. As used herein, "Exclusive Uses" shall mean an entity whose primary business is Gasoline Dispensing Facilities, a car wash and/or a Convenience Store."

Krispy Kreme. Landlord's lease with Krispy Kreme provides, in part: "Landlord shall not cause or permit occupancy or operation in the Development (other than the Premises) which permits such space to be used by a Direct Competitor of Tenant. As used herein, "Direct Competitor" means a business that uses its premises primarily for the Exclusive Use (as defined below), excluding the premises of any future "Anchor Tenant(s)." As used herein, "Exclusive Use" shall mean an entity whose primary business is the sale of doughnuts, or whose sales of doughnuts exceed five percent (5%) of its annual revenues. As used herein, "Anchor Tenant" shall mean a tenant or occupant of the Development whose premises contains a floor area in excess of 30,000 square feet."

EXHIBIT G-1

**MASTER LEASE NONDISTURBANCE AND
ATTORNMENMENT AGREEMENT**

[TO BE ATTACHED]

EXHIBIT G-2

**LANDLORD'S LENDER'S SUBORDINATION, NON-DISTURBANCE AND
ATTORNMENMENT AGREEMENT**

WHEN RECORDED, RETURN TO:

U. S. Bank National Association
Attn: Sharon S. Council
4180 La Jolla Village Drive #570
La Jolla, CA 92037

**SUBORDINATION, NON-DISTURBANCE AND
ATTORNMENMENT AGREEMENT**

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENMENT AGREEMENT made in multiple copies as of _____, 2003, by and between U.S. BANK NATIONAL ASSOCIATION (herein referred to as "Lender") and BRINKER RESTAURANT CORPORATION, a Delaware corporation (herein referred to as "Tenant");

WITNESSETH:

WHEREAS, Lender is the holder of a Note in the original principal amount of \$5,000,000.00, secured by a Mortgage dated June 9, 1997 by Arena Group 2000, L.P., a California limited partnership and San Diego Entertainment, Inc., a California corporation (herein referred to as "Landlord"), recorded on June 27, 1997, as Instrument Number 1997-0304043, in the Official Records of San Diego County, California, covering the property legally described on Exhibit "A" attached hereto and made a part hereof;

WHEREAS, by ground sublease dated _____, 2003 (herein referred to as "Lease"), recorded by Memorandum of Ground Sublease of even date, on _____, 2003, as Series Number _____, in the Official Records of San Diego County, California, Landlord, as landlord, leased to Tenant, as tenant, the property described on Exhibit "B" (herein referred to as "Leased Premises").

WHEREAS, Lender and Tenant desire to confirm their understanding with respect to said Lease and said Mortgage;

NOW THEREFORE, in consideration of the Premises and the mutual covenants and promises contained herein and other good and valuable consideration, the parties agree as follows:

1. Subject to the covenants, terms and conditions of this Agreement, the Lease is hereby subordinated to the lien of said Mortgage. If there shall be a conflict between the terms of said Lease and the terms of said Mortgage, the terms of said Lease shall prevail.
2. In the event Lender or any other party acquires title or right of possession of the Leased Premises under said Mortgage through foreclosure, or otherwise, said Lease shall remain in full force and effect and Tenant shall continue occupancy of the Leased Premises in accordance with the terms and provisions of said Lease. In such event, Lender or any other party shall be in all respects bound by said Lease as Landlord and by all of Tenant's rights thereunder, provided that Tenant is not in continued default, after notice and the time to cure, as provided for in the Lease, in the payment of rent or otherwise under the terms of said Lease.
3. So long as Lender shall be bound by the terms and conditions of said Lease, Tenant shall attorn to Lender when Lender is in possession of the Leased Premises, whether such possession is pursuant to Lender's rights under said Mortgage, or otherwise, and will continue occupancy of the Leased Premises under the same terms and conditions of said Lease except that Lender shall not be (a) bound by any rent which Tenant might have paid in advance to Landlord for a period in excess of one month or by any security deposit, cleaning deposit or other prepaid charge which Tenant might have paid in advance to Landlord unless and until Lender has actually received for its own account as landlord, the full amount of such deposit, or (b) bound by any amendment or modification of the Lease made without the written consent of Lender, provided, however, that any requested consent shall not be unreasonably withheld or delayed.

