

RECORDED AT THE REQUEST OF
CHICAGO TITLE CO.

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Arena Fuels, LLC
462 Stevens Avenue, Suite 105
Solana Beach, CA 92075
Attention: President

THE ORIGINAL OF THIS DOCUMENT
WAS RECORDED ON OCT 09, 2002
DOCUMENT NUMBER 2002-0875733
GREGORY J. SMITH, COUNTY RECORDER
SAN DIEGO COUNTY RECORDER'S OFFICE
TIME: 3:43 PM

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

23038138-413

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 Arena Fuels, L.L.C., a California limited liability company ("SUBTENANT"), 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 24, 2002 ("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 5.6 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.

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.

(Remainder of page intentionally blank)

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 9 day of September, 2002.

LESSOR:

THE CITY OF SAN DIEGO,
a municipal corporation,

By: T C S

Name: TIM C ROTHMAN
For the City Manager

Title: Deputy Real Estate Assets Director
Date: 9-9-02

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: ERNEST HAHN
Title: GM
Date: 3/30/02

By: [Signature]
Name: ERNEST HAHN
Title: G.P.
Date: 9-1-02

SUBTENANT:

ARENA FUELS, L.L.C.,
A California limited liability company

By: [Signature]
Name: Robert J. Sullivan
Its: member
Date: 9/18/02

APPROVED AS TO FORM AND LEGALITY

CASEY G. GWINN, City Attorney

By: [Signature]
Deputy City Attorney

Dated: 9/18/02

STATE OF CALIFORNIA)
) ss
COUNTY OF SAN DIEGO)

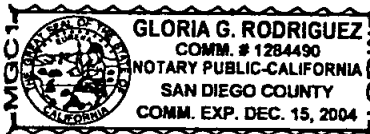
On _____, 2002, before me, the undersigned, a notary public in and for said State, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they 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

STATE OF CALIFORNIA)
) ss
COUNTY OF SAN DIEGO)

On AUGUST 30, 2002, before me, the undersigned, a notary public in and for said State, personally appeared ERNIE 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.

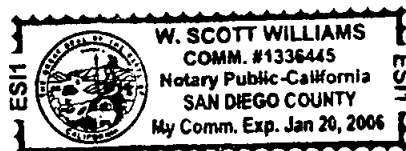
Gloria G. Rodriguez
Notary Public



STATE OF CALIFORNIA)
) ss
COUNTY OF SAN DIEGO)

On August 28, 2002, before me, the undersigned, a notary public in and for said State, personally appeared KEVIN J. SULLIVAN, 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.

W. Scott Williams
Notary Public



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA)

COUNTY OF San Diego)

On 9/1/02 before me, Gloria Rodriguez
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared, Ronald E. 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 (SEAL)
NOTARY PUBLIC SIGNATURE



OPTIONAL INFORMATION

THIS OPTIONAL INFORMATION SECTION IS NOT REQUIRED BY LAW BUT MAY BE BENEFICIAL TO PERSONS RELYING ON THIS NOTARIZED DOCUMENT.

TITLE OR TYPE OF DOCUMENT Non-Disturbance & Attornment Agreement - ARCO

DATE OF DOCUMENT _____ NUMBER OF PAGES _____

SIGNER(S) OTHER THAN NAMED ABOVE Ernest W. Hahn II

SIGNER'S NAME _____ SIGNER'S NAME _____

RIGHT THUMBPRINT

RIGHT THUMBPRINT

ACKNOWLEDGMENT

State of California }
 }
County of San Diego }

SS.

On 09/10/02 , before me,
(Date)

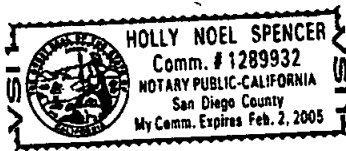
Holly Noel Spencer, Notary Public
(Name and Title of Officer, e.g. "Jane Doe, Notary Public")

personally appeared:

Tim C. Rothans
(Name(s) of Signer(s))

- ☒ personally known to me
☐ 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 entity upon behalf of which the person(s) acted, executed the instrument.



Place Notary Seal Above

WITNESS my hand and official seal.

Holly Noel Spencer
Signature of Notary Public

OPTIONAL

Description of Attached Document

Title of Type of Document: Non-Disturbance and Attornment Agreement

Document Number: Arena Fuels, LLC

Document Date: 08/27/02

STATE OF CALIFORNIA)
) ss
COUNTY OF SAN DIEGO)

On _____, 2002, 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

STATE OF CALIFORNIA)
) ss
COUNTY OF SAN DIEGO)

On AUGUST 30, 2002, before me, the undersigned, a notary public in and for said State, personally appeared ERNIE 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

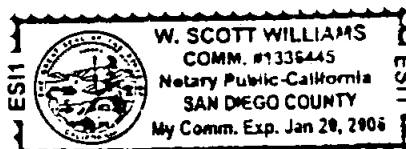


STATE OF CALIFORNIA)
) ss
COUNTY OF SAN DIEGO)

On 8/28/, 2002, before me, the undersigned, a notary public in and for said State, personally appeared KEVIN J. SULLIVAN, 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.

W. Scott Williams
Notary Public



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA)

COUNTY OF San Diego)

On 9/1/02 before me, Gloria Rodriguez
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared, Ronald E. 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 (SEAL)
NOTARY PUBLIC SIGNATURE

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TITLE OR TYPE OF DOCUMENT Non-Disturbance & Attornment Agreement - ARCO

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SIGNER(S) OTHER THAN NAMED ABOVE Ernest W. Hahn II

SIGNER'S NAME _____ SIGNER'S NAME _____

RIGHT THUMBPRINT

RIGHT THUMBPRINT

J-13575B

EXHIBIT "A"

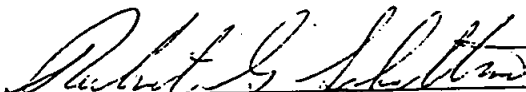
CITY LEASE PARCEL

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

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 24, 2002, by and between the above LESSEE and

ARENA FUELS, LLC

("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 first class gasoline dispensing facility which shall include (i) the sale of gasoline products from a maximum of eight (8) multi-grade dispensers (or its equivalent if grades of gasoline are dispensed individually), (ii) a self-serve car wash (from the car wash building which shall not exceed 1,440 square feet of building area) and (iii) a convenience store (from the convenience store building which shall not exceed 4,200 square feet of building area), all of which constitute the ("Permitted Use"). Any change to the Permitted Use will require prior written consent and approval of the CITY. CITY consents to the use of only such hazardous materials as are necessary for the Permitted Use of the Premises, subject to all applicable laws governing the use of such substances.
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: SUBLESSEE shall be insured by an insurance carrier acceptable to the CITY against loss from public liability arising from the use or condition of or operation conducted on the leased premises. Minimum coverage shall be three million dollars (\$3,000,000) Combined Single Limit Liability. SUBLESSEE shall file with CITY on or before the execution of this SUBLEASE a copy of the policy of insurance which shall name "THE CITY OF SAN DIEGO" as an additional insured. Said policy shall specify that the policy may not be terminated, altered or canceled without thirty (30) days prior written notice to CITY by the insurance company.

(Remainder of page intentionally blank)

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.

LESSOR:

Dated: 9-9-02

THE CITY OF SAN DIEGO,
a municipal corporation,

By: T.C.
For the City Manager, by Tim C. Rothans
Deputy Real Estate Assets Director

LESSEE:

Dated: 8-30-02

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: KEVIN HAHN
Title: GM

By: [Signature]
Name: RANDY FORNER
Title: G.P.

SUBTENANT:

Dated: 8/28/02

ARENA FUELS, LLC,
a California limited liability company

By: [Signature]
Name: Kevin J. Sullivan
Its: Member

APPROVED AS TO FORM AND LEGALITY

CASEY G. GWINN, City Attorney

Dated: 9/18/02

By: [Signature]
Deputy City Attorney

ACKNOWLEDGMENT

State of California }
 }
County of San Diego }

SS.

On 09/10/02 , before me,
(Date)

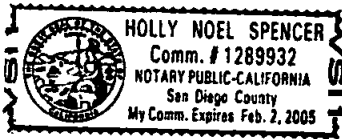
Holly Noel Spencer, Notary Public
(Name and Title of Officer, e.g. "Jane Doe, Notary Public")

personally appeared:

Tim C. Rothans
(Name(s) of Signer(s))

- ☒ personally known to me
☐ 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 entity upon behalf of which the person(s) acted, executed the instrument.



Place Notary Seal Above

WITNESS my hand and official seal.

Holly Noel Spencer
Signature of Notary Public

OPTIONAL

Description of Attached Document

Title of Type of Document: Consent to Sublease

Document Number: Arena Fuels, LLC

Document Date: 09/09/02

On _____, 2002, 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.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA)

COUNTY OF San Diego)

On 9/1/02 before me, Gloria Rodriguez
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared, Ronald E. 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 (SEAL)
NOTARY PUBLIC SIGNATURE

OPTIONAL INFORMATION

THIS OPTIONAL INFORMATION SECTION IS NOT REQUIRED BY LAW BUT MAY BE BENEFICIAL TO PERSONS RELYING ON THIS NOTARIZED DOCUMENT.

TITLE OR TYPE OF DOCUMENT Consent to Sublease - ARCO AM/PM

DATE OF DOCUMENT _____ NUMBER OF PAGES _____

SIGNER(S) OTHER THAN NAMED ABOVE Ernest W. Hahn II

SIGNER'S NAME _____ SIGNER'S NAME _____

RIGHT THUMBPRINT

RIGHT THUMBPRINT

STATE OF CALIFORNIA)
) ss
COUNTY OF SAN DIEGO)

On _____, 2002, 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

LEGAL DESCRIPTION OF THE SUBLEASED PREMISES

[ATTACHED]

J-13575B

EXHIBIT "A"

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.

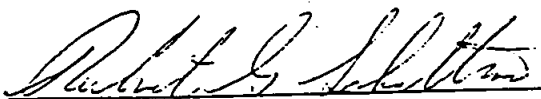
 5-22-2001
Robert G. Schoettmer L.S. 4324



EXHIBIT B

SUBLEASE

[ATTACHED]

GROUND SUBLEASE

**ARENA GROUP 2000 LP,
a California limited partnership**

as Landlord,

and

**ARENA FUELS, LLC,
a California limited liability company**

as Tenant

SUMMARY OF BASIC GROUND SUBLEASE INFORMATION

TERMS (References are to the Lease)		<u>DESCRIPTION</u>
1.	Date:	June <u>24</u> , 2002
2.	Landlord:	ARENA GROUP 2000 LP, a California limited partnership
3.	Tenant:	ARENA FUELS, LLC, a California limited liability company
4.	Shopping Center (Article 1):	That certain retail development located in San Diego, California as, generally depicted on <u>Exhibit A-1</u> to the Lease. The Shopping Center may be subject to future expansion and modification and is currently adjacent to the property operated as the San Diego Sports Arena and certain other improvements which development is hereinafter referred to as the "Development."
5.	Premises and Improvements (Article 1):	
5.1	Premises:	That certain real property located within the Shopping Center as generally depicted on <u>Exhibit A-1</u> to the Lease and legally described on <u>Exhibit A-2</u> to the Lease.
5.2	Improvements:	A gasoline dispensing facility containing approximately (but not exceeding) 5,000 square feet of canopy area ("Gasoline Dispensing Facilities"), together with a single-story convenience store building containing approximately (but not exceeding) 4,200 square feet of building area ("Convenience Store Building"), and an additional single-story self-service car wash containing approximately (but not exceeding) 1,440 square feet of building area ("Car Wash Building") to be constructed on the Premises by Tenant, as more particularly depicted on <u>Exhibit A-1</u> to the Lease. The Gasoline Dispensing Facilities, Convenience Store Building and Car Wash Building and other related improvements to be constructed by Tenant on the Premises are sometimes collectively referred to herein as the "Improvements").
6.	Lease Term (Article 2):	
6.1	Lease Term:	Twenty (20) 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 fifty (150) days after Tenant has approved or waived all of Tenant's Contingencies set forth in Section 30.19 hereof.
6.3	Lease Expiration Date:	The last day of the month in which the twentieth (20) anniversary of the Lease Commencement Date occurs.
6.4	Options to Extend:	Two (2) successive options to extend the Lease Term, the first for a period of five (5) years and the second 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	\$100,000.00	\$ 8,333.33
61-120	\$115,000.00	\$ 9,583.33
121-180	\$132,250.00	\$11,020.83
181-240	\$152,087.50	\$12,673.96
241-300	\$174,900.62	\$14,575.05
(first option)		
301-end of Lease Term (second option)	\$201,135.71	\$16,761.31

7.2 Percentage Rent :

Thirty three percent (33%) of Tenant's "Net Margin of Convenience Store Sales" (subject to the exclusions to Convenience Store Sales set forth in Section 3.2 of the Lease) from the Premises during each calendar year in excess of Two Hundred Ninety Thousand Dollars (\$290,000.00) during such calendar year, as more particularly set forth in Section 3.2 to the Lease. The foregoing dollar threshold is more particularly defined in the Lease as the "Breakpoint" and is subject to increase every five (5) years during the Lease Term as more particularly provided in Section 3.2 of the Lease.

8. Tenant's Share of Expenses (Article 4):

See Section 4.3.1 of the Lease.

9. Use:

9.1 Permitted Use (Article 5):

Tenant shall use the Premise only for the operation of a first class Gasoline Dispensing Facilities which shall include (i) the sale of gasoline products from a maximum of eight (8) multi-grade dispensers (or its equivalent if grades of gasoline are dispensed individually), (ii) a self-serve car wash (from the Car Wash Building which shall not exceed 1,440 square feet of building area) and (iii) a Convenience Store (as defined in Section 5.1 below) (from the Convenience Store Building which shall not exceed 4,200 square feet of building area), subject to the use restrictions, prohibitions and limitations set forth in Article 5 below.

9.2 Trade Name (Article 5):

Arco.

10. Security Deposit (Article 21):

None.

11. Addresses of Landlord and Tenant (Article 23).

11.1 Address of Tenant:

Arena Fuels, LLC
462 Stevens Avenue, Suite 105
Solana Beach, CA 92075
Attention: Kevin Sullivan
Telephone: (858) 793-2708
Facsimile: (858) 793-2707

11.2 Address of Landlord: Arena Group 2000 LP
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

12. Broker (Article 25): Landlord's Broker: Flocke & Avoyer

Tenant's Broker: None

13. Guarantor (Exhibit H): 21st Century Oil Corp., a California corporation

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GROUND SUBLEASE

This Ground Sublease, which includes the preceding Summary of Basic 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 LP, a California limited partnership ("**Landlord**"), and ARENA FUELS, LLC, a California limited liability company ("**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 and Common Areas

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. The outline of the Premises is generally depicted in Exhibit A-1 attached hereto.

1.1.2 The Improvements. The term "**Improvements**" as used herein shall mean the improvements to be constructed by Tenant more particularly described in Section 5.2 of the Summary, 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 three pads ("**Pad Parcels**") and certain access driveways ("**Access Driveways**"); 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. The anticipated initial configuration of the Shopping Center, including the Access Driveways, is generally depicted on Exhibit A-1 attached hereto.

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 which are provided, from time to time, for use in common by Landlord, Tenant 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, and to the extent located thereon, Tenant's use of such portion of the Premises shall be non-exclusive. 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, during the Lease Term, keep, or cause to be kept, the Access Driveways in good order, condition and repair 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 without notice to Tenant (except as provided below) (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 drives depicted on Exhibit A-2) in connection with the use and operation of, and activities from, the Development. Notwithstanding the foregoing, Landlord agrees in connection with any such actions (i) to use Landlord's commercially reasonable efforts not to interfere with (A) the conduct of Tenant's business from the Premises, (B) ingress or egress to and from the Premises, (C) the visibility of Tenant's Improvements from Sports Arena Boulevard, or (D) parking on Tenant's Premises, (ii) not to materially change, without Tenant's consent (which shall not be unreasonably withheld, conditioned or delayed), the primary access points to and from the Premises (as depicted on Exhibit A-2), or (iii) make any other material changes, without Tenant's consent (which shall not be unreasonably withheld), on the Premises.

1.1.6 Master Lease. Landlord is the lessee of the Premises 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; Tenant's "AS-IS" Acceptance of Premises

The Improvements shall be constructed and the entire Premises improved by Tenant, at Tenant's sole cost and expense, in accordance with the Work Letter. Tenant will be responsible for the construction of the Improvements (including the Gasoline Dispensing Facilities, the Convenience Store Building, the Car Wash Building and all other improvements on the Premises or otherwise necessary for Tenant's occupancy and operation of its Permitted Use). All such work by Tenant shall be designed, approved, performed, and completed in compliance with the provisions of the Work Letter and this Lease. Notwithstanding anything to the contrary contained in this Lease, Tenant hereby agrees that Tenant shall accept delivery of the Premises in its "AS-IS" condition on the date of the delivery of the same to Tenant by Landlord, and Tenant further agrees that 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 allocable to Tenant's construction of the Buildings 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.

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 earlier of 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 (the "**Initial Term**"). For purposes of this Lease, the term "**Lease Year**" shall mean each consecutive twelve (12) month period during the Lease Term; provided, however, that the first Lease Year shall commence on the Lease Commencement Date and end of the last day of the twelfth month thereafter and the second and each succeeding Lease Year shall commence on the first day of the next calendar month; and further provided that the last Lease Year shall end on the Lease Expiration Date. 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**") two (2) successive options to extend the Lease Term for a period of five (5) years each (individually, "**Option Term**" and collectively, "**Option Terms**"). Each Extension Option must be exercised, if at all, by written notice ("**Option Notice**") delivered by Tenant to Landlord not less than twelve (12) 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 expiration of any applicable notice and cure period) 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 an assignee 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

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. 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 concurrently with Tenant's execution of this Lease. 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) thirty three percent (33%) of Tenant's Net Margin of Convenience Store Sales (as defined in Section 3.2.3 below) from or with respect to the Premises during each calendar year, exceed (ii) Two Hundred Ninety Thousand Dollars (\$290,000.00) with respect to such calendar year ("the **Breakpoint**"), as more particularly set forth in Exhibit I attached hereto. Notwithstanding the foregoing, commencing on the sixth (6th) anniversary of the Lease Commencement Date and on every fifth (5th) anniversary thereafter (including the Option Terms), the Breakpoint shall be increased to an amount equal to one hundred fifteen percent (115%) of the Breakpoint in effect during the immediately preceding period. By way of example only, the Breakpoint shall equal \$290,000 for years 1-5 of the Lease Term; \$333,500 for years 6-10 of the Lease Term; \$383,525 for years 11-15 of the Lease Term; and for every five (5) years thereafter the Breakpoint shall be increased by fifteen percent (15%) over the then applicable 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 forty five (45) days after the end of each Lease Year a written statement showing in reasonable detail and by month the Convenience Store 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 product of (A) the Percentage Rent Factor and (B) the Convenience Store Sales for such calendar year exceeds the Breakpoint with respect to such calendar year, such Convenience Store Sales statement shall be accompanied by payment to Landlord of an amount equal to the excess as Percentage Rent (as stipulated in Section 3.2.1).

3.2.3 Convenience Store Sales. "Convenience Store 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 Convenience Store Building although said orders may be delivered or filled elsewhere, and including all sales by any franchisee, sublessee, concessionaire, licensee, or co-branding agreements; 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. Notwithstanding the foregoing, sales of products or services outside of the Convenience Store Building but integrally related to or associated with the operation of the Convenience Store (as defined in Section 5.1 below) shall, subject to Exhibit I, be included in Convenience Store Sales, including, but not limited to, sidewalk sales; provided, however, in no event will Convenience Store Sales include gasoline sales, car wash receipts, lotto receipts, lottery receipts, telephone sales, vending machine sales and air/water and other coin operated machines. Further, Convenience Store Sales shall also not include: (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) any industry standard royalty fees paid to Tenant's gas distributor; and (viii) any sales not associated with the operation of the Convenience Store. 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 Convenience Store Sales - Records. Full, true and accurate records from which Convenience Store 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 San Diego County 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 Convenience Store Sales.

3.2.5 Convenience Store Sales - Audit.

3.2.5.1 As the bona fide reporting of Convenience Store Sales and the due payment of Percentage Rent are essential to Landlord, in addition to its rights specified in Section 3.2.4, Landlord shall be entitled, in good faith and with reasonable notice from time to time during normal business hours at the Premises, to have all or any of the accounting records of Tenant affecting the determination of Convenience Store 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 Convenience Store Sales, and the amount of Convenience Store Sales and of Percentage Rent payable for any period.

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 shall be payable by Tenant to Landlord on demand if Convenience Store Sales for any period as determined by such accountant is greater by five percent (5%) 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 Convenience Store Sales statement cannot reasonably be determined.

3.2.5.4 The acceptance by Landlord of any statement of Convenience Store 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. Without limiting the generality of the foregoing, Landlord shall be entitled to all its remedies under this Lease and in any event shall have the remedy of termination and forfeiture if there shall be any substantial or continuing breach of such obligations by Tenant.

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 "Convenience Store Sales" of such other business in the "Convenience Store 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 the 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 any Additional Rent other than Access Driveway Operating Expenses. 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, it is their intent and agreement that this Lease 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 this Lease and 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 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.

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 Access Driveways, or any portions thereof, including, but not limited to, (i) the reasonable cost of parking attendants, if Landlord deems necessary, to control/direct traffic and parking during certain Development events and (ii) any Taxes (as defined below) payable with respect to the Access Driveways. In addition, the expenses in connection with said Access Driveways shall include a fee payable to Landlord equal to fifteen percent (15%) of the total of the aforementioned Access Driveway Operating Expenses for each Expense Year. 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 Notwithstanding the foregoing, for purposes of this Lease, Access Driveway Operating Expenses shall not include the cost of any capital improvements but shall include those capital improvements that relate to the Access Driveways and are (A) required by laws, ordinances or regulations enacted after the date hereof, (B) installed with a reasonable and good faith expectation by Landlord that the same will reduce Access Driveway Operating Expenses or (C) includable in Access Driveway Operating Expenses pursuant to an application of sound real estate management principals (including, but not limited to, Access Driveway repair, resurfacing and replacement); provided, however, any such capital improvements shall be amortized (with commercially reasonable interest) over their useful life.

4.2.4 "**Taxes**" shall mean any form of tax, assessment (general or special), lien, possessory interest tax, bond obligation, license fee, 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 Landlord's general income, profits, corporation, franchise, inheritance, estate, succession or gift taxes.

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 3.56%. In the event either the land area of the Premises and/or the Development Center 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 endeavor to give to Tenant on or before 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. 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. Notwithstanding the foregoing or anything in this Lease to the contrary, Access Driveway Operating Expenses shall not include any expenditures incurred more than twelve (12) months prior to the submission of demand, except with respect to Taxes for which a reassessment is in process in which event such twelve (12) month period shall not begin to run until

such reassessment is completed (provided, however, the foregoing shall not prevent the recovery by Landlord of the amortization of capital items as permitted hereunder).

4.4 Calculation and Payment of Taxes

Subject to the limitations of 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 Buildings, 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. Tenant shall pay such Taxes at least thirty (30) days 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.

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. In the event any such items of property are assessed with property of Landlord, such assessment shall be equitably divided between Landlord and Tenant by Landlord.

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 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 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 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 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 Share of Access Driveway Operating Expenses by more than five percent (5%), the reasonable cost of such certification shall be paid by Landlord (excluding travel and lodging costs). 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 use the Premises solely for the Permitted Use and under the Trade Name set forth in Section 9 of the Summary and Tenant shall not use or permit the Premises to be used for any other purpose or purposes or under any other name whatsoever. 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 or use prohibitions previously granted or in the process of being granted by Landlord with respect to the Shopping Center or Development including the exclusives and use prohibitions specifically set forth in Exhibit F attached hereto ("**Existing Exclusives/Use Prohibitions**") nor any exclusives or use prohibitions granted in the future by Landlord; provided, however, notwithstanding anything to the contrary contained herein, Landlord has not and will not in the future grant any exclusive in the Shopping Center which would prevent Tenant from using the Premises for the operation of Gasoline Dispensing Facilities as a Convenience Store and/or a self-service car wash facility. As used herein, "**Convenience Store**" shall mean a store selling an assortment of food, beverages and other products and services customarily sold in convenience stores operated in Comparable Centers. Tenant's operation of a Convenience Store may include co-branding by Tenant within the Convenience Store Building of uses typically operated in similar Convenience Stores such as,

but not limited to, a Subway sandwich store or Taco Bell, so long as such co-branded uses are customarily located in Convenience Stores in Comparable Centers and so long as such use is reasonably approved by Landlord (with Landlord permitted to reasonably disapprove such co-branded use for any of the reasons set forth in this Section 5.1 below). Notwithstanding the foregoing or anything in this Lease to the contrary, a Convenience Store shall not be deemed to include any premises containing a floor area in excess of 5,000 square feet. Further, notwithstanding the foregoing, Landlord shall not unreasonably withhold its consent to a change in the Trade Name or 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) in Landlord's reasonable judgment the proposed change in Permitted Use is not consistent with the character of the Shopping Center as a high quality Shopping Center; (ii) the proposed use is not permitted by the REA described below or would cause a violation of another then-existing lease for space within 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, (iii) the proposed use is, in Landlord's determination, in conflict with the primary use of any other existing or prospective tenant or occupant of the Shopping Center, or (iv) the proposed change in Permitted Use is not permitted under the Master Lease. Notwithstanding anything to the contrary contained in this Lease, Tenant shall be permitted, without Landlord's consent, to change Tenant's Trade Name to the trade name then used by any other national gasoline brand. 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 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 further 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 and all covenants, conditions, and restrictions relating to the Development and/or Shopping Center previously or hereafter recorded against the Development and/or Shopping Center and any amendments or modifications thereto (collectively, "**REA**"). Notwithstanding the foregoing, Landlord agrees that the Rules and Regulations shall not be (i) modified or enforced in any way by Landlord so as to interfere with Tenant's Permitted Use or (ii) discriminately enforced against Tenant. Further, to the extent the REA is not recorded against the Shopping Center prior to the date hereof, Landlord shall deliver a copy of such REA to Tenant prior to its recordation to confirm that the REA does not materially increase Tenant's obligations or materially decrease Tenant's rights under this Lease. Tenant shall have fifteen business (15) days after receipt of the proposed REA to deliver written notice to Landlord that Tenant reasonably believes such REA does materially increase Tenant's obligations or materially decrease 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 modifications, amendments or supplements thereto. Tenant's failure to notify Landlord in writing of Tenant's objection to the REA within said fifteen (15) business day period shall constitute Tenant's approval of such REA.

5.2.2 Prohibited Conduct. Tenant shall not cause, maintain or permit any nuisance in, on or about the Premises, nor shall Tenant commit or suffer to be committed any waste in or upon the Premises. 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 shall not place or keep any tables, merchandise or other items in the Common Areas and shall not be permitted to use any area outside of the Premises for any portion of Tenant's business operations. 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.

5.2.3 Signs; Merchandising and Advertising. Subject to any required governmental approvals, any 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 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. Notwithstanding the foregoing, the signs, advertising media, window, door lettering or placards or similar items provided by Tenant's then existing national oil company or any permitted co-brand user shall be deemed to be professionally prepared so long as they are in compliance with all applicable laws and the Master Lease. Tenant shall not use any advertising media 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. Notwithstanding the foregoing, to the extent not prohibited by the Master Lease and all applicable laws, rules, regulations and ordinances, Tenant or Tenant's agent shall have the right to conduct on the Premises (i) grand opening activities prior to or promptly following the initial opening of Tenant's business and (ii) "customer appreciation days" activities from time to time on the Premises; provided, however, that (a) such activities shall not interfere with or disrupt the other occupants' normal business operations, pedestrian access, the visibility of the premises of other occupants of the Development or any signage thereon or the use by the other occupants of the Development of the Common Areas and (b) such customer appreciation days activities shall not be permitted more than one (1) time each calendar year (and each such activity shall not exceed seven [7] days in duration).

5.3 Opening for Business and Operating Covenant

Tenant covenants and agrees that Tenant shall open for business to the public fully stocked and fixtured under the Trade Name required under Section 9.2 of the Summary no later than the date set forth in Section 6.2(ii) of the Summary, and from and after such opening shall continuously and uninterruptedly keep the Premises open for business for the Permitted Use and under the required Trade Name during the normal hours of operation of the Shopping Center, or such other hours as may reasonably be approved by Landlord, subject to interruption of business actually caused by casualty or condemnation or a reasonable period of time for periodic remodeling, repairs or maintenance. Tenant shall have its exterior signs and exterior advertising displays adequately illuminated continuously during Tenant's hours of operation. If Tenant shall fail to continuously and uninterruptedly operate the business which it is required to operate under the terms of this Lease, Tenant acknowledges that monetary damages may be inadequate to compensate Landlord and that Landlord shall be entitled to injunctive relief ordering Tenant to resume such continuous operation, and to pursue any and all other rights and remedies under this Lease, at law, or at equity.

5.4 Radius Restriction

Tenant covenants and warrants that it will not, during the Lease Term, directly or indirectly, operate or own any type of business similar to the type of businesses permitted to be operated by Tenant hereunder within a radius of one (1) mile of any portion of the Development (measured on a straight-line basis) (the "**Radius**"). If, during the Lease Term, Tenant, or any parent, subsidiary or other affiliate of Tenant, directly or indirectly, operates or owns under Tenant's Trade Name or otherwise any similar type of business not so operated or owned on the date Landlord executed the Lease, within the Radius, Landlord shall, and continuing while Tenant is operating said other business, include the Convenience Store Sales of such other business in the Convenience Store 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 Convenience Store Sales, in accordance with the provisions of Section 3.2 for each such business location operated by Tenant within said Radius.

5.5 Exclusive Use

To the extent allowed by law, during the Initial Term, 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. The foregoing restriction shall automatically become null and void (i) if Tenant commits any event of default under this Lease which is not cured with any applicable notice and cure period; or (ii) with respect to any Exclusive Use, the Premises cease to be used for such Exclusive Use. Tenant hereby agrees to indemnify, defend and hold Landlord harmless from and against all losses, costs, damages or expenses, including attorney's 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.

5.6 Pad Parcels Prohibited Uses

Notwithstanding anything to the contrary contained in this Lease herein, in no event will any of the following uses be permitted on the Pad Parcels (*i.e.* the three (3) pad parcels depicted on Exhibit A-1):

5.6.1 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 similar retail shopping centers in the area where the Shopping Center is located;

5.6.2 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;

5.6.3 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;

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

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

5.6.6 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);

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

5.6.8 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;

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

5.6.10 any veterinary hospital or animal raising facility (except that this prohibition shall not restrict pet shops);

5.6.11 any catering hall;

5.6.12 any fire sale, flea market or second-hand store, bankruptcy sale (unless pursuant to a court order) or auction operation;

5.6.13 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;

5.6.14 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 Pad Parcels of any lottery tickets or similar legally permitted games of chance;

5.6.15 except as incidental to the use of a restaurant, any discotheque, bar, dance hall, pool hall or business primarily selling liquor;

5.6.16 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 Envelope Areas or 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;

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

5.6.18 any apartment, home or other residential use.

Notwithstanding the provisions of this Section 5.6, 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 5.6.

Further notwithstanding the provisions of this Section 5.6, Landlord and Tenant acknowledge that the Gasoline Dispensing Facilities may involve the use and sale of gasoline, oil and other petroleum derivatives and materials commonly associated with the operation of Gasoline Dispensing Facilities, and such use of the Premises shall not be prohibited by the foregoing so long as such products are used, generated, stored, released or disposed in compliance with the requirements of all applicable laws and this Lease.

5.7 Building Height Limitations

No building or other structure (excluding any light poles) shall exceed the lesser of (i) the maximum height permitted by law or (ii) twenty eight (28) feet, 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.

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, 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, 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.

6.4 After Hours Lighting

Prior to Tenant's opening for business from the Premises Landlord shall inform Tenant of the normal hours of operation for the Shopping Center and Landlord and Tenant shall reasonably establish the hours Tenant will require Common Areas lighting during hours other than the normal hours of operation of such portion of the Shopping Center. Tenant shall be solely responsible for the costs of all Common Areas lighting necessary to serve Tenant's Premises during such after hours operation. Landlord shall equitably determine the cost of such after hours lighting and Tenant shall reimburse Landlord therefor (together with an administrative fee equal to fifteen percent (15%) of such amount), as Additional Rent, within twenty (20) days after being billed for the same.

ARTICLE 7

REPAIRS

Tenant shall, at its sole cost and expense, reasonably maintain the entire Premises and all improvements 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 necessary repairs and replacements to the entire Premises (including all parking areas and other 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. Notwithstanding the foregoing, Landlord shall repair and maintain 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 fifteen (15) 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. Further notwithstanding the foregoing, Landlord shall repair and maintain, or cause to be repaired or maintained, any Common Areas located on the Premises 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 the Lease. 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 twenty (20) days prior to the commencement thereof, and which consent shall not be unreasonably withheld by Landlord; provided, however, that Tenant may, at Tenant's sole cost and expense and upon ten (10) days prior notice to Landlord, make interior Alterations to the Improvements which: (i) are not visible from the exterior of the Improvements; (ii) do not affect any part of the Shopping Center and/or Development outside of the Improvements; (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 and/or Development; (iv) will not result in a breach of this Lease or the Master Lease; and (v) do not cost in excess of \$25,000. 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 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 and/or Development or any portion thereof, by any other tenant of the Shopping Center and/or Development,

and so as not to obstruct the business of Landlord or other tenants in the Shopping Center and/or Development, or interfere with the labor force working in the Shopping Center and/or Development. In addition to Tenant's obligations under Article 9 of this Lease, upon completion of any material Alterations, 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 and/or Development management office a reproducible copy of the "as built" 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 Alterations, prior to the commencement of such Alterations, if Tenant shall use a contractor to make such Alterations, Tenant shall provide Landlord with evidence that Tenant or Tenant's contractor carries "Builder's All Risk" insurance in an amount equal to the cost of construction of such 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.

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 and become the property of Landlord, except that Tenant may remove any non-structural Alterations, provided Tenant repairs 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

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, Development or the 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, Development 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. Notwithstanding anything to the contrary set forth in this Lease, 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 thirty (30) 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

Tenant shall, to the extent not covered by insurance carried or required to be carried by Landlord hereunder, indemnify, defend, protect, and hold harmless Landlord, its partners, subpartners and their respective officers, agents, servants, employees, and independent contractors from any and all loss, cost, damage, expense and liability (including without limitation court costs and reasonable attorneys' fees) incurred in connection with or arising from any cause in, on or about the Premises, including, without limiting the generality of the foregoing: (i) any default by Tenant in the observance or performance of any of the terms, covenants or conditions of this Lease on Tenant's part to be observed or performed; (ii) the use or occupancy of the Premises by Tenant or any person claiming by, through or under Tenant; (iii) the condition of the Premises or any occurrence or happening on the Premises from and after the date that Tenant or Tenant's agent initially accept possession of the Premises; or (iv) any

acts, omissions or negligence of Tenant or of any person claiming by, through or under Tenant, or of the contractors, agents, servants, employees, visitors or licensees of Tenant or any such person, in, on or about the Premises, including, without limitation, any acts, omissions or negligence in the making or performance of any Alterations (whether prior to or during the Lease Term); provided that the terms of the foregoing indemnity shall not apply to the negligence or willful misconduct of Landlord, its employees, agents or contractors. Landlord shall indemnify, defend, protect and hold harmless Tenant from any such loss, cost, damage, expense or liability (including, without limitation, court costs and reasonable attorneys' fees) (i) incurred in connection with or arising from any cause in, on or about the Access Driveways that is not attributable to the negligence or willful misconduct of Tenant or any person claiming by, through or under Tenant or the contractors, agents, servants, employees, visitors or licensees of Tenant or any such person or (ii) arising directly out of the negligence or willful misconduct by Landlord or Landlord's agents, servants, employees and contractors. Further, Tenant's agreement to indemnify and hold Landlord harmless pursuant to this Lease and the exclusion from Tenant's indemnity and the agreement by Landlord to indemnify and hold Tenant harmless pursuant to the preceding sentence are not intended to and shall not relieve any insurance carrier of its obligation under policies required to be carried by Landlord or Tenant, respectively, pursuant to the 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 or liability 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 0% Insured's participation

10.2.2 Physical Damage Insurance covering the Improvements and all other improvements on the Premises, including, but not limited to, (i) the Buildings 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, Development 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, in the event Tenant serves or sells alcohol in or from the Premises.

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 as Landlord shall reasonably deem appropriate, based on practices of prudent owners of comparable Shopping Centers in San Diego, California; provided, however, Landlord shall carry Commercial General Liability Insurance in a coverage amount at least equal to the minimum coverage required by Tenant. 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 with respect to the Premises. Tenant shall neither use the Premises nor permit the Premises to be used or acts to be done therein which will (i) 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) subject Landlord to any liability or responsibility for injury to any person or property by reason of any operation being conducted in the Premises. Notwithstanding the foregoing, Tenant's use of the Premises for the Permitted Uses, in compliance with all applicable laws and the other requirements of this Lease, shall not be deemed to be in violation of the immediately preceding sentence. Tenant shall, at Tenant's expense, comply as to the Premises with all 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 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 (and if Landlord so elects, Landlord's members or partners) Landlord's lender(s) 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 and provide that any insurance carried by Landlord is not excess and is non-contributing with any insurance requirement of Tenant; (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 and any mortgagee of Landlord; and (vi) contain a cross-liability endorsement or severability of interest clause acceptable to Landlord. Tenant shall deliver said policy or policies or 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. In the event Tenant shall fail to procure such insurance, or to deliver such policies or certificate, Landlord may, at its option, procure such policies for the account of Tenant, and the cost thereof (and a reasonable administrative fee) shall be paid to Landlord within five (5) days after delivery to Tenant of bills therefor. Landlord's 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

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 reasonable amounts covering the Premises and Tenant's operations therein, as may be reasonably requested by Landlord, Master 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 prudent landlords of comparable Shopping Centers in San Diego, California and (ii) such coverage include earthquake and flood coverage unless

such coverage is required by Master Landlord or Landlord's lender or customarily carried by similarly situated Gasoline Dispensing Facilities, car wash or Convenience Store tenants in San Diego, California.

ARTICLE 11

DAMAGE AND DESTRUCTION

11.1 Repairs and Restoration

Tenant shall promptly notify Landlord of any damage to the Improvements resulting from fire or any other casualty. In the event of the damage or destruction of the Improvements 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 the Improvements, including any improvements therein, to substantially the same condition in which the same were immediately prior to such damage or destruction. Tenant shall be responsible for the amount of any deductible under such insurance policies and shall also pay the difference, if any, between the insurance proceeds and the cost of such repair and restoration work. 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.

11.2 Destruction During Last Year of Lease Term

Notwithstanding the foregoing, if such damage or destruction shall occur within the last year of the Lease Term (as may be extended pursuant to Section 2.2 above), and shall amount to twenty-five percent (25%) or more of the replacement cost of the Improvements (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 forty-five (45) 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. Any insurance proceeds from the fire and extended coverage insurance policies maintained by Tenant (excluding proceeds for Tenant's merchandise, inventory and personal property and after deduction of all reasonable costs of demolition and removal of the improvements) shall be assigned by Tenant to Landlord (or any party designated by Landlord).

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, Development 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, Development 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 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, either party shall have the option to terminate this Lease upon thirty (30) days' notice to the other party, 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 the Premises 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 and eighty (180) days or less, then this Lease shall not terminate but Base Rent shall be abated for the period of such taking in proportion to the ratio that the amount of rentable square feet floor area of the Premises taken bears to the total floor area of the Premises or, in the event that Tenant's operations are materially impaired as a result of such temporary taking, Tenant shall have the right to cease operating during the period of such temporary taking and all Base Rent and Access Driveway Operating Expenses shall be abated in its entirety during the period Tenant actually ceases operating as a result of such 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 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 "Unamortized Value" of Tenant Improvements as defined in Section 13.3.2 below (to the extent payable under the Master Lease), (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).

(ii) Second, 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.

(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.

13.3.3 The "Unamortized Value" of Tenant's Improvements shall mean the unamortized value of all leasehold improvements made by Tenant (including "soft" costs, but excluding Tenant's FF&E [as defined in Exhibit E attached hereto]) resulting from amortizing the hard costs of such improvements over a period of time, beginning on the date of installation and expiring: (i) at the end of the useful life of such improvement based upon generally accepted accounting principals, or (ii) the expiration of the initial Term, whichever date first occurs.

13.3.4 Except as provided above in this Section 13.3, Tenant shall not be entitled to any award for the value of its leasehold estate in 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 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.

ARTICLE 14

ASSIGNMENT AND SUBLETTING

14.1 Transfers

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 twenty (20) days after nor more than one hundred eighty (180) 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 certified 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. Whether or not Landlord consents to any proposed Transfer, Tenant shall pay Landlord's reasonable review and processing fees, as well as any reasonable legal fees incurred by Landlord, within thirty (30) days after written request by Landlord up to an aggregate of one thousand five hundred dollars (\$1,500.00) ("**Transfer Fees Cap**"), which Transfer Fees Cap shall be increased by ten percent (10%) on the fifth (5th) anniversary of the Commencement Date and on every fifth (5th) anniversary thereof during the Lease Term.

14.2 Landlord's Consent

Landlord shall not unreasonably withhold 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 In Landlord's reasonable business judgment, the Transferee lacks sufficient business experience to operate a successful business from the Premises;

14.2.3 In Landlord's reasonable business judgment, the Transferee is not a party of reasonable financial worth and/or financial stability in light of the responsibilities involved under the Lease on the date consent is requested;

14.2.4 The proposed Transfer 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;

14.2.5 The proposed Transfer or the proposed Transferee is not permitted under the Master Lease; or

14.2.6 In Landlord's reasonable business judgment, the Rent (including Percentage Rent) that Landlord reasonably anticipates receiving from the Transferee during the first twelve (12) months following such Transfer is less than that which Landlord has received from Tenant over the immediately preceding twelve (12)-month period.

If Landlord consents to any Transfer pursuant to the terms of this Section 14.2, Tenant may within 180 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, (iii) Tenant shall deliver to Landlord, promptly after execution, a copy of the assignment or sublease or similar transfer document and (iv) no Transfer relating to this Lease or agreement entered into with respect thereto, whether with or without Landlord's consent, shall relieve Tenant, or any guarantor of the Lease, from liability under this Lease except as may be otherwise provided in this Lease or in the Guaranty of Lease attached hereto as Exhibit H.

14.4 Additional 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 transfer of twenty-five percent or more of the general partnership or members (as the case may be) interests, within a twelve (12) month period, 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) 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.

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 Mortgage") 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) 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 Mortgagee Insurance. Each Leasehold Mortgagee shall be added to the loss payable endorsement of any and all fire and other casualty insurance policies to be carried by Tenant in respect of the Premises and Improvements, and all such policies shall state that the insurance proceeds are to be held by such Leasehold Mortgagee for the benefit of the parties hereto and applied in the manner specified in the Lease.

If there is a condemnation or eminent domain in respect of the Premises and/or Improvements, any award or payment therein attributable to the Improvements or personalty of Tenant (but not the Premises) shall be paid to the Leasehold Mortgagee for the benefit of the parties hereto and applied in the manner specified in this Lease; and if the same results in a termination of the Lease, Tenant's portion of the award or payment (if any) shall be paid to such Leasehold Mortgagee for the benefit of Tenant and such Leasehold Mortgagee.

No fire or casualty loss claims shall be settled and no agreement will be made in respect of any award or payment in condemnation or eminent domain without in each case the prior written consent of the applicable Leasehold Mortgagee, if any.

14.5.4 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 14.5.4 shall not limit or restrict Landlord's remedies against Tenant.

14.5.5 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.

14.5.6 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) fifteen (15) 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 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.

14.5.7 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.

14.5.8 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.

14.5.9 Assignment by Leasehold Mortgagee. Subject to prior written approval of Landlord and the other limitations contained herein, which shall not be unreasonably withheld, conditioned or delayed, 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. 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 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.

14.5.10 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 an Estoppel Certificate substantially in the form attached hereto as Exhibit D (or any other commercially reasonable form) 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.

14.5.11 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.

14.5.12 Interpretation. If any provisions of this Lease are in conflict with any of the provisions of this Article 14, the provisions of this Article 14 shall control as between Landlord and the Leasehold Mortgagee, but not between Landlord and Tenant.

14.5.13 Tenant's Initial Leasehold Mortgage. Notwithstanding the foregoing, with respect to Tenant's initial Leasehold Mortgage, Landlord agrees to promptly execute and deliver to Tenant that certain Consent to Leasehold Mortgage in the form of Exhibit G-2 attached hereto.

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 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 anything to the contrary contained in this Lease, Tenant acknowledges and understands that the Master Lease permits Master Landlord to require, upon one (1) year notice to Landlord, that all improvements located on the Premises be removed on or prior to the expiration of the Lease Term ("**Removal Right**"). In the event this Master Landlord invokes such Removal Right, Tenant shall promptly cause the Building and all similar Improvements located on the Premises to be removed by Tenant at Tenant's sole cost and expense.

15.3 Landlord's Lien Waiver

Landlord, within thirty (30) 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 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.

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 twenty five percent (125%) 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 twenty (20) days following a request in writing by either party to the other, but in no event more than two (2) times in any twelve (12) month period, the recipient party shall execute and deliver to the requesting party an estoppel certificate, which shall be substantially in the form of Exhibit D, attached hereto (or such other form as may be reasonably required by any prospective mortgagee or purchaser of the Shopping Center or Development, 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. Failure of either party to timely execute and deliver such estoppel certificate or other instruments shall constitute an acceptance of the Premises (if addressed to Tenant) and an acknowledgment by such party that the statements included in the estoppel certificate in good faith are true and correct, without exception.