4. Lender shall not include Tenant in any foreclosure proceeding involving the Leased Premises.

5. During the continuance of the Mortgage, Tenant shall use reasonable efforts to give written notice to Lender of all default notices given by Tenant to Landlord of a default by Landlord of those obligations under said Lease which are of a nature as to give Tenant a right to terminate said Lease, to reduce rent, or to credit or offset any amounts against future rents, and Lender shall have the same opportunity as provided to Landlord in said Lease to cure the same. Tenant's failure to provide Lender such written notice shall not impair any rights granted or derived by Tenant under said Lease and/or this Agreement.

6. Lender shall promptly advise Tenant upon the release, cancellation or termination of said Mortgage.

7. In the event Lender acquires title or right of possession of the Leased Premises under said Mortgage through foreclosure, or otherwise, and thereafter the Lender transfers, assigns or conveys its interest in the Leased Premises and the Lease, Lender shall be relieved of all covenants and obligations of Landlord accruing under the Lease after the transfer date, provided that the Lender's successor in interest assumes all such covenants and obligations of the Landlord hereunder.

8. In the event Lender acquires title or right of possession of the Leased Premises under said Mortgage through foreclosure, or otherwise, Tenant acknowledges and agrees that the liability of Lender under the Lease shall be limited to its interest in the property described on Exhibit "A" and the rents, income and profits therefrom. Nothing contained herein shall otherwise limit Tenant's rights or remedies as provided in the Lease.

9. This Agreement shall also bind and benefit the heirs, legal representatives, successors and assigns of the respective parties thereto, and all covenants, conditions and agreements therein contained shall be construed as running with the land.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement, under seal, as of the day and year first above written.

TENANT:

BRINKER RESTAURANT CORPORATION,
a Delaware corporation

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

LENDER:

U.S. BANK NATIONAL ASSOCIATION

By: _____
Its: Corporate Officer

ALL SIGNATURES MUST BE NOTARIZED

State of _____)
) ss.
County of _____)

On _____, before me, _____,
personally appeared _____, ()
personally known to me - **OR** - () proved to me on the basis of satisfactory evidence to be the person
whose name is subscribed to the within instrument and acknowledged to me that he/she executed the
same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the
entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

SIGNATURE OF NOTARY

State of _____)
) ss.
County of _____)

On _____, before me, _____,
personally appeared _____, ()
personally known to me - **OR** - () proved to me on the basis of satisfactory evidence to be the person
whose name is subscribed to the within instrument and acknowledged to me that he/she executed the
same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the
entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

SIGNATURE OF NOTARY

State of _____)
) ss.
County of _____)

On _____, before me, _____,
personally appeared _____, ()
personally known to me - **OR** - () proved to me on the basis of satisfactory evidence to be the person
whose name is subscribed to the within instrument and acknowledged to me that he/she executed the
same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the
entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

SIGNATURE OF NOTARY

State of _____)
) ss.
County of _____)

On _____, before me, _____,
personally appeared _____, ()
personally known to me - **OR** - () proved to me on the basis of satisfactory evidence to be the person
whose name is subscribed to the within instrument and acknowledged to me that he/she executed the
same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the
entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

SIGNATURE OF NOTARY

EXHIBIT A

LEGAL DESCRIPTION OF THE SHOPPING CENTER

[TO BE ATTACHED]

EXHIBIT B

LEGAL DESCRIPTION OF THE PREMISES

[TO BE ATTACHED]

EXHIBIT H

MEMORANDUM OF GROUND SUBLEASE

**RECORDING REQUESTED BY:
AND WHEN RECORDED RETURN TO:**

Brinker International, Inc.
6820 LBJ Freeway
Dallas, Texas 75240
Attention: General Counsel

(Space Above For Recorder's Use Only)

The undersigned declares that the documentary transfer tax is \$ _____.