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 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, without any deductions or set-offs whatsoever, 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 hereby irrevocably authorizes Landlord to execute and deliver in the name of Tenant any such instrument or instruments if Tenant fails to timely do so, provide that such authorization shall in no way relieve Tenant from the obligation of executing such instruments of subordination or superiority. Tenant waives the provisions of any current or future statute, rule or law, which may give or purport to give 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 twenty (20) days of request by Landlord, 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 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 SNDA"); 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 but in no event later than sixty (60) days after the date of such notice; 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

Whether or not 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 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 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 may take such required action upon Landlord's failure to do so within the specified five day period. If such action or payment was required under the terms of this Lease to be taken by Landlord or otherwise authorized herein, then Landlord shall reimburse Tenant for all of Tenant's reasonable and documented costs and expenses incurred in taking such action or making such payment ("Cure Cost") within thirty (30) days following receipt of a billing thereof. If Landlord fails to so reimburse Tenant, Tenant shall have the right to deduct the Cure Cost from Base Rent next coming due until Tenant has recovered the full amount of such Cure Cost, but in no event shall such deduction during any month exceed 20% of the Base Rent due for such month. Notwithstanding the foregoing, except as hereinafter provided, Tenant shall have no right to offset such Cure Cost in the event Landlord, within thirty (30) days following receipt of Tenant's notice of its intent to offset, commences a reference proceeding for the sole purpose of determining whether Landlord was in default, and, if Landlord was in default, whether the Cure Cost is reasonable as set forth below. If in such reference proceeding, it is determined that Landlord was not in default then Tenant shall be responsible for paying the Cure Cost plus the cost of such reference and the reasonable attorneys' fees of Landlord as determined by the reference proceeding. If in such reference proceeding, it is determined that Landlord was in default, then Landlord shall be responsible for paying the Cure Cost plus the cost of such reference and the reasonable attorneys' fees of Tenant as determined by the reference proceedings. If the Cure Cost (or so much thereof as is determined in such a reference proceeding to be reasonable) and cost of such reference and attorneys' fees are not paid by Landlord within thirty (30) days following the rendering of a decision or judgment through or in the reference proceeding, Tenant shall be entitled to deduct such Cure Cost and the cost of reference and Tenant's reasonable attorneys' fees from Base Rent next coming due hereunder, subject, however, to the twenty percent (20%) limitation hereinabove stated. Further notwithstanding the foregoing, in the event Tenant is owed any Cure Costs pursuant to this Section 19.5 and there does not then exist sufficient remaining Lease Term to allow Tenant to fully recover such Cure Costs then, in such event, Tenant shall be entitled to offset such Cure Costs on a prorated basis over the then remaining Lease Term to the extent necessary to recover any such Cure Costs. 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.

ARTICLE 20

COVENANT OF QUIET ENJOYMENT

Landlord covenants that Tenant, on paying the Rent, charges for services and other payments herein reserved and on keeping, observing and performing all the other terms, covenants, conditions, provisions and agreements herein contained on the part of Tenant to be kept, observed and performed, 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

[INTENTIONALLY OMITTED]

ARTICLE 22

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 23

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 or Tenant at the appropriate addresses set forth in Section 11 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 upon receipt or refusal if it is mailed as provided in this Article 23 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, Tenant shall give to such mortgagee or ground or underlying lessor (including Master Landlord) 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.

ARTICLE 24

DEVELOPMENT OF THE SHOPPING CENTER

Landlord reserves the right to subdivide and redevelop all or a portion of the Shopping Center. 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; provided, however, such changes shall not materially increase Tenant's obligations nor materially limit Tenant's rights under 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. Notwithstanding the foregoing, Landlord agrees that during any such subdivision and/or redevelopment, access to and from the Access Driveways, visibility of Tenant's Improvements from Sports Arena Boulevard and parking on Tenant's Premises shall not be materially and adversely affected.

ARTICLE 25

BROKER

Landlord and Tenant hereby warrant to each other that, except for the broker listed in Section 12 of the Summary, 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 26

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 five percent (5%) 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 of 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 27

LANDLORD'S RIGHT TO CURE DEFAULT; PAYMENTS BY TENANT

27.1 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) 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.

27.2 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 27.1; (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 amounts so expended. Tenant's obligations under this Section 27.2 shall survive the expiration or sooner termination of the Lease Term.

ARTICLE 28

ENTRY BY LANDLORD

Landlord reserves the right at all reasonable times and upon not less than 24 hours prior written notice to Tenant (except in the case of an emergency) 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 or security systems. 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 29

PARKING

Throughout the Lease Term but subject to the provisions of this Article 28, Tenant and Tenant's employees, agents, customers, invitees and permittees shall have the right to the non-exclusive use of all non-exclusive parking areas of the Shopping Center and Development 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 and Development. Tenant's parking rights shall be subject to the terms of this Lease and reasonable rules and regulations adopted by Landlord from time to time including, but not limited to, the rules and regulations set forth in Exhibit C attached hereto. Landlord agrees that throughout the Lease Term, Tenant's customers 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; provided, however, that such system shall not materially and adversely affect Tenant's use of, visibility of, and/or access to and from, and/or parking on, the Premises, and agrees that the costs incurred therewith shall be a permitted Access Driveway Operating Expense hereunder. Tenant shall 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. 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 on the Premises; provided, however, Landlord agrees to give Tenant notice of the first two (2) violations 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 two-hour 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 third (3rd) 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 30

MISCELLANEOUS PROVISIONS

30.1 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.

30.2 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.

30.3 Transfer of Landlord's Interest

Tenant acknowledges that 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 Landlord's obligations hereunder after the date of transfer.

30.4 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 Shopping Center and/or 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.

30.5 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.

30.6 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.

30.7 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).

30.8 Time of Essence

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

30.9 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.

30.10 Financial Statements

Tenant agrees that it shall promptly furnish Landlord, from time to time, upon Landlord's written request, current financial statements reflecting Tenant's and the Guarantors' financial condition. Such financial statements shall be prepared in accordance with generally accepted accounting principles and, if such is the normal practice of Tenant, shall be audited by an independent certified public accountant.

30.11 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.

30.12 Right to Lease

Landlord reserves the absolute right to effect such other tenancies in the Shopping Center and/or Development as Landlord in the exercise of its sole business judgment shall determine to best promote the interests of the Shopping Center and/or Development.

30.13 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.

30.14 Joint and Several

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

30.15 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.

30.16 Waiver of Trial by Jury

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

30.17 Governing Law; Venue

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

30.18 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.

30.19 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**");

30.19.1 **Permits.** Tenant's receipt of, or satisfaction that Tenant will be able to receive, no later than ninety (90) days after the date hereof, 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;

30.19.2 **SNDA's.** Tenant's written approval, no later than ninety (90) days after the date hereof, of an SNDA (as defined in Article 18) from all holders of superior interests in the Premises and Access Driveways, including, but not limited to, Master Landlord and 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; and

30.19.3 **Leasehold Financing.** Tenant's obtainment of, or satisfaction that Tenant will be able to obtain, no later than ninety (90) days after the date hereof, leasehold financing ("**Leasehold Financing**") for the Premises, reasonably acceptable to Tenant.

Tenant shall use reasonable efforts and due diligence to satisfy the Tenant's Contingencies set forth in Sections 30.19.1 through 30.19.3 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. Tenant may extend the time period for waiver or satisfaction of the Tenant Contingencies for one (1) additional sixty (60) day period, provided that such extension is needed to allow Tenant to obtain the above-referenced Permits, SNDA's, and/or Leasehold Financing. Tenant's extension must be in writing and must be given prior to the expiration of the applicable time period for waiver or satisfaction of the specified condition. If Tenant does not extend the time period for waiver or satisfaction of any condition set forth above as permitted hereunder, the condition is deemed waived, unless within five (5) 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 30.19 of this Lease.

30.20 Hazardous Materials- Handling And Disposal

For purposes of this Section 30.20 and Section 30.21, below, the term "**Hazardous Materials**" shall mean any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California, the United States Government, or any quasi-governmental body or agency. The term "Hazardous Material" includes, without limitation, any material or substance which is currently or subsequently (i) defined as a "hazardous waste", "extremely hazardous waste" or "restricted hazardous waste" under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law), (ii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) defined as a "hazardous material", "hazardous substance", or "hazardous waste" under Section 25501 of the California Health or Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Plans and Inventory), (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) petroleum, (vi) asbestos, (vii) listed under Article 9 or defined as hazardous or extremely hazardous pursuant to Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20, (viii) designated as a "hazardous substance" under Section 311 of the Federal Water Pollution Control Act, 33 U.S.C. Section 1251 *et. seq.* (33 U.S.C. Section 1321) or listed pursuant to Section 307 of the Federal Water Pollution Control Act (33 U.S.C. Section 1317), (ix) defined as a "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 *et. seq.* (42 U.S.C. Section 6903), or (x) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 *et. seq.* (42 U.S.C. Section 9601).

Tenant, at its sole cost, shall comply with all laws relating to the storage, use and disposal of Hazardous Materials, and Tenant's failure to do so shall constitute an event of default. Notwithstanding the foregoing, Landlord acknowledges that Tenant's Permitted Use involves the use of gasoline, oil and other petroleum derivatives and materials commonly associated with the operation of Gasoline Dispensing Facilities ("**Permitted Hazardous Materials**"). Tenant shall be permitted to use, generate, store, release or dispose such Permitted Hazardous Materials so long as Tenant's use of such Permitted Hazardous Materials is in compliance with all applicable laws, subject to the other requirements and conditions of this Lease. Tenant shall notify Landlord in writing of each type of

Hazardous Material (other than Permitted Hazardous Materials) to be stored, used or disposed of at the Premises at least ten (10) days prior to the first appearance of each such material on the Premises. In addition, Tenant shall, at all times during the Term and within thirty (30) days following Tenant's receipt, deliver to Landlord copies of all current permits, authorizations and other documentation evidencing Tenant's compliance with all laws relating to the storage, use and disposal of Hazardous Materials. From time to time, Landlord may retain a registered environmental consultant (the "**Consultant**") to conduct an investigation of the Premises ("**Environmental Assessment**") (i) for Hazardous Materials contamination in, about or beneath the Premises and (ii) to assess Tenant's compliance with the provisions of this Section 30.20. The cost of the Environmental Assessment shall be borne by Landlord unless such Environmental Assessment discloses the presence of Hazardous Materials (other than Permitted Hazardous Materials) or discloses Tenant's non-compliance with the provisions of this Section 30.20, in which event Tenant shall pay Landlord on demand the cost of the Environmental Assessment, excluding travel and lodging costs. The Consultant selected by Landlord shall, unless Tenant is then in default under this Lease (after expiration of any applicable notice and cure period) be subject to the mutual approval of Landlord and Tenant, which approval shall not be unreasonably withheld. As used in this Section 30.20, "reasonable cause" shall mean the occurrence of any event which gives Landlord a reasonable basis to suspect that Tenant has failed to comply with any law or provision of this Lease relating to the storage, use or disposal of Hazardous Materials at the Premises. The Environmental Assessment shall be performed in a manner reasonably calculated to discover the presence of Hazardous Materials contamination and shall be of a scope and intensity reflective of the general standards of professional environmental consultants who regularly provide environmental assessment services in connection with the transfer or leasing of real property. The Consultant shall concurrently deliver the written results of its investigation in writing directly to Landlord and Tenant. If Landlord so requires, Tenant shall comply, at Tenant's sole cost and expense, with all recommendations required by law that are contained in the Environmental Assessment (whether such Environmental Assessment was performed with or without reasonable cause); and if such Environmental Assessment was performed with reasonable cause, Tenant shall comply, at Tenant's sole cost and expense, with any commercially reasonable recommendation with respect to the precautions which should be taken with respect to Tenant's activities at the Premises or any recommendations for additional testing and studies to detect the presence of Hazardous Materials. Tenant covenants to reasonably cooperate with the Consultant and to allow entry and reasonable access to all portions of the Premises for the purpose of Consultant's investigation. If the presence of Hazardous Materials on the Premises caused or permitted by Tenant results in contamination or deterioration of water or soil, then Tenant shall promptly take any and all action necessary to clean up such contamination. Tenant's obligations hereunder shall survive the termination of this Lease.

Prior to surrendering possession of the Premises, Tenant shall remove any tanks, pumps, personal property, equipment, fixture and/or storage device or vessel on, under or about the Premises which is contaminated by or which contains Hazardous Materials and shall deliver to Landlord an Environmental Assessment indicating the removal of all such items in compliance with all applicable laws. Prior to or after the expiration or termination of the Lease Term, Landlord shall also have the right to have an Environmental Assessment of the Premises performed in accordance this Section 30.20. Tenant shall perform, at its sole cost and expense, any clean-up or remedial work recommended by the Consultant which is necessary to remove, mitigate or remediate any Hazardous Materials contamination of the Premises or Shopping Center in connection with Tenant's or Tenant's Agent's Environmental Activities; provided, however, such required removal, mitigation or remediation shall be what is then customarily required of Gasoline Dispensing Facilities located in Comparable Centers in Southern California.

30.21 Indemnification - Hazardous Wastes.

Tenant shall indemnify, defend and hold Landlord, its members, employees, agents, and any successors to Landlord's interest in the chain of title to the Premises, their directors, officers, members, employees and agents, harmless from and against any and all losses, costs, damages, expenses, claims, causes of action, judgments, penalties, fines or liabilities directly or indirectly relating to or arising from the presence, use, generation, storage, release or disposal of Hazardous Materials by Tenant. Such losses, costs, damages, expenses, claims, causes of action, judgments, penalties, fines and liabilities shall include, without limitation, (a) personal injury claims, (b) diminution in value of the Premises, (c) damages for the loss or restriction on use of rentable or usable space or any amenity of the Premises, (d) damages arising from any adverse impact on the redevelopment of the Premises or the marketing of space therein, (e) sums paid in settlement of claims, (f) attorney, consultant and expert fees, (g) all foreseeable and all unforeseeable consequential damages relating to the presence of Hazardous Materials in, on or under the Premises, (h) the cost of any investigation of site conditions (including investigations reasonably necessary to establish an off-site source of contamination), (i) the cost of preparing any closure or other plans or reports, and (j) the cost of any repair, clean-up, remedial, removal or restoration work or detoxification if the same is required by any governmental or quasi-governmental agency or body or necessary in Landlord's reasonable judgment. Tenant's obligations pursuant to the foregoing

indemnity shall survive the termination of the Lease and shall inure to the benefit of Landlord and its successors and assigns. Tenant shall not be liable to Landlord hereunder for Hazardous Materials on the Premises resulting from the action of an adjacent property owner or operator provided that Tenant in no way permitted or otherwise knowingly allowed such releases, nor shall Tenant be liable to Landlord for the presence of any Hazardous Materials resulting from the actions of a prior owner or operator of the Premises.

30.22 Guaranty of Lease

This Lease is subject to and conditional upon Tenant's delivery to Landlord, concurrently with Tenant's execution and delivery of this Lease, of a Guaranty of Lease in the form of and upon the terms contained in Exhibit H attached hereto ("**Guaranty of Lease**"), which shall be fully executed by the Guarantor specified in Section 13 of the Summary ("**Guarantor**"). Notwithstanding the foregoing or anything in this Lease to the contrary, the Guarantor shall have the right to assign its duties and obligations under the Guaranty of Lease to another entity or individual with a then current minimum net worth and net current assets of not less than Ten Million Dollars (\$10,000,000) each ("**Replacement Guarantor**"), provided (i) Tenant is not in default (following expiration of any applicable notice and cure period) and (ii) Landlord is not then pursuing Guarantor's obligations to guaranty the terms of this Lease, and further provided Replacement Guarantor executes and delivers to Landlord a Guaranty of Lease in the form of Exhibit H attached hereto.

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

"TENANT"

ARENA FUELS, LLC,
a California limited liability company

By:

Name:

Its:

By:

Name:

Its:

"LANDLORD"

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:

Name:

Title:

By:

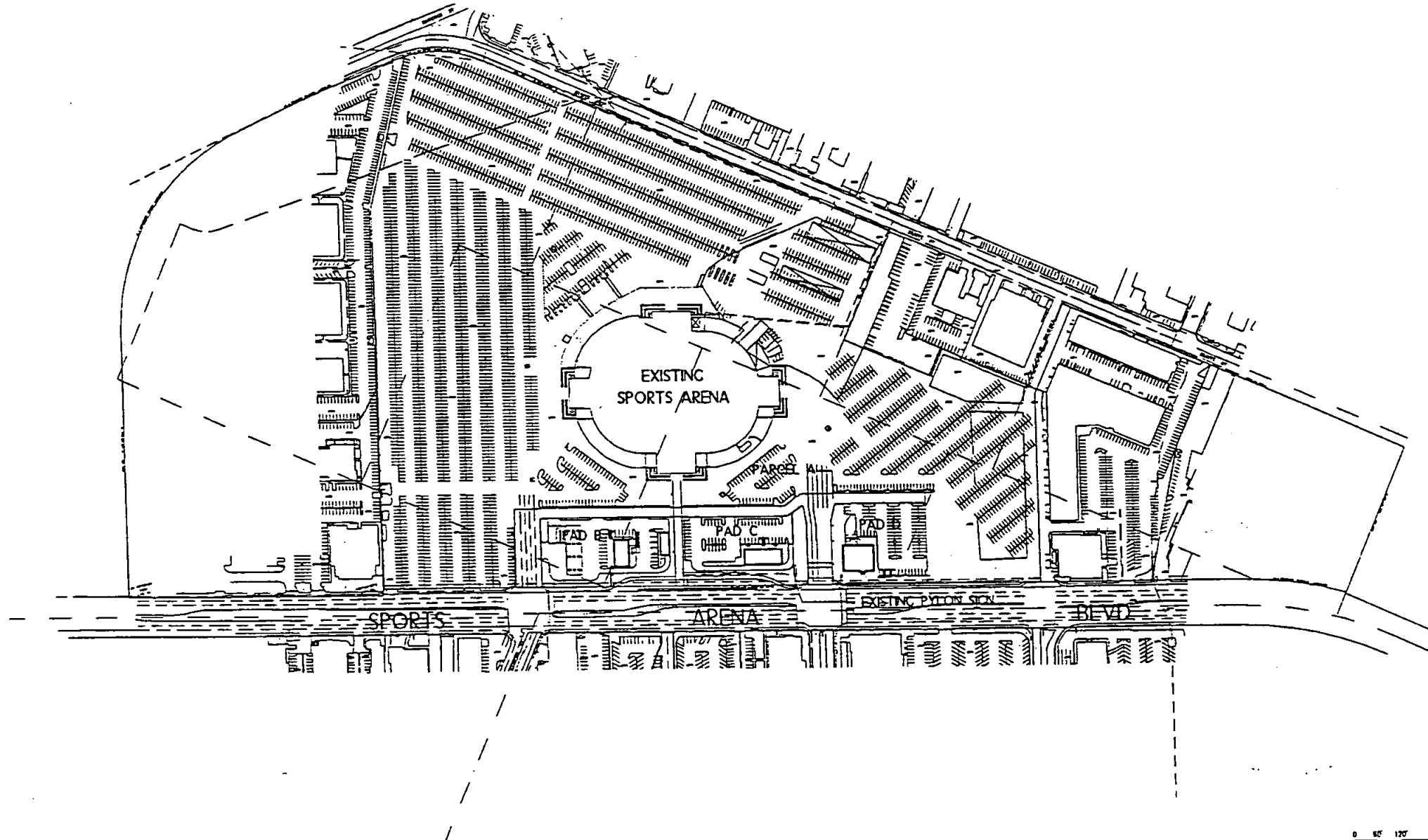
Name:

Title:

EXHIBIT A-1

OUTLINE OF THE PREMISES AND THE SHOPPING CENTER

[ATTACHED]



LEASE EXHIBIT A

ARENA 2000

SPORTS ARENA MASTERSITE
SAN DIEGO, CALIFORNIA

0 60' 120' 240'



1 OF 1

SGPA ARCHITECTURE • PLANNING
SAN DIEGO SAN FRANCISCO

Project No. 98019-P-03
File No. 98019-P-03-001.dwg Date: April 09, 2002

Date: 4-18-02
Copyright 2002



EXHIBIT A-2

LEGAL DESCRIPTION OF PREMISES

[ATTACHED]

J-13575B

CITY LEASE PARCEL

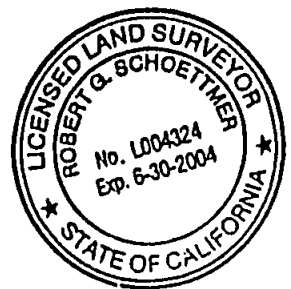
Parcel "A"

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 $77^{\circ}23'37''$ West (record North $77^{\circ}52'25''$ West per said Map No. 6629) 53.74 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 North $12^{\circ}36'23''$ East 199.03 feet; thence South $77^{\circ}23'37''$ East 677.04 feet; thence North $65^{\circ}44'11''$ East 51.62 feet; thence South $77^{\circ}23'37''$ East 307.67 feet; thence South $12^{\circ}36'23''$ West 25.00 feet; thence North $77^{\circ}23'37''$ West 224.75 feet; thence South $26^{\circ}38'35''$ West 46.38 feet; thence South $12^{\circ}36'23''$ West 160.00 feet; thence North $77^{\circ}23'37''$ West 60.00 feet; thence North $12^{\circ}36'23''$ East 160.00 feet; thence North $03^{\circ}09'24''$ East 42.41 feet; thence South $67^{\circ}37'56''$ West 48.56 feet; thence North $77^{\circ}23'37''$ West 262.25 feet; thence South $12^{\circ}36'23''$ West 174.00 feet; thence North $77^{\circ}23'37''$ West 20.00 feet; thence North $12^{\circ}36'23''$ East 174.00 feet; thence North $77^{\circ}23'37''$ West 335.00 feet; thence South $12^{\circ}36'23''$ West 174.00 feet; thence North $77^{\circ}23'37''$ 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

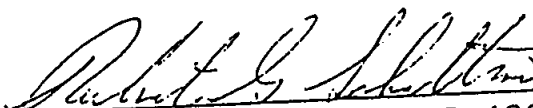
CITY LEASE PARCEL

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

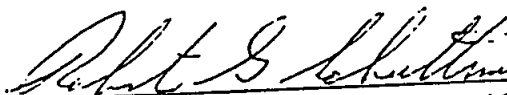
CITY LEASE PARCEL

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°23'37" East (record North 77°52'25" West per said Map No. 6629) 367.25 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 line North 12°36'23" East 174.00 feet; thence South 77°23'37" East 262.25 feet; thence North 67°37'56" East 48.56 feet; South 03°09'24" West 42.41 feet; thence South 12°36'23" West 160.00 feet to said Northerly Right-of-way line; thence Westerly along said Northerly Right-of-way line North 77°23'37" West 309.00 feet to the TRUE POINT OF BEGINNING.

Containing 1.248 acres more or less.

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



jb/13575.002

J-13575D

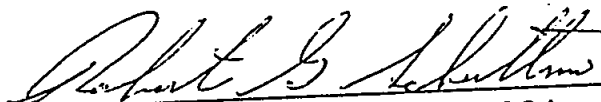
CITY LEASE PARCEL

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 B

CONFIRMATION OF GROUND SUBLEASE 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 two (2) successive options to extend the Lease Term for five (5) years each.

2. Rent commenced to accrue on _____, in the initial amount of \$ _____ per month for Base Rent, plus (a) Percentage Rent as provided in the Lease, and (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 B

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 or Development; provided, however, Landlord shall use its reasonable efforts to cause all other tenants and occupants of the Shopping Center or Development 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 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, except as permitted under the Lease.

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 business from the Premises in accordance with all applicable laws, the REA and in and the normal customary manner Tenant operates its similar facilities 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 or Development 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 or Development.