The real property is located in the City and County of San Diego, State of California.

MEMORANDUM OF GROUND SUBLEASE

This MEMORANDUM OF GROUND SUBLEASE (the "**Memorandum**") is made as of _____, 2003, by and between ARENA GROUP 2000, L.P., a California limited partnership ("**Landlord**"), and BRINKER RESTAURANT CORPORATION, a Delaware corporation ("**Tenant**").

1. This Memorandum is executed in connection with that certain Ground Sublease dated _____, 2003, ("**Lease**") by and between Landlord and Tenant.
2. The real property which is the subject of this Memorandum and of the Lease is legally described on Exhibit A attached hereto (the "**Premises**"). The Premises are part of the project legally described in Exhibit B attached hereto ("**Shopping Center**").
3. Landlord hereby leases to Tenant the Premises, and Tenant hereby leases said Premises from Landlord, for the rent and on the terms and conditions set forth in the Lease.
4. The term of the Lease is fifteen (15) years commencing on the Lease Commencement Date (as defined in the Lease). Tenant may, at Tenant's option, in accordance with the terms of the Lease, extend the Lease Term by exercising two (2) successive options to extend the Lease Term for a period of five (5) years each and a third option for a period equal to the lesser of (i) five (5) years or (ii) the remaining term of the Master Lease, as more particularly set forth in the Lease.
5. Section 1.1.4 of the Lease provides, in part, "Tenant shall have the non-exclusive right to use in common with other tenants in the Shopping Center, and subject to the Rules and Regulations and REA referred to in Article 5 of this Lease, those portions of the Shopping Center including, without limitation, the Access Driveways, which are provided, from time to time, for use in common by Landlord, Tenant, its customers, occupants, invitees, employees, shippers, suppliers, contractors, agents, and any others authorized by Tenant ("**Tenant Parties**"), and any other tenants of the Shopping Center, whether or not those areas are open to the general public (such areas, together with such other portions of the Shopping Center reasonably designated by Landlord are collectively referred to herein as the "**Common Areas**"). Tenant acknowledges that a portion of the Common Areas may be located on the Premises (but outside of the Building and appurtenant improvements described in Section 5.7 below), and to the extent located thereon, Tenant's use of such portion of the Premises shall be non-exclusive."
6. Section 1.1.5 of the Lease provides, in part, "Landlord agrees not to, without Tenant's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed (if the following requirements are satisfied) (i) materially interfere with the conduct of Tenant's business from the Premises or ingress or egress to and from the Premises or the parking area serving the Premises, (ii) materially change the primary access points to and from the Premises or the parking area serving the Premises, or (iii) make any other changes to the Common Areas within "**Tenant's Control Area**" as shown on Exhibit A-8)."
7. Section 1.1.5 of the Lease also provides, in part, "Landlord hereby covenants and agrees not to construct or maintain, or permit any other party to construct or maintain, without Tenant's consent, which consent shall not be unreasonably withheld, any building, barrier or signs on or within the No Build Area ("**No Build Area**") depicted on Exhibit A-6; provided, however, Landlord shall be permitted

to locate within the No Build Area directional signs or other improvements either depicted on Exhibit A-1, constructed as part of Landlord's Work (as defined below) pursuant to Exhibit E or other improvements normally and customarily found in Comparable Centers; provided, however, any such signs or improvements shall not materially and adversely interfere with Tenant's or Tenant Parties' access to, or use of, the Shopping Center or the Premises. Notwithstanding the foregoing, Landlord and Tenant agree that the foregoing covenant shall only encumber the portions of the Development owned or controlled by Landlord (*i.e.* Arena Group 2000 and its successors and assigns) pursuant to Landlord's existing Sports Arena operating agreement with respect to the balance of the Development. For purposes of illustration only, at such time as Landlord or its affiliate no longer operate the balance of the Development, pursuant to Landlord's separate operating agreements with Master Landlord, such covenant shall no longer be effective with respect to such portions of the Development no longer controlled by Landlord or its affiliate pursuant to such operating agreement(s)."