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.

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 in Landlord's judgment may from time to time be necessary for the management, safety, care and cleanliness of the Premises, the Common Areas and the Shopping Center or Development, 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, as provided in the Lease.
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 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.
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 30 of this Ground Sublease 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 7 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. Premises AS-IS, WHERE IS. The Premises shall be delivered to Tenant in its "AS-IS", "WHERE IS" condition. Tenant shall, at its sole cost and expense, field verify the "AS-IS" condition of the Premises, as necessary and connect to 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 fees related to utilities serving the Premises.

2. 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 on the Premises, Tenant's furniture, fixtures and equipment ("**Tenant's FF&E**"), all perimeter sidewalks and curbs around the Buildings, all signage for the Premises, parking areas, landscaping, a trash enclosure for the Premises and the restoration of any portions of the Access Driveways or other portions 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 (collectively, "**Tenant's Work**"). In no event shall the height of the Buildings (including any parapet and other architectural features) exceed twenty-five feet (25') from the finished pad for the Premises.

3. Improvement Plans.

(a) Preliminary Plans. As soon as reasonably 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 Buildings 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, roof plans 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, including, without limitation, final grading permits and a building permit for the Improvements (collectively, "**Tenant's Permits**"); (ii) in all other respects diligently pursue the obtaining of Tenant's 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 Tenant's 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. 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) 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.

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 and the Construction Contract. Tenant agrees to use diligent efforts to cause construction of Tenant's Work to commence promptly following the issuance of Tenant's Permits and cause the completion of Tenant's Work as soon as reasonably possible. 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 Buildings, (ii) any loading and trash areas serving Tenant's Buildings, (iii) the architectural/engineering fees pertaining to Tenant's Buildings and (iv) any permits, fees or assessments related to Tenant's Buildings as may be imposed by governmental agencies.

7. 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 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. Tenant agrees that its indemnities set forth in Section 10.1 of this Lease shall also apply with respect to any acts or omissions of Tenant or Tenant's 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 following information:

(i) The names and addresses of the general, mechanical and electrical contractors Tenant intends to engage in the performance of Tenant's Work;

(ii) 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 Buildings; and

(iii) A copy of the fully executed Construction Contract.

EXHIBIT E

(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.

EXHIBIT F

EXISTING EXCLUSIVES/USE PROHIBITIONS

Landlord's lease with GCFF-San Diego, LLC (dba "Krispy Kreme Doughnuts") 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."

Landlord's lease with Brinker Restaurant Corporation (dba "Chili's Grill & Bar") provides, in part: "Landlord agrees it shall not lease or permit any occupant to use space, any Pad Parcel or other space within the Shopping Center for the operation of an Applebee's, TGI Friday's, Bennigans, and/or Red Robin restaurant."

EXHIBIT G-1

**MASTER LEASE SUBORDINATION , NON-DISTURBANCE
AND ATTORNMENT AGREEMENT**

[TO BE PROVIDED]

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Arena Fuels, LLC
462 Stevens Avenue, Suite 105
Solana Beach, CA 92075
Attention: President

(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 Arena Fuels, L.L.C., a California limited liability company ("SUBTENANT"), 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 24, 2002 ("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 5.6 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.

l. 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.

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.

(Remainder of page intentionally blank)

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 ____ day of _____, 2002.

LESSOR:

THE CITY OF SAN DIEGO,
a municipal corporation,

By: _____
Name: _____
For the City Manager
Title: _____
Date: _____

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: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

SUBTENANT:

ARENA FUELS, L.L.C.,
A California limited liability company

By: _____
Name: _____
Its: _____
Date: _____

APPROVED AS TO FORM AND LEGALITY

CASEY G. GWINN, City Attorney

Dated: _____

By: _____
Deputy City Attorney

On _____, 2002, 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.

On _____, 2002, 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.

On _____, 2002, 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.

8

STATE OF CALIFORNIA)
) ss
COUNTY OF SAN DIEGO)

On _____, 2002, 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

LEGAL DESCRIPTION OF THE SUBLEASED PREMISES

[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 June ____, 2000, by and between U.S. BANK NATIONAL ASSOCIATION (herein referred to as "Lender") and ARENA FUELS, LLC, a California limited liability company (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 Lease dated June ____, 2002 (herein referred to as "Lease"), Landlord, as landlord, leased to Tenant, as tenant, the property described on Exhibit "A" (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 lien of said 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 under the Lease 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:

LENDER:

ARENA FUELS, LLC,
a California limited liability company

U.S. BANK NATIONAL ASSOCIATION

By: _____
Name: _____
Its: _____

By: _____
Its: Corporate Officer

By: _____
Name: _____
Its: _____

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

EXHIBIT G-2

EXHIBIT H

GUARANTY OF SUBLEASE

WHEREAS, a certain Ground Sublease dated June ___, 2002 ("Lease"), more fully described below, has been or will be executed:

- a. Landlord: ARENA GROUP 2000 LP, a California limited partnership
- b. Tenant: ARENA FUELS, LLC, a California limited liability company
- c. Effective Date: June ___, 2002
- d. Premises Address: Pad B of Sports Arena Retail Development

WHEREAS, the Landlord under the Lease requires as a condition to its execution of said Lease that both of the undersigned (herein collectively referred to as "Guarantor") guaranty 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; and

(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.

(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 existing and future obligations of Tenant to Guarantor, or any person owned in whole or in part by Guarantor, and the right of Guarantor to cause or permit itself or such person to withdraw any capital invested in Tenant are hereby subordinated to all obligations hereby guaranteed, and, without the prior written consent of Landlord, such obligations to Guarantor shall not be performed, and such capital shall not be withdrawn, in whole or in part, while Tenant is in default under the Lease.

6. 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 Guaranty of Lease is in addition to and exclusive of the guaranty of any other guarantor of any obligation of Tenant to Landlord.

7. 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.

8. 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 Guaranty 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.

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

10. This Guaranty 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 Guaranty 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.

11. Upon full performance of all obligations hereby guaranty, this Guaranty 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.

12. No provision of this Guaranty 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.

13. 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.

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

15. This Guaranty 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 Guaranty 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 Guaranty 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.

16. Notwithstanding the foregoing, Guarantor shall have the right to assign its duties and obligations under this Guaranty of Lease to another entity or individual with a then current minimum net worth and net current assets of not less than Ten Million Dollars (\$10,000,000) each ("**Replacement Guarantor**"), 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 Replacement Guarantor executes and delivers to Landlord a Guaranty of Lease substantially identical in form to this Guaranty of Lease.

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

Address: 462 Stevens Avenue, Suite 105
Solana Beach, CA 92075

Telephone: (858) 793-2708
Federal I.D. No. 33-0914330

GUARANTOR:

21st CENTURY OIL CORP.,
a California corporation

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

EXHIBIT I

COMPUTATION OF PERCENTAGE RENT

NET MARGIN OF CONVENIENCE STORE SALES. THE MANNER OF CALCULATING NET MARGIN OF CONVENIENCE STORE SALES IS SET FORTH BELOW.

FOR THE PURPOSES OF THIS LEASE THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

- i. "Taxable Sales" shall be defined as the amount set out am/pm Franchise Accounting System Report MR23MON forwarded to Arco on a monthly basis.
- ii. "Non-taxable Sales" shall be defined as the amount set out am/pm Franchise Accounting System Report MR23MON forwarded to Arco on a monthly basis.
- iii. "Convenience Store Sales" shall be defined to mean the sum obtained when the Taxable Sales and Non-taxable Sales are added together.
- iv. "Year To Date Gross Margin Percentage" shall be defined to mean the amount reported on the am/pm Franchise Accounting System Report MDCATSUM.
- v. "Net Royalty Fee" shall be defined to mean the amount reported on FAS Report 2000A forwarded to Arco.
- vi. "Advertising Fee Percentages" shall be defined to mean the amount reported on FAS Report 2000A forwarded to Arco.
- vii. "Adjusted Year to Date Gross Margin Percentage" shall be defined to mean the result obtained when the Year to Date Gross Margin Percentage is reduced by both the Net Royalty Fee and Advertising Fee Percentages.
- viii. "Net Margin of Convenience Store Sales" shall be the result obtained when "Convenience Store Sales" is multiplied by "Adjusted Year to Date Gross Margin Percentage."

Thirty three percent (33%) of the following difference: (a) Net Margin of Convenience Store Sales during each calendar year reduced by (b) the Breakpoint then in effect and as more particularly set forth in Section 3.2 to the Lease.

Chick-fil-A, Inc.
5200 Buffington Road
Atlanta, Georgia 30349-2998
www.chick-fil-a.com

RECEIVED

OCT 09 2006



Real Estate Assets Director
RECEIVED OCT 6 2006

Jennifer Dean
Direct: (404) 305-7704
Fax: (404) 684-8620
jennifer.dean@chick-fil-a.com

October 3, 2006

VIA OVERNIGHT DELIVERY

City Manager
City of San Diego
Attn: Real Estate Assets Director
City Administration Building
202 "C" Street, M.S. 9B
San Diego, California 921014155

— To: JIM BARWICK -
FOR REVIEW & ACTION. IF OK,
GO AHEAD & SIGN.
JW

RE: San Diego City Consent Agreement (the "Agreement") dated July 12, 2006 between
The City of San Diego (the "City") GCFF San Diego, LLC ("GCFF") and Chick-fil-
A, Inc. ("CFA")

Dear Sir/Madam:

This correspondence is being sent pursuant to the Requirements of the City's Charter Section 225 and related notice and disclosure requirements of any transfer in interest required in the Agreement referenced above. CFA intends to assign its interest of the sublease Premises (as defined in the Agreement) to Mr. Matthew Lee Hughes as Operator and franchisee of CFA for the purposes of operation of a Chick-fil-A restaurant.

Mr. Hughes will operate the restaurant in accordance with the terms and conditions of CFA's standard Operator Agreement, as Operator and franchisee of CFA, and Chick-fil-A, Inc. will remain primarily liable under the sublease. To that end, this letter is intended to serve as notice and consent to assignment as required by San Diego Charter Section 225.

If you require any additional information, please feel free to contact me at (404) 305-7704, or via e-mail at Jennifer.dean@chick-fil-A.com.

City Manager
City of San Diego
October 3, 2006
Page 2 of 2



Sincerely,
CHICK-FIL-A, INC.

A handwritten signature in black ink, appearing to read "Jennifer Dean".

Jennifer Dean
Asset Management Analyst
Real Property Asset Management

Acknowledged and agreed to
this 1st day of NOVEMBER, 2006.

The City of San Diego, a California municipal corporation

A handwritten signature in black ink, appearing to read "J.F. Barwick".
By: J.F. BARWICK
Title: DIRECTOR - READ

Enclosures

Cc: Arena Group 2000 LP
3500 Sports Arena Boulevard
San Diego, California 92110
Attn: Ronald E. Hahn

CITY OF SAN DIEGO CONSENT AGREEMENT

THIS CITY OF SAN DIEGO CONSENT AGREEMENT ("Consent") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), ARENA GROUP 2000, L.P., a California limited partnership ("ARENA"), GCFF – SAN DIEGO, LLC, a Delaware limited liability company ("GCFF"), and CHICK-FIL-A, INC., a Georgia corporation ("CHICK-FIL-A"), to be effective upon execution by CITY and approval by the San Diego City Attorney, as follows:

RECITALS

- A. CITY, as lessor, and ARENA, as lessee, are parties to that certain City of San Diego Ground Lease Agreement ("Master Lease"), dated April 19, 2002, and filed in the office of the San Diego City Clerk as Document No. 296248, relating to CITY-owned real property ("Master Lease Property") consisting of three in-line retail pads adjacent to the San Diego Sports Arena (currently, the "I Pay One Center at the Sports Arena") in San Diego, California.
- B. CITY consented to that certain Ground Sublease ("Sublease"), dated June 24, 2002, by and between ARENA and GCFF, relating to a portion of the Master Lease Property located at 3570 Sports Arena Boulevard in San Diego, California ("Sublease Premises").
- C. The Sublease was subsequently amended by that certain First Amendment to Ground Sublease Agreement, dated April 3, 2003.
- D. GCFF and CHICK-FIL-A are parties to that certain Assignment and Assumption of Lease ("Assignment"), dated December 29, 2005, and attached hereto as Exhibit A, under which, subject to CITY'S consent, GCFF assigned, and CHICK-FIL-A assumed, all of the rights and obligations of "Tenant" under the Sublease.
- E. GCFF and CHICK-FIL-A are parties to that certain Second Amendment to Lease ("Second Amendment"), dated JULY 12, 2006, attached hereto as Exhibit B, and which, subject to CITY'S consent, amends the Sublease.
- F. Under the terms and conditions of this Consent, CITY will consent to the Assignment and to the Second Amendment.

IN WITNESS WHEREOF, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

- 1. Subordination. The Sublease is and shall be subordinate to the Master Lease. CITY shall not be bound by any term or condition in the Sublease which in any way conflicts with CITY'S rights or increases CITY'S obligations under the

Master Lease. Any conflict between the Master Lease and the Sublease shall be construed or resolved in favor of the Master Lease.

2. San Diego's Strong Mayor Form of Governance. All references to "City Manager" in the Master Lease shall be deemed to refer to "Mayor." This provision became effective January 1, 2006, and shall remain in effect for the duration CITY operates under the mayor-council (commonly referred to as "strong mayor") form of governance pursuant to Article XV of the San Diego City Charter.
3. Subsequent Assignment and Subletting. CHICK-FIL-A may not assign the Sublease or sublet any part of the Sublease Premises without the prior written consent of CITY. An assignment by operation of law shall automatically terminate the Sublease.
4. Improvements/Alterations. No major structural or architectural design alterations to the improvements, structures, or installations of the Sublease Premises shall be made without the prior written approval of the Mayor, which approval may not be unreasonably withheld.
5. Indemnification. ARENA and CHICK-FIL-A, jointly and severally, shall defend, indemnify, protect, and hold CITY, its elected officials, officers, representatives, agents and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including without limitation any injury to ARENA'S or CHICK-FIL-A'S officers, employees, agents, invitees, guests, subtenants or licensees, which arise out of or are in any manner directly or indirectly connected with the Sublease, CHICK-FIL-A'S use of or operations on the Sublease Premises, the condition of the Sublease Premises, or from any act or omission of CHICK-FIL-A or any of its officers, employees, agents, invitees, guests, subtenants or licensees; provided, however, this duty to indemnify and hold harmless shall not include any claims or liability arising from the established sole negligence, or sole willful misconduct of CITY, its elected officials, officers, representatives, agents or employees.
6. Notices. Notices shall be given as provided in the Master Lease. Notices to CHICK-FIL-A shall be addressed to:

CHICK-FIL-A, INC.
ATTN: Legal Department
5200 Buffington Road
Atlanta, Georgia 30349
PHONE: (404) 765-8000
FAX: (404) 765-8941
7. Waiver. Any failure by CITY to exercise its rights, or insist upon strict performance of any obligation under this Consent, in one or more instances, shall

not be construed as a waiver thereof, and the same shall remain in full force and effect.

8. Written Agreement. This Consent contains the complete expression of the agreement between the parties, and there are no promises, representations, agreements, warranties or inducements, either expressed orally or implied, except as set forth herein. No term or condition of this Consent may be changed in any respect except by written agreement between the parties.
9. Partial Invalidity. If any term, covenant, condition, or provision of this Consent is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.
10. Governing Law. This Consent shall be governed, construed, and enforced in accordance with the laws of the State of California.
11. Legal Proceedings. If CITY commences legal proceedings to enforce any right or obligation under this Consent, ARENA and CHICK-FIL-A shall be jointly and severally liable for all legal expenses in connection therewith, including reasonable attorney fees and costs.
12. Authority. Each individual executing this Consent on behalf of another person or legal entity represents and warrants that he/she is authorized to execute and deliver this Consent on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Consent is binding upon such person or entity in accordance with its terms. Each person executing this Consent

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

on behalf of another person or legal entity shall provide CITY with evidence, satisfactory to the Mayor, that such authority is valid and that such entity is a valid, qualified corporation, limited liability company, partnership, or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.

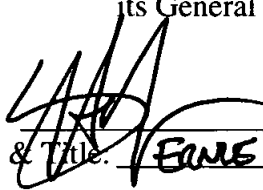
IN WITNESS WHEREOF, the parties execute this Consent to be effective upon approval by the San Diego City Attorney:

Date: 6/15/06

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

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

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

BY: 
Name & Title: JAMES HAHN - SE

Date: _____

GCFF – SAN DIEGO, LLC,
A Delaware limited liability company

BY: Great Circle Family Foods, LLC,
A California limited liability company

BY: _____
Name & Title: _____

Date: _____

CHICK-FIL-A, INC.,
A Georgia corporation

BY: _____
Name & Title: _____

BY: _____
Name & Title: _____

on behalf of another person or legal entity shall provide CITY with evidence, satisfactory to the Mayor, that such authority is valid and that such entity is a valid, qualified corporation, limited liability company, partnership, or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.

IN WITNESS WHEREOF, the parties execute this Consent to be effective upon approval by the San Diego City Attorney:

Date: _____

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

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

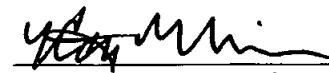
By: Founders of Arena Group 2000,
a California corporation,
its General Partner

BY: _____
Name & Title: _____

Date: 6/15/06

GCFF – SAN DIEGO, LLC,
A Delaware limited liability company

BY: Great Circle Family Foods, LLC,
A California limited liability company

BY: 
Name & Title: ROGER E. GLICKERT, PRESIDENT

Date: _____

CHICK-FIL-A, INC.,
A Georgia corporation

BY: _____
Name & Title: _____

BY: _____
Name & Title: _____

on behalf of another person or legal entity shall provide CITY with evidence, satisfactory to the Mayor, that such authority is valid and that such entity is a valid, qualified corporation, limited liability company, partnership, or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.

IN WITNESS WHEREOF, the parties execute this Consent to be effective upon approval by the San Diego City Attorney:

Date: _____

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

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

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

BY: _____
Name & Title: _____

Date: _____

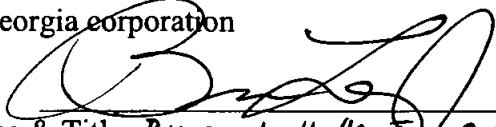
GCFF – SAN DIEGO, LLC,
A Delaware limited liability company

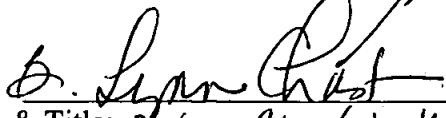
BY: Great Circle Family Foods, LLC,
A California limited liability company

BY: _____
Name & Title: _____

Date: June 15, 2006

CHICK-FIL-A, INC.,
A Georgia corporation

BY: 
Name & Title: Burren Ledbetter Jr., Sr. Vice President

BY: 
Name & Title: B. Lynn Chastain, Vice President

Date: 7/10/06

THE CITY OF SAN DIEGO,
A California municipal corporation

BY: J.F. Barwick

Name & Title: J.F. Barwick
DIRECTOR REAL ESTATE

APPROVED AS TO FORM AND LEGALITY:

Date: 7/12/06

MICHAEL J. AGUIRRE, San Diego City Attorney

BY: Brock Ladewig

Brock Ladewig, Deputy City Attorney

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }
County of SAN DIEGO } ss.
On July 11, 2006 before me, STEPHEN L. GEITZ, Notary Public
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
personally appeared JAMES F. BARWICK
Name(s) of Signer(s)

☒ personally known to me
☐ 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
Signature of Notary Public

OPTIONAL

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

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

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

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER

Top of thumb here

Exhibit A

Ground Lease

(attached)

Exhibit B

Lease
(attached)

Exhibit C

**Assignment and Assumption of Lease
(attached)**

Exhibit D

Menu

(attached)

RECORDING REQUESTED BY AND
WHEN RECORDED, RETURN TO:

ARONSON LIGHT LLP
16000 Ventura Blvd., Suite 500
Encino, California 91436
Attn: Katherine H. Light, Esq.

AMENDMENT TO NON-DISTURBANCE AND ATTORNMENT AGREEMENT

This Amendment to Non-Disturbance and Attornment Agreement ("Amendment") is dated as of _____, 2006 and is made by and among THE CITY OF SAN DIEGO, a municipal corporation (the "City"), ARENA GROUP 2000, LP, a California limited partnership ("Lessee"), and CHICK-FIL-A, INC., a Georgia corporation ("Subtenant"), as successor-in-interest to GCFF-San Diego, L.L.C., a Delaware limited liability company ("GCFF").

RECITALS

A. Original NDA. The City, Lessee and GCFF entered into that certain Non-Disturbance and Attornment Agreement dated as of August 23, 2002, recorded in the Official Records of the San Diego County Recorder's Office on August 29, 2002, as Document No. 2002-0738582 ("NDA"). All defined terms used herein shall have the same meanings set forth in the NDA, unless specifically provided otherwise herein.

B. Assignment of Lease. On December 29, 2005, GCFF agreed to assign to Tenant all of its right, title and interest in the Lease pursuant to the Assignment and Assumption of Lease by and between GCFF, as Assignor and Tenant, as Assignee (the "Assignment") of that property described on Exhibit A attached hereto.

C. City Consent. Concurrently herewith, the City has consented to the Assignment and has entered into the City of San Diego Consent Agreement by and among the City, Landlord, Tenant and GCFF dated as of _____, 2006 (the "Consent").

D. Amendment to NDA. The parties desire to amend the NDA to reflect the Assignment.

AGREEMENT

1. Amendment of Non-Disturbance and Attornment Agreement. The NDA is hereby amended as follows:

(a) The definition of "SUBTENANT" is amended to be "Chick-fil-A, Inc., a Georgia corporation, as successor-in-interest to GCFF-San Diego, LLC, a Delaware limited liability company ("GCFF").

(b) The definition of "Sublease" in Section 1 of the NDA is amended to be "the Sublease dated June 24, 2002, as amended by the First Amendment, dated April __, 2003, as assigned by GCFF to Subtenant by the Assignment and Assumption of Lease dated December 29, 2005, and amended by the Second Amendment to Lease dated as of _____, 2006."

(c) Section 8(c) is hereby deleted and replaced with the following:

"c. **Permitted Use.** Notwithstanding anything to the contrary in the Sublease, Lessee shall use the premises for the operation of a typical Chick-fil-A restaurant, which includes the sale of primarily those items sold by a typical Chick-fil-A restaurant from time to time (including, but not limited to chicken sandwiches, salads and other chicken items, french fries, milkshakes, various desserts and hot and cold beverages), including drive-through facilities, and a children's play area and the incidental sale at retail of any and all other types of food items and merchandise as are offered for sale in substantially all stores operating under the trade name "Chick-fil-A" (the "Incidental Items"); provided the display of such Incidental Items shall not occupy an area, in the aggregate, that exceeds five percent (5%) of the floor area of the premises used for the display and sale of merchandise in the building, and for no other purpose."

2. **Counterparts.** This Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute but one and the same agreement.

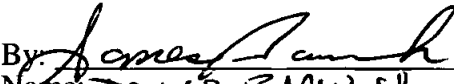
3. **Governing Law.** This Amendment shall be governed by and construed in accordance with California law.

4. **No Further Modification.** Except as expressly provided herein, nothing in this Amendment will be deemed to waive or modify any of the provisions of the NDA, or any amendment or addenda thereto. In the event of any conflict between the NDA, this Amendment or any other amendment or addendum thereof (exclusive of the Assignment which is addressed in Section 1 of this Amendment), the document later in time will prevail.

IN WITNESS WHEREOF, City, Lessee and Subtenant have caused their duly authorized representatives to execute this Amendment as of the date first above written.

CITY:

THE CITY OF SAN DIEGO
For the Mayor,

By: 
Name: JAMES BARWICK
Title: DIRECTOR REAL ESTATE

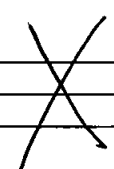
LESSEE:

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

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

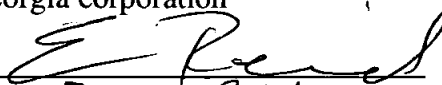
By: Founders of Arena Group 2000,
a California corporation,
its General Partner

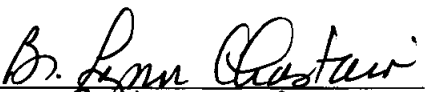
By: 
Name: PENE HAYN
Title: SEC

By: 
Name: _____
Title: _____

SUBTENANT:

CHICK-FIL-A, INC.,
a Georgia corporation

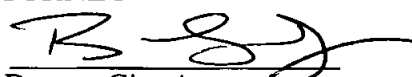
By: 
Name: Erwin Reid
Title: Vice President

By: 
Name: B. Lynn Chestain
Title: Vice President

APPROVED AS TO FORM AND LEGALITY THIS 12th DAY OF July, 2006.

MICHAEL J. AGUIRRE, CITY
ATTORNEY

Dated: 7/12/06

By: 
Deputy City Attorney
Brock LaBewig

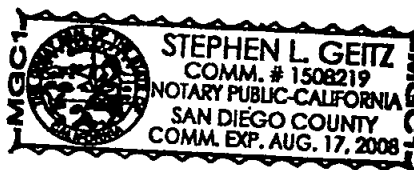
STATE OF California)
COUNTY OF San Diego) SS.

On July 11, 2006, before me,
STEPHEN L. GEITZ, a Notary Public,
personally JAMES F. BARWICK appeared

personally known to me ~~(or proved to me on the basis of satisfactory evidence)~~ to be the person(s) whose names(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(ies) upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Stephen L. Geitz
Notary Public



STATE OF)
COUNTY OF) SS.

On _____, 200__, before me,
personally _____, a Notary Public,
appeared

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose names(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(ies) upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of San Diego

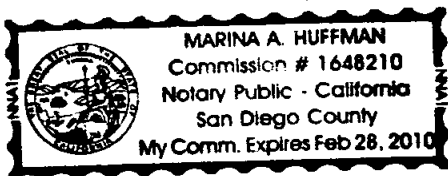
On June 21, 2006 before me, Marina A. Huffman, Notary Public
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Ernie Hahn
Name(s) of Signer(s)

☒ personally known to me

☐ (or proved to me on the basis of satisfactory evidence)

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Place Notary Seal Above

[Signature]
Signature of Notary Public

OPTIONAL

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

Description of Attached Document

Title or Type of Document: Amendment to Non-Disturbance and Attornment Agreement

Document Date: N/A Number of Pages: 7 pages

Signer(s) Other Than Named Above: N/A

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

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

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer's Name: _____

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

Signer Is Representing: _____

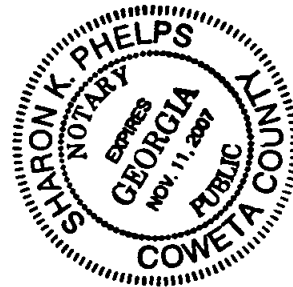
RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

STATE OF GEORGIA)
) SS.
COUNTY OF FULTON)

On June 14, , 2006, before me, Sharon K. Phelps, a Notary Public, personally appeared Erwin Reid, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose names(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(ies) upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Sharon K. Phelps
Notary Public



STATE OF GEORGIA)
) SS.
COUNTY OF FULTON)

On June 14, , 2006, before me, Sharon K. Phelps, a Notary Public, personally appeared B. Lynn Chastain, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose names(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(ies) upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Sharon K. Phelps
Notary Public



Exhibit A
Legal Description

DESCRIPTION

PARCEL 1: (ASSESSOR'S PARCEL NO. 760-245-08)

ALL 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.

PARCEL 2: (ASSESSOR'S PARCEL NO. 760-245-10)

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 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) 367.25 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 LINE NORTH 12°36'23" EAST 174.00 FEET; THENCE SOUTH 77°23'37" EAST 262.25 FEET; THENCE NORTH 67°37'56" EAST 48.56 FEET; SOUTH 03°09'24" WEST 42.41 FEET; THENCE SOUTH 12°36'23" WEST 160.00 FEET TO SAID NORTHERLY RIGHT-OF-WAY LINE; THENCE WESTERLY ALONG SAID NORTHERLY RIGHT-OF-WAY LINE NORTH 77°23'37" WEST 309.00 FEET TO THE TRUE POINT OF BEGINNING.

ASSIGNMENT AND ASSUMPTION OF LEASE

This Assignment and Assumption of Lease ("Agreement") is dated December 29, 2005 ("Execution Date") and is made by and between GCFF-SAN DIEGO LLC, a Delaware limited liability company, dba Krispy Kreme Doughnuts, as assignor ("Assignor") and CHICK-FIL-A, INC., a Georgia corporation, as assignee ("Assignee").

RECITALS

A. The City of San Diego, a chartered municipal corporation, as Lessor (the "City"), and Arena Group 2000, L.P., a California limited partnership, as Lessee, entered into the Ground Lease dated as of April 19, 2002 (the "Master Ground Lease"), attached hereto as Exhibit A-1. Subsequently, Arena Group 2000, L.P., a California limited partnership ("Landlord"), (as Landlord) and Assignor (as Tenant) entered into the Master Ground Sublease dated as of September 3, 2002 (the "Lease"), attached hereto as Exhibit A-2. The Lease is for property containing approximately 54,450 square feet, improved with a drive-thru restaurant building containing approximately 4,000 square feet of floor area and located at 3570 Sports Arena Boulevard, in San Diego, California ("Premises").

B. Assignor desires to assign to Assignee all of Assignor's right, title and interest in the Lease, upon and subject to all the terms and conditions hereinafter set forth.

C. The parties acknowledge that the assignment of the Lease will not become effective until a future date as described in Article IG below and until various conditions have been satisfied or waived, all as set forth below.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

AGREEMENT

I. ASSIGNMENT AND ASSUMPTION

A. Assignment and Assumption. As of the Actual Delivery Date (as defined in Article IG), Assignor hereby assigns to Assignee all of its right, title and interest in, to and under the Lease and the Premises (including but not limited to all of Assignor's right, title, and interest in and to any prepaid rents, if any, paid by Assignor pursuant to the Lease), and Assignee hereby accepts such assignment, assumes all of Assignor's obligations under the Lease, agrees to be bound by all of the provisions thereof and to perform all of the obligations of the tenant thereunder from and after the Actual Delivery Date. At the Actual Delivery Date, a proration will be made as to any prepaid rents, property taxes, common area expenses, and any security deposit and the party hereto with a debit amount shall pay such amount to the other party. Such assignment and assumption is made upon, and is subject to, all of the terms, conditions and provisions of this Agreement. Assignor hereby agrees to indemnify and hold Assignee harmless from all obligations under the Lease and all liabilities and claims to third parties concerning the Premises, in each case occurring or accruing prior to the Actual Delivery Date, and Assignee hereby agrees to indemnify and hold Assignor and Guarantor (as said term is defined in the Lease), if any, harmless from all obligations under the Lease and all liabilities and claims to third parties concerning the Premises, in each case occurring or accruing from and after the Actual Delivery Date.

B. Delivery of Premises. Assignor shall deliver the Premises to Assignee in "AS-IS" condition. Notwithstanding the foregoing, Assignor agrees to remove its proprietary equipment, furnishings, fixtures, personal property and signage as listed on Exhibit B attached hereto, prior to delivery and to repair any material damage caused by such removal. The parties agree that the Assignor expects to deliver the Premises to Assignee on or before March 31, 2006 (the "Expected Delivery Date"). Assignor may deliver the Premises to Assignee after the Expected Delivery Date, provided that Assignor delivers written notice to Assignee of such delay at least ten (10) days before the Expected Delivery Date. The date on which Assignor delivers the Premises to Assignee in accordance with this Article 1B is the "Actual Delivery Date." Notwithstanding the foregoing, the Actual Delivery Date shall be no later than April 14, 2006. If Assignor does not deliver the Premises in the condition required hereunder by April 14, 2006, then Assignee may, in its sole discretion, terminate the Assignment and this Agreement shall be of no further force and effect by delivering notice of such termination to Assignor. Assignor shall retain possession of the Premises after the date of Funding (as defined in Section 1G below) through the Actual Delivery Date. Assignor shall continue to pay all rent and other monetary obligations due to Landlord and perform all other obligations required under the Lease from and after the Execution Date through the Actual Delivery Date. On the Actual Delivery Date, the "Closing" shall occur, pursuant to which Escrow shall cause the Memorandum to be recorded, the Cash Consideration to be paid to Assignor (plus or minus net prorations and costs) and the Lessee's Title Policy to be issued to Assignee. Lessee's Title Policy shall be issued by Chicago Title Insurance Company ("Title Company") in the amount of the Cash Consideration, showing only the exceptions described in Article 1D(i)(b), except for those items which Assignor elects to correct or cure.

C. Intentionally Omitted.

D. Contingencies.

(i) General: The Funding is contingent upon:

(a) Landlord's approval of the assignment to and modification of the Lease as evidenced by Landlord's execution and delivery of an amendment to the Lease in a form acceptable to Assignee in its sole and reasonable discretion (the "Lease Amendment") which modifies the Lease so as to allow Chick-fil-A to operate in its typical manner, including, but not limited to not operating on Sundays, Christmas or Thanksgiving.

(b) Assignee's review and approval of a current title report and survey for the Premises to be secured by Assignee at its sole expense, if desired, together with such tests, studies, investigations and reports Tenant deems appropriate in order to satisfy itself of the feasibility of the development and use of the Premises for a Chick-fil-A restaurant (including but not limited to Assignee's receipt of the original written consent to the Assignment (the "Consent") from Krispy Kreme Doughnut Corporation, a North Carolina corporation ("Franchisor"), satisfactory to Assignee, in Assignee's sole and reasonable discretion);

(c) Assignee's receipt of a commercially reasonable non-disturbance agreement executed by Landlord and any mortgage lender on the Premises; and

(d) Assignee's receipt of a commercially reasonable non-disturbance agreement executed by Landlord and the City.

(ii) Lease Contingency Date. Assignee shall notify Assignor no later than February 28, 2006 (the "Lease Contingency Date") if Assignee has not yet received a fully executed Lease Amendment as described in Article 1D(i)(a) above. Assignee's failure to notify

Assignor of Assignee's receipt of a fully executed Lease Amendment before the expiration of the Lease Contingency Date, shall conclusively be deemed to constitute Assignee's election to terminate the Agreement. If this Agreement is terminated in accordance with this paragraph, neither party shall have any obligation to the other and Assignee shall have no right to the Premises or the Lease.

(iii) Due Diligence Contingency Date. Assignee shall notify Assignor no later than February 28, 2006 (the "Due Diligence Contingency Date") of either (x) its approval of the contingencies set forth in Article ID(i)(b) or (c), or (y) any objections to the state of title (including but not limited to any objections based upon Assignee's failure to receive the Consent), the physical condition or other aspects concerning the use and development of the Premises. Assignee's failure to notify Assignor of its approval pursuant to clause (x) before the expiration of the Due Diligence Contingency Date shall conclusively be deemed to constitute Assignee's disapproval of the condition of the Premises and title thereto. If Assignee objects to the condition of the Premises or to title in writing prior to the expiration of the Due Diligence Contingency Date, Assignor shall then notify Assignee as to whether Assignor intends to correct or cure all objections noted by Assignee. If Assignor agrees to correct or cure all of the items objected to by Assignee, then this Agreement shall continue in full force and effect. If Assignor does not elect to correct or cure any items objected to, or if it elects to correct or cure less than all of the defects, then Assignee shall notify Assignor within three (3) days after receipt of Assignor's notice that Assignee elects to either terminate the Agreement or unconditionally waive its objections and proceed with the Assignment. Failure of Assignee to timely send said election notice shall conclusively be deemed to constitute Assignee's election to terminate the Agreement. If this Agreement is terminated in accordance with this paragraph, neither party shall have any obligation to the other and Assignee shall have no right to the Premises or the Lease.

(iv) Assignor's Contingency: If this Agreement is not terminated pursuant to Article 1. D (ii) or (iii) above, and if Assignor performs all of its obligations hereunder, then Assignee shall pay to Assignor in good funds on or before the date of the Closing One Million One Hundred Seventy Five Thousand Dollars (\$1,175,000) (the "Cash Consideration") in consideration of the assignment of Assignor's leasehold improvements.

E. Memorandum. If all of the conditions set forth in Article ID have been timely satisfied or waived as described above, the parties shall each execute the Memorandum set forth in Exhibit D (the "Memorandum") and deliver same to Escrow for recordation at the Closing.

F. Termination. If all of the conditions set forth in Article ID above have not been timely satisfied or waived as described above, then this Agreement shall terminate, neither party shall have any further right or obligation to the other, and Assignee shall have no rights in or to the Lease or the Premises.

G. Escrow; Closing. These transactions shall be consummated through an escrow with Chicago Title Escrow Services ("Escrow"). Assignor and Assignee shall timely sign (with signature acknowledged) and deposit with Escrow the Memorandum and any other documents reasonably required by Escrow or the Title Company to consummate the transaction described herein. If all the conditions set forth in Article ID are satisfied or waived as described therein, then Assignee shall pay the Cash Consideration to Escrow on or before March 7, 2006 (the "Funding") to be held in Escrow pending the Closing. Assignee's failure to timely effect the Funding if the conditions therefor are satisfied shall entitle Assignor to terminate its obligations under this Agreement and Assignee shall be in default. The parties agree to execute any escrow instructions required by Escrow, so long as same are consistent with the terms of this Agreement.

H. Representations and Warranties. Assignor represents and warrants to the best of its knowledge that on the Execution Date the following are true and correct in all material respects:

(i) the Premises are zoned for Assignor's Permitted Use and that all necessary discretionary approvals have been obtained to permit Assignor to construct the Premises and operate its business;

(ii) the Lease is in good standing, Assignor is not in default thereunder and Assignor has no actual knowledge of any default of the tenant under the Master Ground Lease;

(iii) no tenants or occupants shall remain on the Premises on or after the Actual Delivery Date; and

(iv) Assignor has received no objection to the assignment contemplated by this Agreement from Franchisor.

(v) Broker's Representation. Assignor agrees and acknowledges that except for Retail Insite (Jeff Drew) who represents the Assignee, Assignor did not deal with any other brokers or consultants in connection with the negotiation, execution and delivery of this Agreement. Assignor shall be responsible for payment of a commission to Retail Insite, if any, as per a pre-existing agreement. Assignee further represents and warrants that it did not deal with any other brokers or consultants in connection with the negotiation, execution and delivery of this Agreement. Furthermore, Assignor and Assignee shall, and do hereby, indemnify, defend, and save the other harmless from and against any losses, damages, penalties, claims or demands of whatsoever nature arising from a breach of its foregoing representation including, without limitation, reasonable attorneys' fees and expenses.

I. Deposit. Prior to Execution Date hereof, Assignee has deposited Fifty Eight Thousand Seven Hundred Fifty Dollars (\$58,750) (the "Deposit") with Escrow to be held pending Closing. If Assignee provides notice to Assignor of its disapproval of any condition described in Article ID, on or before February 28, 2006, then the entire Deposit shall be returned to Assignee within five (5) days of delivery of such notice to Assignor and Escrow. If all of the conditions in Article ID are satisfied or waived as described therein, then such Deposit shall be applied in full to the Cash Consideration at Funding.

II. GENERAL

A. Attorneys' Fees. In the event that either Assignor or Assignee shall institute any action or proceeding against the other relating to the provisions of this Agreement or the Lease or any default thereunder, the party not prevailing in such action or proceeding shall reimburse the prevailing party for its actual attorneys' fees, and all fees, costs and expenses incurred in connection with such action or proceedings including, without limitation, any post-judgment fees, costs or expenses incurred on any appeal or in collection of any judgment.

B. Authority to Execute Agreement. Each individual executing this Agreement on behalf of a corporation or limited liability company represents that he or she is duly authorized to execute and deliver this Agreement on behalf of the corporation and/or limited liability company and agrees to deliver evidence of his or her authority upon request.

C. Successors. The provisions of this Agreement shall be binding upon, and shall inure to the benefit of, each of the parties hereto and to their respective successors, transferees and assigns.

D. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute but one and the same agreement.

E. Governing Law. This Agreement shall be governed by and construed in accordance with California law.

F. Indemnification.

(i) Assignee hereby indemnifies and agrees to defend and hold harmless Assignor, its shareholders, directors, officers, successors and assigns and the Guarantor of the Lease, if any, from and against any and all liability, loss, damage, cost and expense, including without limitation reasonable attorneys' fees, which Assignor or said Guarantor, if any, may or shall incur under the Lease by reason of any failure or alleged failure of Assignee or its successor-in-interest to have complied with or to have performed, the obligations of the Tenant under the Lease on or after the Actual Delivery Date. The foregoing indemnification shall survive the Actual Delivery Date.

(ii) Assignor hereby indemnifies and agrees to defend and hold harmless Assignee, its shareholders, directors, officers, successors and assigns from and against any and all liability, loss, damage, cost and expense, including without limitation reasonable attorneys' fees, which Assignee may or shall incur under the Lease by reason of any failure or alleged failure of Assignor to have complied with or to have performed, the obligations of the Tenant under the Lease prior to the Actual Delivery Date. The foregoing indemnification shall survive the Actual Delivery Date.

G. Notices. All notices to be given pursuant to this Agreement shall either be (1) personally delivered; (2) sent via U.S. mail, postage prepaid, (3) sent via overnight courier for overnight delivery; or (4) sent by telecopy transmittal with a confirming copy by U.S. Mail. If sent via U.S. Mail, receipt shall be deemed to have occurred effective forty-eight (48) hours after being deposited in the U.S. mail. If sent via overnight courier, receipt shall be deemed to have occurred twenty-four hours after deposit with the overnight courier. If sent via personal delivery, receipt shall be deemed to have occurred at such time as the notice is personally received. If sent via telecopy, notice shall be deemed received when received by the telecopy machine (except if received by the telecopy machine after 5:00 p.m., it shall be deemed received on the next business day). All notices to be given pursuant to this Agreement shall be given to the parties at the addresses set forth below. Each party may change the name and address to whom notices shall be given by providing at least 10 days' prior notice of such change to the parties in writing. Any notice deemed received on a day which is not a business day shall be deemed to be received on the next business day. A "business day" shall be Mondays through and including Fridays, except such days as banks are generally closed in Los Angeles, California.

To Assignor: GCFF-San Diego LLC
Attention: Roger Glickman
300 South Grand Avenue, Suite 2600
Los Angeles, CA 90071
Telephone Number: (213) 291-6116
Facsimile Number: (213) 624-9227

To Assignee:

Chick-fil-A, Inc.
5200 Buffington Road
Atlanta, Georgia 30349
Attention: Legal Department
Telephone Number: (404) 765-8000
Facsimile Number: (404) 765-8941

[Signatures Begin on Next Page.]

IN WITNESS WHEREOF, Assignor and Assignee have caused their duly authorized representatives to execute this Agreement as of the date first above written.

ASSIGNOR:

GCFP-SAN DIEGO LLC, a Delaware limited liability company

By: Great Circle Family Funds LLC
a Calif. LLC, Managing Member

By: Richard D. Rainis
Name: Richard Rainis
Title: CEO

ASSIGNEE:

CHECK-FIL-A, INC.,
a Georgia corporation

By: Don M. Carty
Name: Donald M. Carty
Title: Sr. Vice President

By: Burton Ledbetter, Jr.
Name: Burton Ledbetter, Jr.
Title: Sr. Vice President

EXHIBIT A-1

Master Ground Lease

EXHIBIT A-2

Lease

EXHIBIT B

List of Assignor's Personal Property

EXHIBIT C

Amendment to Lease

(Attached)

EXHIBIT D

Memorandum of Lease

EXHIBIT E

Signage

RECORDING REQUESTED BY AND
WHEN RECORDED, RETURN TO:

ARONSON LIGHT LLP
16000 Ventura Blvd., Suite 500
Encino, California 91436
Attn: Katherine Light, Esq.

MEMORANDUM OF ASSIGNMENT OF LEASE

THIS MEMORANDUM OF ASSIGNMENT OF LEASE ("Memorandum"), is made and entered into this _____ day of _____, 2006, by and between GCFF – SAN DIEGO, LLC, a Delaware limited liability company, dba Krispy Kreme Doughnuts ("Assignor"), and CHICK-FIL-A, INC., a Georgia corporation ("Assignee").

W I T N E S S E T H:

WHEREAS, The City of San Diego, a chartered municipal corporation, (the "City") as landlord, and Arena Group 2000, L.P., a California limited partnership ("Arena Group"), as tenant, entered into the Ground Lease dated as of April 19, 2002 (the "Master Ground Lease"). Subsequently, Arena Group, as landlord ("Landlord") and Assignor (as tenant) entered into the Master Ground Sublease dated as of September 3, 2002, as amended by the First Amendment to Ground Sublease entered into by Landlord and Tenant as of June 24, 2002 (collectively, the "Lease"). The Lease is for property containing approximately 54,450 square feet, improved with a drive-thru restaurant building containing approximately 4,000 square feet of floor area and located at 3570 Sports Arena Boulevard, in San Diego, California ("Premises"), the legal description of which is attached hereto as Exhibit "A."

WHEREAS, Assignor and Assignee entered into an Assignment and Assumption of Lease dated as of December 29, 2005 ("Assignment") to facilitate an assignment to and assumption of the Lease and amend certain provisions of the Lease.

WHEREAS, the parties hereto desire to file this Memorandum for record in the Records to provide record notice of the Assignment and certain of the terms and conditions contained therein.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein and in the Assignment, Assignor and Assignee hereby agree as follows:

1. Assignment. As of the Actual Delivery Date (as defined in the Assignment), Assignor hereby assigns to Assignee all of its right, title and interest in, to and under the Lease and the Premises (including but not limited to all of Assignor's right, title, and interest in and to any prepaid rents, if any, paid by Assignor pursuant to the Lease), and Assignee hereby accepts such assignment, assumes all of Assignor's obligations under the Lease, and agrees to be bound by all of the provisions thereof and to perform all of the obligations of the tenant thereunder, from and after the Actual Delivery Date.

2. Term. The term of the Lease commenced on September 3, 2002, and shall terminate on September 30, 2017 unless sooner terminated or extended as provided in the Lease. Assignee has certain rights to extend the term of the Lease.

3. Incorporation of Assignment. The provisions set forth in the Assignment are hereby incorporated into this Memorandum as if set out in full herein. In the event of any conflict or inconsistency between the terms of this Memorandum and the terms of the Assignment, the terms of the Assignment shall govern and control for all purposes.