8. Section 5.6 of the Lease provides, in part, "To the extent allowed by Law, Landlord shall not cause or permit occupancy or operation in the Development (other than the Premises) which permits such space to be used by a Direct Competitor of Tenant. As used herein, "Direct Competitor" shall mean any Applebee's, TGI Friday's, Bennigan's and/or Red Robin restaurant, excluding the premises of any future "Anchor Tenant(s)". As used herein, "Anchor Tenant" shall mean a tenant or occupant of the Development whose premises contains a floor area in excess of 30,000 square feet. Notwithstanding the foregoing, Landlord and Tenant agree that the foregoing restriction shall only encumber the portions of the Development owned or controlled by Landlord (*i.e.* Arena Group 2000 and its successors and assigns) pursuant to Landlord's existing Sports Arena operating agreement with respect to the balance of the Development, but shall always, subject to the limitations contained in this Section 5.6, encumber the entire Shopping Center. For purposes of illustration only, at such time as Landlord or its affiliate no longer operate the balance of the Development, pursuant to Landlord's separate operating agreements with Master Landlord, such restriction shall no longer be effective with respect to such portions of the Development no longer controlled by Landlord or its affiliate pursuant to such operating agreement(s).

9. The terms and conditions of the Lease are incorporated herein by reference. This Memorandum is prepared for the purpose of recordation and in no way modifies the terms and conditions of the Lease. If there is any inconsistency between the terms and conditions of this Memorandum and the terms and conditions of the Lease, the terms and conditions of the Lease shall control.

10. This Memorandum may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together constitute one in the same instrument.

IN WITNESS WHEREOF, the parties executed this Memorandum on the date first above written.

"TENANT"

BRINKER RESTAURANT CORPORATION
a Delaware corporation

By: _____
Name: _____
Title: _____

"LANDLORD"

ARENA GROUP 2000 L.P.,
a California limited partnership

By: Arena Founders, L.P.,
a California limited partnership
Managing General Partner

By: Founders of Arena Group 2000,
a California corporation,
General Partner

By: _____
Name: _____
Title: _____

*[Signatures must be acknowledged by a notary-
Notary acknowledgements on following pages]*

State of _____)
) ss.
County of _____)

On _____, 200_, before me, the undersigned, a Notary Public in and for said County and State, personally appeared _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public in and for said State

State of _____)
) ss.
County of _____)

On _____, 200_, before me, the undersigned, a Notary Public in and for said County and State, personally appeared _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public in and for said State

EXHIBIT A TO MEMORANDUM OF GROUND LEASE

LEGAL DESCRIPTION OF THE PREMISES

[TO BE ATTACHED]

EXHIBIT B TO MEMORANDUM OF GROUND LEASE

LEGAL DESCRIPTION OF SHOPPING CENTER

[TO BE ATTACHED]

EXHIBIT I

GUARANTY OF LEASE

WHEREAS, a certain lease ("Lease"), more fully described below, has been or will be executed:

- a. Landlord: ARENA GROUP 2000 L.P., a California limited partnership
- b. Tenant: BRINKER RESTAURANT CORPORATION,
a Delaware corporation
- c. Effective Date: _____, 2003
- d. Premises Location: Pad D of Sports Arena Retail Pads

WHEREAS, the Landlord under the Lease requires as a condition to its execution of said Lease that the undersigned (herein referred to as "Guarantor") guarantee the full performance of the obligations of Tenant under the Lease.