4. Defined Terms. All capitalized terms and words of art which are used but not defined herein shall have the same respective meaning designated for such terms and words of art in the Assignment.

5. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, when taken together, shall constitute but one and the same agreement.

6. Cancellation of Memorandum. Upon the request of Assignor following the expiration or termination of the Lease, Assignee shall promptly execute and deliver to Assignor an appropriate release and/or cancellation instrument acknowledging the expiration or termination of the Assignment and releasing any and all right, title and interest of Assignee in and to the Premises under the Assignment. Such release and/or cancellation instrument shall be executed in proper form for recordation in the Records.

7. Authority to Execute Agreement. Each individual executing this Memorandum on behalf of a corporation or limited liability company represents that he or she is duly authorized to execute and deliver this Memorandum on behalf of the corporation and/or limited liability company and agrees to deliver evidence of his or her authority upon request.

[Signatures Begin on Next Page.]

IN WITNESS WHEREOF, Assignor and Assignee have caused this Memorandum to be executed and sealed the day, month and year first above written.

"ASSIGNOR"

GCFF – SAN DIEGO, LLC,
a Delaware limited liability company

By: Great Circle Family Foods, LLC,
Its sole member

By: 
Title: PRESIDENT

"ASSIGNEE"

CHICK-FIL-A, INC.,
a Georgia corporation

By: _____
Title: _____

By: _____
Title: _____

IN WITNESS WHEREOF, Assignor and Assignee have caused this Memorandum to be executed and sealed the day, month and year first above written.

"ASSIGNOR"

GCFF – SAN DIEGO, LLC,
a Delaware limited liability company

By: Great Circle Family Foods, LLC,
Its sole member

By: _____
Title: _____

"ASSIGNEE"

CHICK-FIL-A, INC.,
a Georgia corporation

By: 
Title: Vice President

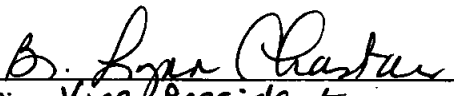
By: 
Title: Vice President

EXHIBIT A

Legal Description

DESCRIPTION

PARCEL 1: (ASSESSOR'S PARCEL NO. 760-245-08)

ALL 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.

PARCEL 2: (ASSESSOR'S PARCEL NO. 760-245-10)

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 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) 367.25 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 LINE NORTH 12°36'23" EAST 174.00 FEET; THENCE SOUTH 77°23'37" EAST 262.25 FEET; THENCE NORTH 67°37'56" EAST 48.56 FEET; SOUTH 03°09'24" WEST 42.41 FEET; THENCE SOUTH 12°36'23" WEST 160.00 FEET TO SAID NORTHERLY RIGHT-OF-WAY LINE; THENCE WESTERLY ALONG SAID NORTHERLY RIGHT-OF-WAY LINE NORTH 77°23'37" WEST 309.00 FEET TO THE TRUE POINT OF BEGINNING.

ACKNOWLEDGMENT

State of California
County of Los Angeles

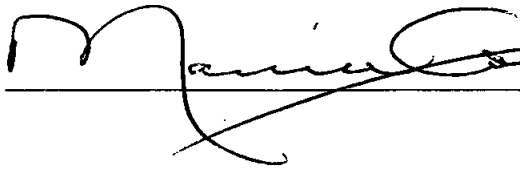
On June 14, 2006 before me, Marcia Cox - Notary Public,
(here insert name and title of the officer)

personally appeared Roger E. Glickman

personally known to me (~~or proved to me on the basis of satisfactory evidence~~) to be
the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and
acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized
capacity(~~ies~~), and that by his/~~her/their~~ signature(s) on the instrument the person(s),
or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature



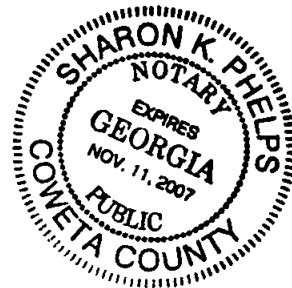
(Seal)

STATE OF Georgia)
COUNTY OF Fulton) ss

On June 19, 2006, before me, Sharon K. Phelps,
a Notary Public in and for said State, personally appeared Erwin Reid, 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 executed the same
in his authorized capacity, and that by his signature on the instrument the person, or the entities
upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature: Sharon K. Phelps

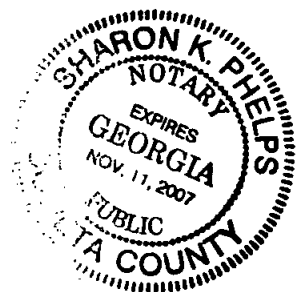


STATE OF Georgia)
COUNTY OF Fulton) ss

On June 19, 2006, before me, Sharon K. Phelps,
a Notary Public in and for said State, personally appeared B. Lynn Chastain, 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 executed the same
in his authorized capacity, and that by his signature on the instrument the person, or the entities
upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

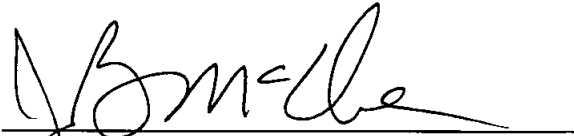
Signature: Sharon K. Phelps



CERTIFICATE OF CHIEF FINANCIAL OFFICER

I, James B. McCabe, as Chief Financial Officer and Senior Vice President, Finance, of CHICK-FIL-A, INC., a Georgia corporation (the "Corporation"), do hereby certify that (i) the Corporation's net worth is currently in excess of \$450,000,000, excluding goodwill, and the Corporation's earnings have risen from \$35,221,495 to \$73,446,458 over the past five years, for an average annual increase of 15.97%, and (ii) attached hereto is a copy of the Corporation's most recent unaudited balance sheet, as of September 30, 2005.

IN WITNESS WHEREOF, this Certificate of Controller has been signed this 6th day of March, 2006.

A handwritten signature in black ink, appearing to read 'J B McCabe', is written over a horizontal line.

James B. McCabe
Chief Financial Officer and
Senior Vice President, Finance



Chick-fil-A, Inc. Consolidated
Balance Sheet
September 30, 2005

<u>Assets</u>	<u>2005</u>	<u>2004</u>
Cash	\$ 5,588,323.52	4,914,221.99
Short-term Investments	15,500,000.00	0.00
Inventories	3,951,369.32	3,685,708.54
Property and equipment, at cost:		
Leased to unit Operators:		
Land	207,726,516.77	184,449,581.53
Buildings	295,698,980.44	266,145,743.80
Leasehold Improvements	361,849,530.95	318,865,681.80
Fixtures and Equipment	187,762,996.83	175,647,744.90
Equipment in storage and construction in progress	41,211,603.87	21,108,264.37
Office Land, Buildings, Fixtures and Equipment	90,395,479.76	81,126,569.56
Capital leases	8,733,456.68	8,733,456.68
	<u>1,193,378,565.30</u>	<u>1,056,077,042.64</u>
Less accumulated depreciation and amortization	329,884,516.86	290,709,642.43
Net property and equipment	<u>863,494,048.44</u>	<u>765,367,400.21</u>
Lease deposits	600,000.00	600,000.00
Cash surrender value of life insurance, net of loans of \$ 0.00 in 2005 and \$ 0.00 in 2004	40,741,316.09	36,649,802.28
Prepaid expenses and other assets	18,042,430.58	17,458,218.22
Receivables	8,462,883.27	9,150,965.55
Notes receivable	0.00	0.00
	<u>\$ 956,380,371.22</u>	<u>837,826,316.79</u>

Unaudited



**Chick-fil-A, Inc. Consolidated
Balance Sheet
September 30, 2005**

<u>Liabilities and Stockholders' Equity</u>	<u>2005</u>	<u>2004</u>
Notes payable:		
Banks	\$ 258,069,837.50	256,071,353.48
Others	2,671,132.43	4,909,585.36
Total notes payable	<u>260,740,969.93</u>	<u>260,980,938.84</u>
Obligations under capital leases	<u>4,240,368.92</u>	<u>4,703,430.27</u>
Accounts payable:		
Due to unit Operators	39,594,773.29	29,255,189.12
Other	25,267,697.47	16,955,121.79
Total accounts payable	<u>64,862,470.76</u>	<u>46,210,310.91</u>
Accrued expenses	32,872,778.65	26,095,005.89
Income taxes payable	5,081,771.88	4,871,841.00
Deferred income taxes	32,499,000.00	27,830,000.00
Unit Operators' deposits	4,530,159.49	4,257,398.09
Dividends payable	0.00	0.00
Total liabilities	<u>404,827,519.63</u>	<u>374,948,925.00</u>
Stockholders' equity:		
Common stock:		
Voting shares of \$.01 par value. 200,000 shares authorized; 100,000 shares issued	1,000.00	1,000.00
Nonvoting shares of \$.01 par value. 1,800,000 shares authorized; issued 836,615 shares in 2005 and 838,815 shares in 2004	8,366.15	8,388.15
Total common stock	<u>9,366.15</u>	<u>9,388.15</u>
Additional paid-in capital	125,423.01	125,717.63
Retained earnings - beginning	485,757,846.10	414,085,797.04
Dividends	0.00	0.00
Current year earnings	65,660,216.33	48,656,488.97
Total stockholders' equity	<u>551,552,851.59</u>	<u>462,877,391.79</u>
	<u>\$ 956,380,371.22</u>	<u>837,826,316.79</u>

Unaudited

SECOND AMENDMENT TO LEASE

This Second Amendment to Lease ("Amendment") is dated as of _____, 2006 (the "Effective Date") and is made by and between ARENA GROUP 2000 L.P., a California limited partnership ("Landlord") and CHICK-FIL-A, INC., a Georgia corporation ("Tenant"), as successor-in-interest to GCFF-SAN DIEGO, LLC, a Delaware limited liability company ("GCFF").

RECITALS

A. Ground Lease. The City of San Diego (the "City") leased three in-line retail pads adjacent to the San Diego Sports Arena, located in San Diego, California (the "Shopping Center") to Landlord pursuant to a Ground Lease dated as of April 19, 2002 ("Ground Lease").

B. Lease. Landlord thereafter subleased one of such pads to GCFF pursuant to the Ground Sublease Agreement dated June 24, 2002, as amended by the First Amendment to Ground Sublease Agreement ("First Amendment") dated April 3, 2003 (collectively, the "Lease"). The Lease is for property containing approximately 54,450 net square feet, improved with a drive-thru restaurant building containing approximately 4,000 square feet of floor area and located in the Shopping Center ("Premises").

C. Assignment of Lease. In connection herewith, GCFF has assigned to Tenant all of its right, title and interest in the Lease pursuant to the Assignment and Assumption of Lease dated December 29, 2005 by and between GCFF, as Assignor and Tenant, as Assignee (the "Assignment"). The Assignment will not become effective until a future date as described in the Assignment and until various conditions have been satisfied or waived (the "Actual Delivery Date").

D. Amendment to Lease. Landlord consents to the Assignment, attached hereto as Exhibit C and the parties hereto desire to modify the Lease in connection with the Assignment.

E. City Consent. In connection herewith, the City consented to the Assignment and entered into the City of San Diego Consent Agreement by and among the City, Landlord, Tenant and GCFF dated as of _____, 2006.

F. Non-Disturbance and Attornment Agreement. In connection herewith, Landlord, Tenant and the City have entered into an Amendment to Non Disturbance and Attornment Agreement dated as of _____, 2006 to substitute Tenant for GCFF in the original Non-Disturbance Agreement dated as of August 23, 2002 and to make other related modifications thereto.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

AGREEMENT

1. Ground Lease, Lease and Assignment and Assumption of Lease; Consent. Landlord and Tenant hereby represent that true and complete copies of the Ground Lease, Lease and the Assignment are attached hereto and made a part hereof as Exhibits A, B and C, respectively. Landlord hereby consents to the Assignment.

2. Lease Modification. Landlord and Tenant hereby agree to amend the Lease as follows:

(a) Tenant's Trade Name. All references throughout the Lease to "Tenant's Trade Name" are amended to provide that Tenant's Trade Name shall be "Chick-fil-A" and all references throughout the Lease to "Krispy Kreme", "GCFF-San Diego" or "Great Circle" shall be replaced with "Chick-fil-A."

(b) Rent Commencement Date. The Lease Commencement Date as defined in Section 6.2 of the Summary of Basic Ground Sublease Information ("Summary") and Article 3 of the Lease was: September 3, 2002. The expiration date of the initial term of the Lease is September 30, 2017.

(c) Permitted Use. Section 9.1 of the Summary is hereby deleted in its entirety and replaced with the following:

"Section 9.1 Permitted Use (Article 5):

"Operation of a typical Chick-fil-A restaurant, which includes the sale of primarily those items sold by a typical Chick-fil-A restaurant from time to time, including, but not limited to French fries, milkshakes and those categories of items shown on the menu attached hereto as Exhibit D, including drive-through facilities, and a children's play area and the incidental sale at retail of any and all other types of food items and merchandise as are offered for sale in substantially all stores operating under the trade name "Chick-fil-A" (the "Incidental Items"); provided the display of such Incidental Items shall not occupy an area, in the aggregate, that exceeds five percent (5%) of the Floor Area used for the display and sale of merchandise in the Building and for no other purpose."

(d) Tenant's Notice Address. The "Address of Tenant" listed in Section 10.1 of the Summary is hereby deleted in its entirety and replaced with the following:

Chick-fil-A, Inc.
5200 Buffington Road
Atlanta, Georgia 30349
PHONE: (404) 765-8000
FAX: (404) 765-8941
ATTN: Legal Department

The "With a copy to" address immediately following Tenant's address in the Lease is deleted in its entirety.

(e) Signs.

(i) Article 5.2.3(a) is hereby deleted in its entirety and replaced with the following:

"(a) **Building Signage.** To the fullest extent permitted by Applicable Laws, but subject to compliance with the Master Lease and any REA approved by Tenant as provided hereinabove, Tenant shall be entitled to (i) install its prototypical signage on all four elevations of its Building (including, but not limited to any "Home of the Original Chicken Sandwich" signage), (ii) highlight architectural elements of its Building with neon or other type of lighting, and (iii) all other Building identification signage with respect to the Premises similar to

Tenant's other Chick-fil-A restaurants, all of which signs shall be designed and installed, at Tenant's sole cost and expense ("**Building Signage**")."

(ii) Article 5.2.3(b) and the First Amendment are hereby modified to provide that (a) Tenant shall have the right to exposure time in the Electronic Display Area on the "Modified Marquee Sign" equal to the other events and activities that are being marketed in rotation on the marquee, and (b) all alterations to the Modified Marquee Sign are complete and GCFF has paid in full any obligations of Tenant under the Lease to contribute to the cost of the Modified Marquee Sign. Tenant shall have the right to modify Tenant's electronic message monthly, at its sole discretion, upon three (3) days prior notice to Landlord. Tenant shall be entitled to modify the non-electronic signage located on the Modified Marquee Sign currently occupied by GCFF and replace it with its prototypical signage at Tenant's sole cost and expense.

(iii) Landlord acknowledges that it has reviewed and approved Tenant's prototypical Chick-fil-A signage.

(f) Assignment and Subletting. The last two sentences of Article 14.4 of the Lease are hereby deleted in their entirety and replaced with the following:

"Subject to the Master Lease, Tenant shall have the right, without Landlord's consent, to sublet the Premises to an operator, franchisee or licensee ("**Franchisor/Franchisee**") without complying with the requirements and conditions of this Article 14, provided that (i) any such subtenant agrees to comply with all of the terms and conditions of this Lease to be performed by Tenant; (ii) subtenant shall operate under the name of "Chick-fil-A" or a trade name being utilized by Tenant or its affiliates in substantially all of its stores; (iii) Tenant shall not be relieved of any responsibilities imposed by the Lease; (iv) no subtenant shall have the right to sublet or assign the Premises without Landlord's written consent, except back to Tenant, and (v) assignee shall operate the Premises in the same manner and quality as Tenant. Notwithstanding anything to the contrary in this Lease, upon a Transfer by Tenant to a Permitted Transferee or Franchisee, such succeeding entity shall have all of the rights afforded to Tenant under this Lease, including all personal rights for signage rights, exclusivity rights and any other personal right provided to Tenant under this Lease."

(g) Remodeling. Landlord hereby consents to the remodeling of the Premises as a prototypical Chick-fil-A restaurant, in accordance with Article 8 of the Lease.

(h) Intentionally Omitted.

3. Hours of Operation. Landlord acknowledges that (a) Tenant shall not be obligated to operate on Sundays, Christmas, Thanksgiving, or other national holidays, and (b) Tenant is permitted to operate from 6:00 a.m. to 11:30 p.m. Monday through Saturday.

4. Options to Extend. Landlord acknowledges that pursuant to Article 2.3 of the Lease, Tenant is a Transferee approved or permitted under Article 14 of the Lease and therefore retains all the rights and privileges of Tenant with regard to exercise the Extension Options.

5. Authority to Execute Amendment. Each individual executing this Amendment on behalf of a corporation or limited partnership represents that he or she is duly authorized to execute and deliver this Amendment on behalf of the corporation and/or limited partnership and agrees to deliver evidence of his or her authority upon request.

6. Successors. The provisions of this Amendment shall be binding upon, and shall inure to the benefit of, each of the parties hereto and to their respective successors, transferees and assigns.

7. Counterparts. This Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute but one and the same agreement.

8. Governing Law. This Amendment shall be governed by and construed in accordance with California law.

9. No further Modification. Except as expressly provided herein, nothing in this Amendment will be deemed to waive or modify any of the provisions of the Lease, or any amendment or addenda thereto. In the event of any conflict between the Lease, this Amendment or any other amendment or addendum thereof (exclusive of the Assignment which is addressed in Section 1 of this Amendment), the document later in time will prevail.

10. Attorneys' Fees. If any party commences an action against any of the parties arising out of or in connection with this Amendment, the prevailing party or parties shall be entitled to recover from the losing party or parties' reasonable attorneys' fees and costs of suit.

11. Severability. If any provision or any part of any provision of this Amendment is for any reason held to be invalid, unenforceable, or contrary to any public policy, law, statute and/or ordinance, the remainder of this Amendment shall not be affected and shall remain valid and fully enforceable.

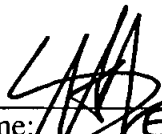
IN WITNESS WHEREOF, Landlord and Tenant have caused their duly authorized representatives to execute this Amendment as of the date first above written.

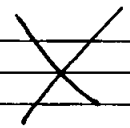
LANDLORD:

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

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

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

By: 
Name: ERNE HAHN
Title: Sec.

By: 
Name: _____
Title: _____

TENANT:

CHICK-FIL-A, INC.,
a Georgia corporation

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, Landlord and Tenant have caused their duly authorized representatives to execute this Amendment as of the date first above written.

LANDLORD:

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

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

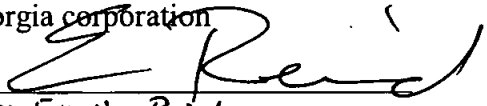
By: Founders of Arena Group 2000,
a California corporation,
its General Partner

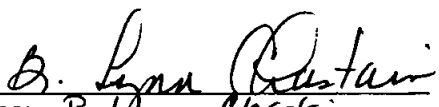
By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

TENANT:

CHICK-FIL-A, INC.,
a Georgia corporation

By: 
Name: Erwin Reid
Title: Vice President

By: 
Name: B. Lynn Chastain
Title: Vice President

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 24, 2002, by and between the above LESSEE and

GCFF-SAN DIEGO, LLC

("SUBLESSEE") for the property more particularly described in Exhibit A attached hereto. 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 for the operation of a typical Krispy Kreme Doughnuts restaurant which may be open 24 hours a day, 7 days a week with drive-thru capabilities specializing in the manufacture and sale of doughnuts and incidental sale of other food and non-food items (including coffee, espresso, ice-blended drinks, and other beverages) sold in other Krispy Kreme Doughnuts restaurants in Southern California or other first-class restaurant use ("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: SUBLESSEE shall be insured by an insurance carrier acceptable to the CITY against loss from public liability arising from the use or condition of or operation conducted on the leased premises. Minimum coverage shall be three million dollars (\$3,000,000) Combined Single Limit Liability. SUBLESSEE shall file with CITY on or before the execution of this SUBLEASE a copy of the policy of insurance which shall name "THE CITY OF SAN DIEGO" as an additional insured. Said policy shall specify that the policy may not be terminated, altered or canceled without thirty (30) days prior written notice to CITY by the insurance company.

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.

LESSOR

THE CITY OF SAN DIEGO

Dated 8-23-02

By 
For the City Manager, by Tim C. Rothans
Deputy Real Estate Assets Director

[Signatures continued on following page]

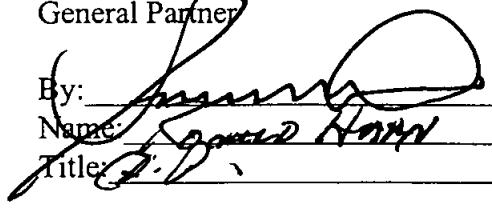
LESSEE

Dated August 14, 2002

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: Robert S. Fein
Title: General Partner

SUBLESSEE

Dated August 13, 2002

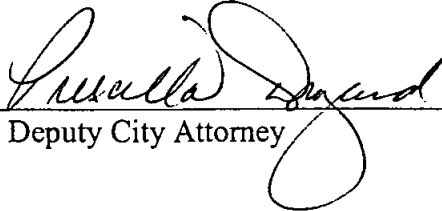
GCFF-SAN DIEGO, LLC
a Delaware limited liability company

By: Great Circle Family Foods, LLC,
a California limited liability company,
its sole member

By: 
Name: Robert S. Fein, Manager
Its: CEO

APPROVED AS TO FORM AND LEGALITY
CASEY G. GWINN, City Attorney

Dated 8/15/02

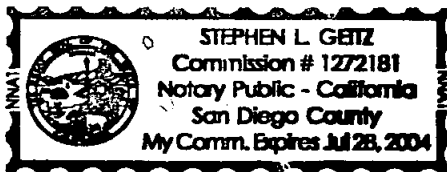
By: 
Deputy City Attorney

CEH/ceh

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO)ss.

On August 24, 2002, before me, Stephen L. Getz, personally appeared Tim C. Robbins 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.



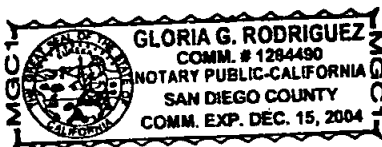
Stephen L. Getz

Notary Public

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO)ss.

On AUGUST 14, 2002 before me, GLORIA G. RODRIGUEZ personally appeared RONALD 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.



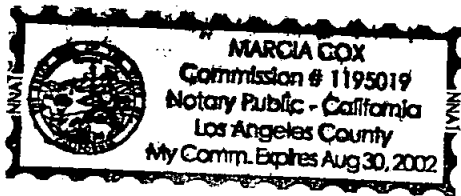
Gloria G. Rodriguez

Notary Public

STATE OF California
COUNTY OF Los Angeles)ss.

On 8-13-02, before me, Marcia Cox, personally appeared Richard Reinis 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.