WHEREAS, the undersigned is desirous that Landlord enter into the Lease with Tenant.

NOW, THEREFORE, in consideration of the execution of the Lease by Landlord, Guarantor agrees as follows:

1. Guarantor hereby unconditionally guarantees the performance of, and unconditionally promises to perform, all of the obligations of Tenant under the Lease and any and all extensions and modifications thereof, including, but not limited to, the obligation to pay rent thereunder.

2. In such manner, upon such terms and at such times as Landlord shall deem best, and without notice to or the consent of Guarantor, Landlord may alter, compromise, extend or change the time or manner for the performance of any obligation hereby guaranteed, substitute or add any one or more guarantors, accept additional or substituted security for the performance of any such obligation, or release or subordinate any security therefor, any and all of which may be accomplished without any effect on the obligations of Guarantor hereunder. No exercise or non-exercise by Landlord of any right hereby given, no dealing by Landlord with Tenant, any other guarantor or other person, and no change, impairment or suspension of any right or remedy of Landlord shall in any way affect any of the obligations of Guarantor hereunder or any security furnished by Guarantor or give Guarantor any recourse against Landlord.

3. Guarantor hereby waives and agrees not to assert or take advantage of the following:

(a) Any right to require Landlord to proceed against Tenant or any other person or to proceed or exhaust any security held by Landlord at any time or to pursue any other remedy in Landlord's power before proceeding against Guarantor, including the provisions of Sections 2845 and 2850 of the Civil Code of California;

(b) Any defense based on the statute of limitations in any action hereunder or in any action for the performance of any obligation hereby guaranteed;

(c) Any defense that may arise by reason of the incapacity, lack of authority, bankruptcy, death or disability of any other person or persons or the failure of Landlord to file or enforce a claim against the estate (in administration, bankruptcy or any other proceeding) of any other person or persons, including the provisions of Section 2810 of the Civil Code of California;

(d) Any right to receive demands, protests and notices of any kind including, but not limited to, notice of the existence, creation or incurring of any new or additional obligation or of any action or non-action on the part of Tenant, Landlord or any other person;

(e) Any defense based on an election of remedies including, but not limited to, any action by Landlord which shall destroy or otherwise impair any subrogation right of Guarantor or the right of Guarantor to proceed against Tenant for reimbursement, or both;

(f) Any duty on the part of Landlord to disclose to Guarantor any facts Landlord may now or hereafter know about Tenant, regardless of whether Landlord has reason to believe that such facts materially increase the risk beyond that which Guarantor intends to assume or has reason to believe that such facts are unknown to Guarantor or has a reasonable opportunity to communicate such facts to Guarantor, it being understood and agreed that Guarantor is fully responsible for being and keeping informed of the financial condition of Tenant and of all circumstances bearing on the risk of nonperformance of any obligation hereby guaranteed;

(g) Any right to receive notice of or to consent to any amendments that may hereafter be made to the Lease, including the provisions of Section 2819 of the Civil Code of California; and

(h) Any defense based on the fact that Guarantor's obligations hereunder are larger or more burdensome than that of Tenant's under the Lease, including the provisions of Section 2809 of the Civil Code of California

4. Until all obligations hereby guaranteed shall have been fully performed, Guarantor shall have no right of subrogation and waives any right to enforce any remedy which Landlord now has or may hereafter have against Tenant and any benefit of, and any right to participate in, any security now or hereafter held by Landlord, including the provisions of Sections 2847, 2848 and 2849 of the Civil Code of California.

5. All rights, powers and remedies of Landlord hereunder and under any other agreement now or at any time hereafter in force between Landlord and Guarantor shall be cumulative and not alternative, and such rights, powers and remedies shall be in addition to all rights, powers and remedies given to Landlord at law or in equity. This Guarantee of Lease is in addition to and exclusive of the guarantee of any other guarantor of any obligation of Tenant to Landlord.