Marcia Cox
Notary Public

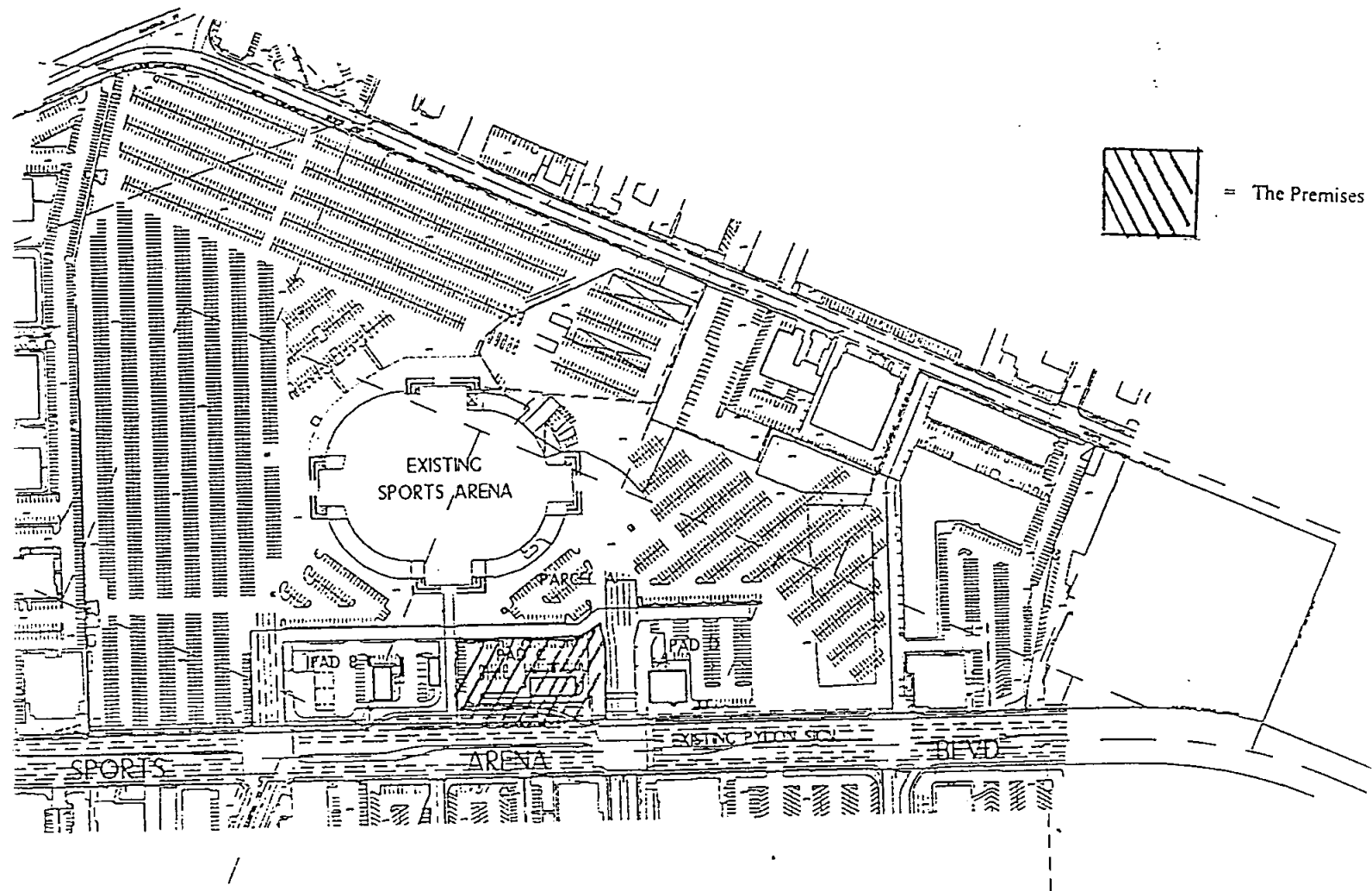
STATE OF _____)
COUNTY OF _____)ss.

On _____, before me, _____, 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. 760-245-10)

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 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) 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.

**FIRST AMENDMENT TO GROUND SUBLEASE AGREEMENT
DATED JUNE 24, 2002 BY AND BETWEEN ARENA GROUP 2000, L.P.,
A CALIFORNIA LIMITED PARTNERSHIP ("LANDLORD") AND GCFF-SAN DIEGO, LLC,
A DELAWARE LIMITED LIABILITY COMPANY ("TENANT")**

THIS FIRST AMENDMENT TO SHOPPING CENTER GROUND LEASE, dated June 24, 2002, by and between Arena Group 2000 L.P. and GCFF-San Diego, LLC, is effective this _____ day of April, 2003.

Wherein the terms hereof vary the terms of Ground Sublease, the terms hereof shall prevail.

Section 5.2.3 of the Ground Sublease is hereby amended to provide Tenant with additional rights with respect to the "Modified Marquee Sign" in exchange for permitting Landlord to move the "location" and "size" of the signage on the "Modified Marquee Sign" from the "Existing Marquee Sign" which include the following provisions:

- 1) Tenant shall have the right to exposure time in the Electronic Display Area on the "Modified Marquee Sign" of fifty percent (50%), from the hours of 5:00 a.m. through 9:00 a.m., and fifty percent (50%) exposure time from the hours of 4:00 p.m. through 8:00 p.m., and twenty-five percent (25%) exposure time for the remaining hours, Monday through Sunday, on or about 280 days per year. Tenant shall also have the right to exposure time in the Electronic Display Area on the Modified Marquee Sign of twenty-five percent (25%) for the hours of 4:00 p.m. through 8:00 p.m. for 85 days of the year.
- 2) All other terms and conditions of the Lease and Section 5.2.3 of this Ground Sublease shall remain the same.

(continued on following page)

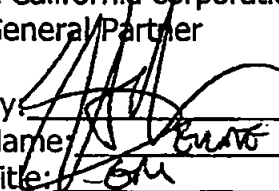
IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to Ground Sublease to be executed on the date first indicated above.

"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

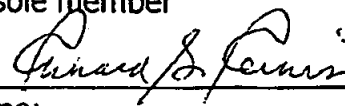
By: 
Name: Erico Kohn
Title: GM

By: _____
Name: _____
Title: _____

"TENANT"

GCFF-SAN DIEGO, LLC
a Delaware limited liability company

By: Great Circle Family Foods, LLC,
a California limited liability company,
its sole member

By: 
Name: _____
Title: CEO

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

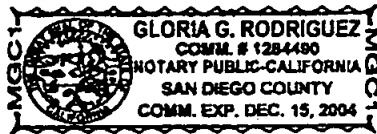
State of California

County of SAN DIEGO

SS.

On April 11, 2003 before me, Gloria G. Rodriguez, Notary Public
Date Name and Title of Officer (e.g., "John Doe, Notary Public")
personally appeared Ernie Hahn
Name(s) of Signer(s)

☒ personally known to me
☐ 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
Signature of Notary Public

OPTIONAL

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

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

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

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Los Angeles } SS.

On April 3, 2003

Date

before me Silvia Bradley, Notary Public

Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Richard A. Bennis

Name(s) of Signer(s)

☒ personally known to me

☐ 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.

Silvia Bradley
Signature of Notary Public

OPTIONAL

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

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

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

Signer Is Representing: _____



RECORDED AT THE REQUEST OF
CHICAGO TITLE CO.

THE ORIGINAL OF THIS DOCUMENT
WAS RECORDED ON AUG 29, 2002
DOCUMENT NUMBER 2002-0738582
GREGORY J. SMITH, COUNTY RECORDER
SAN DIEGO COUNTY RECORDER'S OFFICE
TIME: 4:15 PM

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Buchalter, Nemer, Fields, & Younger
601 South Figueroa Street, Suite 2400
Los Angeles, California 90017-5704
Attn: Bryan Mashian, Esq.

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

23038139-413

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 GCFF—San Diego, L.L.C., a Delaware limited liability company ("SUBTENANT"), 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 24, 2002 ("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. City's Condemnation Rights; Right to Terminate.

a. If CITY exercises any rights of eminent domain, condemnation or taking with respect to the premises subject to the Master Lease, the Sublease interest and/or the Subleased Premises (or any portion thereof), LESSEE shall be entitled to the entire condemnation award except for the following amounts, all of which amounts shall be provided to Subtenant: (i) any and all allowable relocation costs under applicable law at the time of condemnation (subject to the limitations contained in Section 3(b) below), (ii) the fair market value of the tenant improvements constructed by Subtenant on the Subleased Premises including any and all buildings, fixtures, drive-thru improvements (collectively, "Tenant Improvements"), (iii) any loss of goodwill (subject to the limitations contained in Section 3(b) below), (iv) fifty percent (50%) of the value of Subtenant's leasehold estate or so-called "bonus value" under the Sublease based on the contract rental rates in comparison with the market rental rates for the Subleased Premises for the unexpired term of the Sublease, and (v) any additional amounts to which Subtenant would be entitled to under State and Federal Law.

b. The parties acknowledge and agree that if, after the earlier to occur (i) the date which is twenty one (21) years after the commencement date of the term of the Master Lease or (ii) twenty (20) years after the commencement date of the third sublease in the existing Shopping Center (with the understanding that Subtenant's Sublease is the first sublease in the existing Shopping Center), and if CITY or other entity terminates the Master Lease by exercising eminent domain, condemnation or taking rights or if CITY or CITY's designee exercises its early termination right under Section 3.9 of the Master Lease, then Subtenant shall not be entitled to any relocation expense or goodwill payment whatsoever arising out of eminent domain, condemnation or taking of the Subleased Premises (or any portion thereof) or CITY's early termination right under Section 3.9 of the Master Lease.

4. 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.

5. 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.

6. 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.

7. 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.

8. 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 8, "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. Permitted Use. Notwithstanding anything to the contrary in the Sublease, LESSEE shall use the premises for the operation of a typical Krispy Kreme Doughnuts restaurant which, may be open 24 hours a day, 7 days a week with drive-thru capabilities specializing in the manufacture and sale of doughnuts and incidental sale of other food and non-food items (including coffee, espresso, ice-blended drinks, and other beverages), sold in other Krispy Kreme Doughnuts restaurants in Southern California or other first-class restaurant use ("Permitted Use"). Any change to the Permitted Use will require prior written consent and approval of the CITY.

d. Exclusive Use. The provisions of Section 5.6 Exclusive Use of the Sublease shall be limited to the three pads only.

e. 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.

f. 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.

g. 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.

h. 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.

i. Arbitration. Article 30 Arbitration of the Sublease is deleted in its entirety and shall not apply to CITY as Landlord.

j. Prohibited Uses. Article 5.8 Prohibited Uses of the Sublease is deleted in its entirety and shall not apply to CITY as Landlord.

k. Nondiscrimination. 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.

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

(1) Equal Opportunity Contracting. 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. 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. 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. 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.

9. 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.

10. 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.

[Remainder of page intentionally blank]

11. 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 23 day of August, 2002.

LESSOR:

THE CITY OF SAN DIEGO,
a municipal corporation,

By: T-C

Name: TIM C. ROTHMAN
For the City Manager

Title: DEPUTY DIRECTOR

Date: 8-23-02

LESSEE:

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: [Signature]

Name: RONALD HAHN

Title: G.P.

Date: 8-14-02

SUBTENANT:

GCFF-SAN DIEGO, L.L.C.,
A Delaware limited liability company

By: Great Circle Family Foods, LLC,
a California limited liability company,
its sole member

By: Richard E. Reinis

Name: Richard E. Reinis

Title: CEO Managing Member

Date: August 13, 2002

[Signatures continued on following page]

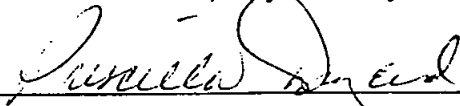
APPROVED AS TO FORM AND LEGALITY

CASEY G. GWINN, City Attorney

Dated

5/27/02

By:



Deputy City Attorney

STATE OF CALIFORNIA)

) ss

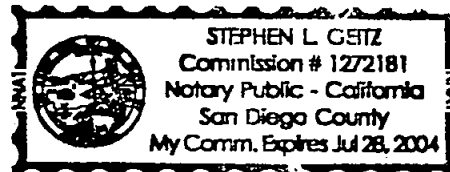
COUNTY OF SAN DIEGO)

On August 26, 2002, before me, the undersigned, a notary public in and for said State, personally appeared Tim C. Notman, personally known to me (~~or proved to me on the basis of satisfactory evidence~~) to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in his/~~her~~/their authorized capacity(ies), and that by his/~~her~~/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

[Signature]

Notary Public



STATE OF CALIFORNIA)

) ss

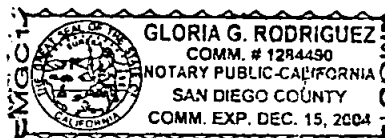
COUNTY OF SAN DIEGO)

On 08/14/02, 2002, before me, the undersigned, a notary public in and for said State, personally appeared RONALD 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.

[Signature: Gloria G. Rodriguez]

Notary Public



STATE OF CALIFORNIA)

Los Angeles) ss
COUNTY OF SAN DIEGO)

On 8-13, 2002, before me, the undersigned, a notary public in and for said State, personally appeared Richard Reinis, personally known to me (~~or proved to me on the basis of satisfactory evidence~~) to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in his/~~her~~/their authorized capacity(ies), and that by his/~~her~~/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

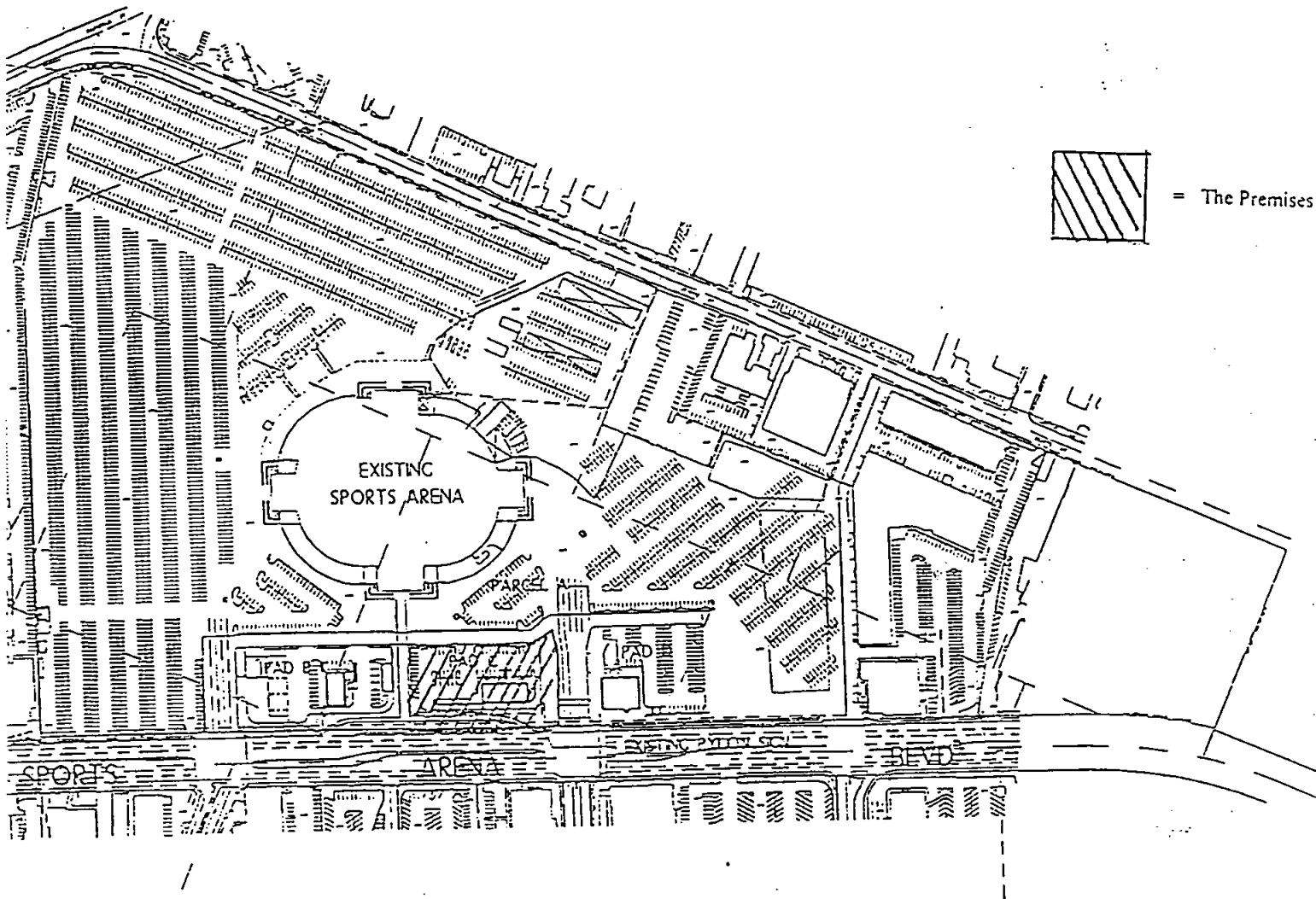
WITNESS my hand and official seal.

[Signature]

Notary Public



Exhibit A



PARCEL 2: (ASSESSOR'S PARCEL NO. 760-245-10)

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 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) 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.

RECORDED AT THE REQUEST OF
CHICAGO TITLE CO.

THE ORIGINAL OF THIS DOCUMENT
WAS RECORDED ON AUG 29, 2002
DOCUMENT NUMBER 2002-0738583
GREGORY J. SMITH, COUNTY RECORDER
SAN DIEGO COUNTY RECORDER'S OFFICE
TIME: 4:15 PM

WHEN RECORDED, RETURN TO:

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

23038139-413
SUBORDINATION, NON-DISTURBANCE AND
ATTORNMENMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENMENT AGREEMENT made in multiple copies as of June 24, 2002, by and between U.S. BANK NATIONAL ASSOCIATION (herein referred to as "Lender") and GCFF-San Diego, LLC, a Delaware limited liability company (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 Lease dated June 24, 2002 (herein referred to as "Lease"), recorded by Memorandum of Lease of even date, on 8-29-2002, as Instrument No. 2002-0738583 in the Official Records of San Diego County, California, Landlord, as landlord, leased to Tenant, as tenant, the property described on Exhibit "A" (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 lien of said 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 under the Lease 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:

GCFF-SAN DIEGO, LLC
a Delaware limited liability company

By: Great Circle Family Foods, LLC,
a California limited liability company,
its sole member

By: *David P. Pinn*
Name: for Great Circle Family Foods, LLC
Its: Managing Member

LENDER:

U.S. BANK NATIONAL ASSOCIATION

Sharon Council

By:
Its: Corporate Officer

ALL SIGNATURES MUST BE NOTARIZED

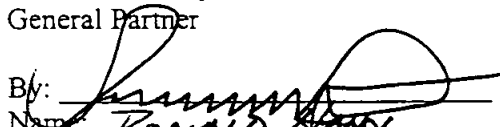
[Signatures continued on following page]

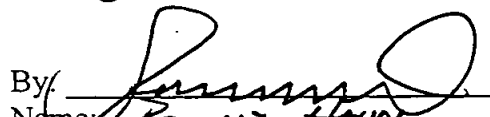
LANDLORD:

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 Hahn
Title: G.P.

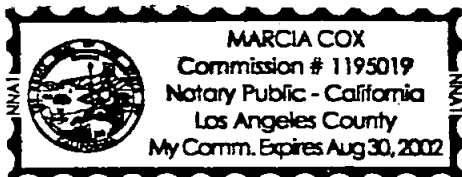
By: 
Name: Ronald Hahn
Title: President

ALL SIGNATURES MUST BE NOTARIZED

State of California)
County of Los Angeles) ss.

On 5-28-02, before me, Marcia Cox, Notary Public,
personally appeared Richard Dennis, ()
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.

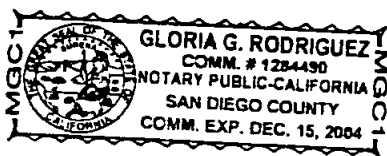


Marcia Cox
SIGNATURE OF NOTARY

State of CALIFORNIA)
County of SAN DIEGO) ss.

On JULY 02, 2002, before me, GLORIA G. RODRIGUEZ, Notary Public,
personally appeared RONALD HAHN, GENERAL PARTNER, X
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.

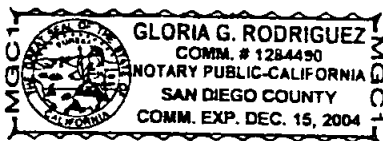


Gloria G. Rodriguez
SIGNATURE OF NOTARY

State of CALIFORNIA)
County of SAN DIEGO) ss.

On JULY 02, 2002, before me, GLORIA G. RODRIGUEZ, Notary Public, ()
personally appeared RONALD HAHN, PRESIDENT, ()
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.

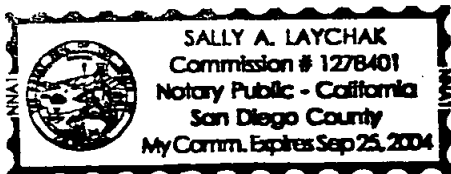


Gloria G. Rodriguez
SIGNATURE OF NOTARY

State of California)
County of San Diego) ss.

On Aug. 7th, 2002, before me, Sally A. Laychak, Notary Public, ()
personally appeared Sharon Council, ()
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.



Sally A. Laychak
SIGNATURE OF NOTARY

EXHIBIT A

PARCEL 2: (ASSESSOR'S PARCEL NO. 760-245-10)

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 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) 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.

RECORDED AT THE REQUEST OF
CHICAGO TITLE CO

THE ORIGINAL OF THIS DOCUMENT
WAS RECORDED ON AUG 29, 2002
DOCUMENT NUMBER 2002-0738581
GREGORY J. SMITH, COUNTY RECORDER
SAN DIEGO COUNTY RECORDER'S OFFICE
TIME: 4:15 PM

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

BUCHALTER, NEMER, FIELDS & YOUNGER
601 South Figueroa Street, Suite 2400
Los Angeles, California 90017-5704
Attention: Bryan Mashian, Esq.

23038139-413

MEMORANDUM OF GROUND SUBLEASE

This Memorandum of Ground Sublease ("Memorandum"), dated June 24, 2002 by and between Arena Group 2000 LP, a California limited partnership ("Landlord") and GCFF-San Diego, LLC, a Delaware limited liability company ("Tenant"), is based upon the following facts and circumstances:

1. Landlord and Tenant are parties to that certain Ground Sublease dated June 24, 2002 ("Sublease") pursuant to which Landlord leased to Tenant and Tenant leased from Landlord that certain real property described on Exhibit A attached hereto ("Premises") together with rights and interest to that certain real property described on Exhibit B attached hereto ("Access Driveways"), that certain real property described as Exhibit C attached hereto ("Shopping Center"), and the Common Areas (as such term is defined in Section 1.1.4 in the Sublease). The capitalized terms used in this Memorandum shall have the meaning given to such terms in the Sublease, unless specifically provided otherwise herein.

Landlord and Tenant hereby agree as follows:

Pursuant to the Sublease, Tenant has certain rights and interests in and to the Premises, the Access Driveways, the Shopping Center, and the Common Areas as set forth in the Sublease, including, without limitation, the following: (i) signage rights, (ii) exclusive use rights, (iii) right to prohibit certain uses in Shopping Center, (iv) right to enforce building height limitations over certain parts of the Shopping Center, (v) right to after-hours lighting in Common Areas, and (vi) parking rights in the Shopping Center.