6. The obligations of Guarantor hereunder are independent of the obligations of Tenant under the Lease, and, in the event of any default hereunder or under the Lease, a separate action or actions may be brought and prosecuted against Guarantor, whether or not Tenant is joined therein or a separate action or actions are brought against Tenant. Landlord may maintain successive actions for other defaults. Landlord's rights hereunder shall not be exhausted by its exercise of any of its rights or remedies or by any such action or by any number of successive actions until and unless all obligations hereby guaranteed shall have been fully performed.

7. Guarantor shall pay to Landlord, without demand, reasonable attorneys' fees and all costs and other expenses which Landlord shall expend or incur in collecting or compromising any obligation hereby guaranteed or in enforcing this Guarantee of Lease against Guarantor, whether or not suit is filed including, but not limited to, attorneys' fees, costs and other expenses incurred by Landlord in connection with any insolvency, bankruptcy, reorganization, arrangement or other similar proceeding involving Guarantor which in any way affects the exercise by Landlord of its rights and remedies hereunder.

8. Should any one or more provisions of this Guarantee of Lease be determined to be illegal or unenforceable, all other provisions shall nevertheless be effective.

9. This Guarantee of Lease shall inure to the benefit of Landlord and its successors and assigns, and shall bind the heirs, executors, administrators, successors and assigns of Guarantor. This Guarantee of Lease may be assigned by Landlord concurrently with the transfer of title to property covered by the Lease, and, when so assigned, Guarantor shall be liable to the assignees without in any manner affecting the liability of Guarantor hereunder.

10. Upon full performance of all obligations hereby guaranteed, this Guarantee of Lease shall be of no further force or effect; provided, however, Guarantor's obligations hereunder shall continue and remain in effect if such full performance is avoided or recovered from Landlord as a preference, fraudulent transfer or otherwise.

11. No provision of this Guarantee of Lease or right of Landlord hereunder can be waived or modified, nor can Guarantor be released from Guarantor's obligations hereunder, except by a writing duly executed by Landlord.

12. When the context and construction so require, all words used in the singular herein shall be deemed to have been used in the plural and the masculine shall include the feminine and neuter and vice versa. The word "person" as used herein shall include any individual, company, firm, association, partnership, corporation, trust or other legal entity of any kind whatsoever.

13. If two (2) or more persons are signing this Guarantee of Lease as Guarantor, then all such persons shall be jointly and severally liable for the obligations of Guarantor hereunder.

14. This Guarantee of Lease shall be governed by and construed in accordance with the laws of the State of California. In any action brought under or arising out of this Guarantee of Lease, Guarantor hereby consents to the jurisdiction of any competent court within the State of California and hereby consents to service of process by any means authorized by California law. This Guarantee of Lease shall constitute the entire agreement of Guarantor with respect to the subject matter hereof, and no representation, understanding, promise or condition concerning the subject matter hereof shall be binding upon Landlord unless expressed herein.

15. Notwithstanding the foregoing, in the event Landlord consents to a Transfer and Transferee (as such terms are defined in Section 14.1 of the Lease) has (i) a minimum net worth and net current assets equal to at least Fifty Million Dollars (\$50,000,000) and (ii) a total of at least twenty-five (25) stores and/or restaurants, Guarantor shall be relieved from its duties and obligations under this Guaranty of Lease arising from and after such Transfer, provided (i) Tenant is not in default (following expiration of any applicable notice and cure period) under the Lease and (ii) Landlord is not then pursuing Guarantor's obligations under this Guaranty of Lease, and further provided Transferee executes and delivers to Landlord an assumption instrument in form and content satisfactory to Landlord and executed by Tenant and such Transferee.

IN WITNESS WHEREOF, Guarantor has caused this Guaranty of Lease to be executed as of the Effective Date of the Lease.

Address: _____

Telephone: _____

GUARANTOR:

BRINKER INTERNATIONAL, INC.,
a Delaware corporation

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____