This Memorandum is for the purpose of recordation and in no way modifies, amends or changes the Sublease. The Sublease is incorporated herein by reference. In the event of a conflict between this Memorandum and the provisions of the Sublease, the Sublease shall prevail.

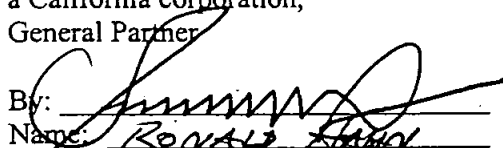
Landlord and Tenant have each executed this Memorandum as of the date set forth above.

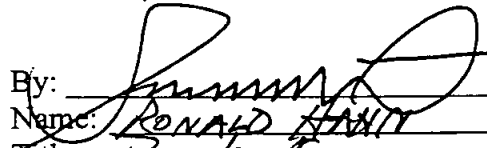
Landlord:

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 SMITH
Title: G.P.

By: 
Name: RONALD SMITH
Title: President

Tenant:

GCFF-San Diego, LLC,
a Delaware limited liability company

By: 
Name Printed: for Great Circle Family Funds, LLC
Title: Managing Member

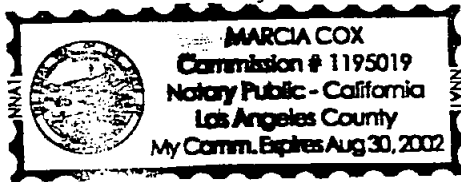
By: _____
Name Printed: _____
Title: _____

STATE OF CALIFORNIA)

Los Angeles
COUNTY OF SAN DIEGO)

On 5-28-02, before me, Marcia Cox personally appeared Richard Dennis 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.



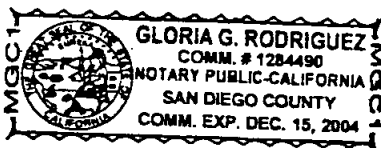
Marcia Cox
Notary Public

STATE OF CALIFORNIA)

County of San Diego)

On July 02, 2002, before me, Gloria G. Rodriguez personally appeared Ronald 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.

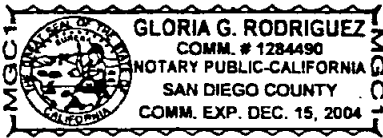


Gloria G. Rodriguez
Notary Public

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

On July 02, 2002, before me, GLORIA G. RODRIGUEZ personally appeared RONALD 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 _____, before me, _____, 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. 760-245-10)

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:

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J-13575B

EXHIBIT B

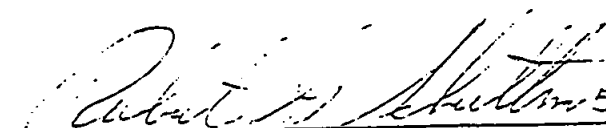
CITY LEASE PARCEL

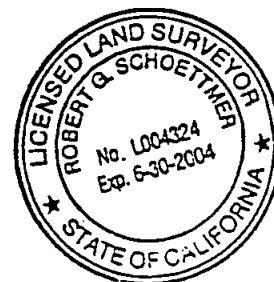
Parcel "A"

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 $77^{\circ}23'37''$ West (record North $77^{\circ}52'25''$ West per said Map No. 6629) 53.74 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 North $12^{\circ}36'23''$ East 199.03 feet; thence South $77^{\circ}23'37''$ East 677.04 feet; thence North $65^{\circ}44'11''$ East 51.62 feet; thence South $77^{\circ}23'37''$ East 307.67 feet; thence South $12^{\circ}36'23''$ West 25.00 feet; thence North $77^{\circ}23'37''$ West 224.75 feet; thence South $26^{\circ}38'35''$ West 46.38 feet; thence South $12^{\circ}36'23''$ West 160.00 feet; thence North $77^{\circ}23'37''$ West 60.00 feet; thence North $12^{\circ}36'23''$ East 160.00 feet; thence North $03^{\circ}09'24''$ East 42.41 feet; thence South $67^{\circ}37'56''$ West 48.56 feet; thence North $77^{\circ}23'37''$ West 262.25 feet; thence South $12^{\circ}36'23''$ West 174.00 feet; thence North $77^{\circ}23'37''$ West 20.00 feet; thence North $12^{\circ}36'23''$ East 174.00 feet; thence North $77^{\circ}23'37''$ West 335.00 feet; thence South $12^{\circ}36'23''$ West 174.00 feet; thence North $77^{\circ}23'37''$ 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



J-13575B

EXHIBIT c

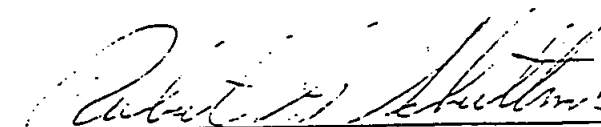
CITY LEASE PARCEL

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 $77^{\circ}23'37''$ West (record North $77^{\circ}52'25''$ West per said Map No. 6629) 53.74 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 North $12^{\circ}36'23''$ East 199.03 feet; thence South $77^{\circ}23'37''$ East 677.04 feet; thence North $65^{\circ}44'11''$ East 51.62 feet; thence South $77^{\circ}23'37''$ East 307.67 feet; thence South $12^{\circ}36'23''$ West 25.00 feet; thence North $77^{\circ}23'37''$ West 224.75 feet; thence South $26^{\circ}38'35''$ West 46.38 feet; thence South $12^{\circ}36'23''$ West 160.00 feet; thence North $77^{\circ}23'37''$ West 60.00 feet; thence North $12^{\circ}36'23''$ East 160.00 feet; thence North $03^{\circ}09'24''$ East 42.41 feet; thence South $67^{\circ}37'56''$ West 48.56 feet; thence North $77^{\circ}23'37''$ West 262.25 feet; thence South $12^{\circ}36'23''$ West 174.00 feet; thence North $77^{\circ}23'37''$ West 20.00 feet; thence North $12^{\circ}36'23''$ East 174.00 feet; thence North $77^{\circ}23'37''$ West 335.00 feet; thence South $12^{\circ}36'23''$ West 174.00 feet; thence North $77^{\circ}23'37''$ 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



J-13575B

EXHIBIT C

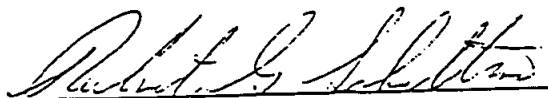
CITY LEASE PARCEL

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



J-13575C

EXHIBIT C

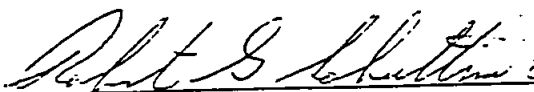
CITY LEASE PARCEL

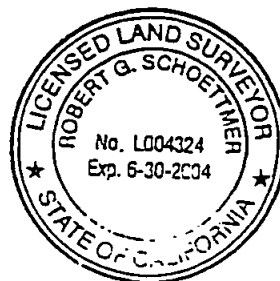
Parcel "C"

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 $03^{\circ}09'24''$ East 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.

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



jb/13575.002

J-13575D

EXHIBIT C

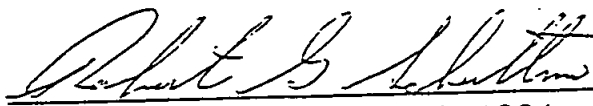
CITY LEASE PARCEL

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.

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



jb/13575.003

REVOLVING CREDIT AND TERM LOAN AGREEMENT

THIS REVOLVING CREDIT AND TERM LOAN AGREEMENT, dated as of the ____ day of August, 2002 (this "Agreement"), is entered into by and among:

- (1) **Great Circle Family Foods, LLC**, a California limited liability company;
GCFF-Canoga, LLC, a Delaware limited liability company;
GCFF-Huntington Park, LLC, a Delaware limited liability company;
GCFF-Ontario, LLC, a Delaware limited liability company;
GCFF-Orange, LLC, a Delaware limited liability company;
GCFF-San Diego, LLC, a Delaware limited liability company; and
GCFF-Ventura, LLC, a Delaware limited liability company

(collectively "Borrower"); and
- (2) **BANK OF AMERICA, N.A.**, a national banking association (together with its successors and assigns, "Lender").

AGREEMENT

In consideration of the mutual covenants herein contained, Borrower and Lender hereby agree as follows:

Section I INTERPRETATION.

1.1 **Definitions.** Unless otherwise indicated in this Agreement or any other Loan Document, each term set forth in Schedule 1.01, when used in this Agreement or any other Loan Document, shall have the respective meaning given to that term in Schedule 1.01 or in the provision of this Agreement or other Loan Document referenced in Schedule 1.01.

1.2 **GAAP.** Unless otherwise indicated in this Agreement or any other Loan Document, all accounting terms used in this Agreement or any other Loan Document shall be construed, and all accounting and financial computations hereunder or thereunder shall be computed, in accordance with GAAP.

1.3 **Governing Law.** This Agreement and each of the other Loan Documents unless otherwise specifically set forth therein shall be governed by and construed in accordance with the laws of the State of Georgia without reference to conflicts of law rules.

1.4 **Construction.** Each of this Agreement and the other Loan Documents is the result of negotiations among, and has been reviewed by, Borrower, Lender and their respective counsel. Accordingly, this Agreement and the other Loan Documents shall be deemed to be the product of all parties hereto, and no ambiguity shall be construed in favor of or against Borrower or Lender.

1.5 **Entire Agreement.** This Agreement and each of the other Loan Documents, taken together, constitute and contain the entire agreement of Borrower and Lender and supersede any and all prior agreements, negotiations, correspondence, understandings and communications among the parties, whether written or oral, respecting the subject matter hereof.

1.6 Other Interpretive Provisions. References in this Agreement and each of the other Loan Documents to any document, instrument or agreement (a) shall include all exhibits, schedules and other attachments thereto, (b) shall include all documents, instruments or agreements issued or executed in replacement thereof, and (c) shall mean such document, instrument or agreement, or replacement or predecessor thereto, as amended, modified and supplemented from time to time and in effect at any given time. The words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement or any other Loan Document shall refer to this Agreement or such other Loan Document, as the case may be, as a whole and not to any particular provision of this Agreement or such other Loan Document, as the case may be. The words "include" and "including" and words of similar import when used in this Agreement or any other Loan Document shall not be construed to be limiting or exclusive.

1.7 Joint and Several Liability. Each Borrower shall be liable for, on a joint and several basis, and hereby guarantees the timely payment by each other Borrower of, each Loan and other Obligations, regardless of which Borrower actually may have received the proceeds of the Loan or other extensions of credit hereunder or the amount of the Loan received or the manner in which Lender accounts for the Loan or other extensions of credit on its books and records, it being acknowledged and agreed that the proceeds of a Loan to any Borrower inure to the mutual benefit of all Borrowers and that Lender is relying on the joint and several liability of Borrowers in extending the Loan and other financial accommodations hereunder. Each Borrower hereby unconditionally and irrevocably agrees that upon default in the payment when due (whether at stated maturity, by acceleration or otherwise) of any principal of, or interest owed on, any Loan or other Obligations, such Borrower shall forthwith pay the same without notice or demand.

Section II CREDIT FACILITY.

2.1. Revolving Loans and Revolving Credit Note.

(A) Subject to the terms and conditions set forth herein, the Lender agrees to make a revolving loan or loans (the "Revolving Loans") to the Borrower, from time to time during the Availability Period, in an aggregate principal amount outstanding at any time not to exceed the Revolving Commitment. During the Availability Period, the Borrower shall be entitled to borrow, prepay and re-borrow Revolving Loans in accordance with the terms and conditions of this Agreement; provided, that the Borrower may not borrow or re-borrow should there exist an uncured Default or Event of Default.

(B) The Borrower's obligation to pay the principal of, and interest on, the Revolving Loans shall be evidenced by the records of the Lender and by one or more promissory notes in form substantially as attached hereto as Exhibit "A" (each a "Revolving Credit Note"). The entries made in such records and/or on the schedule annexed to the Revolving Credit Note shall be *prima facie* evidence of the existence and amounts of the obligations of the Borrower therein recorded; provided, that the failure or delay of the Lender in maintaining or making entries into any such record or on such schedule or any error therein shall not in any manner affect the obligation of the Borrower to repay the Revolving Loans (both principal and unpaid accrued interest) in accordance with the terms of this Agreement.

(C) Lender intends to advance funds under the Revolving Loans in two tranches: (i) a \$1,500,000 tranche to be used for general working capital (the "Working Capital Revolver") and (ii) a \$5,000,000 tranche to be used for acquisition and development of New Units (the "Development Revolver"). Borrower shall execute a separate Revolving Credit Note for each of the Working Capital Revolver and the Development Revolver.

2.2. Procedure for Revolving Loan Advances.

(A) The Borrower shall give the Lender written notice (or telephonic notice promptly confirmed in writing) of each advance ("Advance") under a Revolving Loan (each a "Notice of Revolving Borrowing") prior to 10:00 a.m. two (2) Business Days prior to the requested date of each such Advance. Each Notice of Revolving Borrowing shall be irrevocable and shall specify: (i) the principal amount of the Advance, (ii) the proposed date of such Advance (which shall be a Business Day), and (iii) the purpose of such Advance. Upon the satisfaction of the applicable conditions set forth in this Agreement, the Lender will make the proceeds of each Advance available to

the Borrower on the date specified in the applicable Notice of Revolving Borrowing by crediting an account maintained by the Borrower with the Lender or at the Borrower's option, by effecting a wire transfer of such amount to an account designated by the Borrower to the Lender.

(B) Advances made under the Development Revolver shall be limited to an amount equal to the lesser of (i) 75% of the cost or appraised value of real Property acquired with such Advance (ii) 75% of the cost of tenant improvements and (iii) 100% of the cost of any Equipment purchased with such Advance.

(C) In no event shall any Advance be made in an amount which, when added to amounts outstanding under the Revolving Loans, shall cause the aggregate amount outstanding to exceed the Revolving Commitment.

2.3. Term Loan Commitment.

(A) Subject to the terms and conditions set forth herein, the Lender agrees to make a single loan (the "Term Loan") to the Borrower on the funding date in a principal amount not to exceed \$13,500,000.00 (the "Term Loan Commitment"); provided, that if for any reason the full amount of the Term Loan Commitment is not fully drawn on the Closing Date, the undrawn portion thereof shall be disbursed in one or more subsequent advances (the initial advance and each such subsequent advance are hereinafter referred to individually as a "Term Loan Advance" and collectively as the "Term Loan Advances") up to the Term Loan Commitment. Notwithstanding anything to the contrary in the foregoing, in the event that the Term Loan has not been fully advanced by the date which is sixty (60) days after the Closing Date (the "Final Term Loan Advance Date"), the unadvanced portion of the Term Loan Commitment shall be terminated. The Term Loan may be, from time to time, a Floating Rate Loan or an Effective Fixed Rate Loan. The execution and delivery of this Agreement by the Borrower and the satisfaction of all conditions precedent pursuant to Section 3.1 shall be deemed to constitute the Borrower's request to borrow the Term Loan on the Closing Date.

(B) The Borrower's obligation to pay the principal of, and interest on, the Term Loan shall be evidenced by the records of the Lender and by a term loan promissory note in form substantially as attached hereto as Exhibit "B" (the "Term Note"). The entries made in such records and/or on the schedule annexed to the Term Note shall be *prima facie* evidence of the existence and amounts of the obligations of the Borrower therein recorded; provided, that the failure or delay of the Lender in maintaining or making entries into any such record or on such schedule or any error therein shall not in any manner affect the obligation of the Borrower to repay the Term Loan (both principal and unpaid accrued interest) in accordance with the terms of this Agreement.

(C) To obtain a Term Loan Advance after the Closing Date, the Borrower shall give the Lender written notice (or telephonic notice promptly confirmed in writing) of each Term Loan Advance prior to 10:00 a.m. five (5) Business Days prior to the requested date of such Term Loan Advance. Each such notice shall specify: (i) the principal amount of the Term Loan Advance, (ii) the proposed date of such Term Loan Advance (which shall be a Business Day), and (iii) the purpose of such Term Loan Advance. Upon the satisfaction of the applicable conditions set forth in this Agreement, including, without limitation, delivery of the items set forth in Schedule 3.01, the Lender will make the proceeds of each Term Loan Advance available to the Borrower on the date specified in the notice by crediting an account maintained by the Borrower with the Lender or at the Borrower's option and with Lender's approval, by effecting a wire transfer of such amount to an account designated by the Borrower to the Lender. In no event shall any Term Loan Advance be made in an amount which, when added to amounts outstanding under the Term Loan, shall cause the aggregate amount outstanding to exceed the Term Loan Commitment.

2.4. Interest Rates.

(A) Each Revolving Loan shall be a Floating Rate Loan. The Term Loan initially shall be a Floating Rate Loan. Within five (5) business days after the Final Term Loan Advance Date (the "Conversion Date") Borrower shall convert the Term Loan to an Effective Fixed Rate Loan. To convert the Term Loan to an Effective Fixed Rate Loan, Borrower must have in place an interest rate swap ("Swap"). To that end, Borrower shall execute and deliver to Lender, on or prior to the Conversion Date, a Swap Agreement in form and with a swap provider

satisfactory to Lender in Lender's sole discretion. For purposes of the foregoing, a Swap Agreement on the International Swap Dealers Association Agreement form shall be acceptable to Lender.

(B) The Term Loan shall be maintained as an Effective Fixed Rate Loan from the Conversion Date through the Loan Maturity Date (the "Effective Fixed Rate Period"). In the event that the initial Swap Agreement does not remain in effect for the entire Effective Fixed Rate Period, Borrower shall, within thirty (30) days prior to the expiration of the initial Swap Agreement, deliver to Lender a substitute Swap Agreement, in form and substance satisfactory to Lender, which shall be in place for the balance of the Effective Fixed Rate Period. Failure to deliver the substitute Swap Agreement within the specified period shall constitute an event of default hereunder and under the other Loan Documents.

(C) For any period while the Term Loan is outstanding and said Term Loan is not an Effective Fixed Rate Loan, the Term Loan shall be and be deemed to be a Floating Rate Loan.

2.5. Repayment of Loans.

(A) Accrued interest under the Revolving Loans shall be payable monthly on the first day of each month. The principal amount outstanding under all Revolving Loans shall be due and payable (together with accrued and unpaid interest thereon) on the Commitment Termination Date.

(B) From the date of this Agreement through the last day of the month in which the Final Term Loan Advance Date occurs, accrued interest only under the Term Loan shall be due and payable monthly on the first day of each month. Commencing on first day of the second calendar month following the Final Term Loan Advance Date and continuing throughout the term of the Term Loan, the principal amount of the Term Loan, together with interest thereon, shall be due and payable in monthly installments in accordance with the amortization schedule attached to the Term Note as Schedule 1 thereto. The unpaid principal balance of the Term Loan, together with accrued but unpaid interest, shall be due and payable in full on the Loan Maturity Date.

(C) The Borrower shall have the right at any time and from time to time to prepay any Loan, in whole or in part, without premium or penalty (but subject to payment of the indemnity payments, if any, set forth in Section 2.9), by giving irrevocable written notice (or telephonic notice promptly confirmed in writing) to the Lender no later than 11:00 a.m. not less than two (2) Business Days prior to any such prepayment. Each such notice shall be irrevocable and shall specify the proposed date of such prepayment and the principal amount of each Loan or portion thereof to be prepaid. Such amount shall be due and payable on the date designated in such notice, together with accrued interest to such date on the amount so prepaid. Each prepayment of the Term Loan shall be applied to principal installments in inverse order of maturity.

2.6. Interest on Loans.

(A) The Borrower shall pay interest on each Revolving Loan at the Floating Rate for the applicable Interest Period in effect for such Revolving Loan. The Term Loan shall bear interest at the Floating Rate unless and until the Term Loan is converted to an Effective Fixed Rate Loan.

(B) While an Event of Default exists or after acceleration, at the option of the Lender, the Borrower shall pay interest ("Default Interest") with respect to all Loans at the Prime Rate *plus* an additional 3% per annum. All Default Interest shall be payable on demand.

(C) The Lender shall determine each interest rate applicable to the Loans hereunder and, upon any rate change, shall promptly notify the Borrower of such rate in writing (or by telephone, promptly confirmed in writing). Any such determination shall be conclusive and binding for all purposes, absent manifest error.

2.7 Loan Fees

(A) The Borrower agrees to pay as of the date of this Agreement, a commitment fee for the Revolving Loans (the "Revolving Credit Commitment Fee") of \$65,000 (1% of the Revolving Commitment). The Borrower also agrees to pay an unused portion fee for the Revolving Loans ("Unused Portion Fee") for the period commencing on the Effective Date and continuing through the Commitment Termination Date, computed on the average daily amount of the unused portion of the Revolving Loan Commitment (the "Unused Portion") during the period for which payment is made at the rate per annum equal to the Applicable Fee Percentage (as determined in accordance with subsection (B) of this Section 2.7). Such Revolving Credit Commitment Fee shall be payable to Lender in arrears on the first day of each calendar quarter occurring after the date of this Agreement.

(B) The Applicable Fee Percentage shall be determined by reference to the table set forth below on the basis of the indebtedness ratio determined by reference to the most recent financial statements delivered pursuant to this Agreement.

<u>Ratio of Funded Debt to EBITDA</u>	<u>Applicable Fee Percentage</u>
Greater than 5.00	0.375%
Greater than 3.50 but less than or equal to 5.00	0.25%
Less than or equal to 3.50	0.125%

Upon receipt of the financial statements delivered pursuant to this Agreement, the Applicable Fee Percentage shall be adjusted, such adjustment being effective on the tenth Business Day after receipt of such financial statements; provided, however, if the Borrowers shall not have timely delivered such financial statements in accordance herewith, beginning with the date upon which such financial statements should have been delivered and continuing until such financial statements are delivered, the Applicable Fee Percentage shall equal the Applicable Fee Percentage for the prior period; provided further, however, that if upon delivery of such financial statements the Applicable Fee Percentage is adjusted upwards, the adjustment of the Applicable Fee Percentage shall be retroactive to the date upon which such financial statements should have been delivered.

(C) The Borrower shall pay to the Lender a commitment fee for the Term Loan (the "Term Loan Fee") equal to \$135,000 (1.0% multiplied by the Term Loan Commitment). The Term Loan Fee shall be due and payable on the Closing Date.

2.8. Computation of Interest and Fees. All computations of interest and fees hereunder shall be made on the basis of a year of 360 days for the actual number of days (including the first day but excluding the last day) occurring in the period for which such interest or fees are payable (to the extent computed on the basis of days elapsed). Each determination by the Lender of an interest amount or fee hereunder shall be made in good faith and, except for manifest error, shall be final, conclusive and binding for all purposes.

2.9. Funding Indemnity. In the event of (a) the payment of any principal of a Loan other than on the last day of the Interest Period applicable thereto (including as a result of an Event of Default), (b) the conversion or continuation of a Loan other than on the last day of the Interest Period applicable thereto, (c) the failure by the Borrower to borrow, prepay, convert or continue any Loan on the date specified in any applicable notice (regardless of whether such notice is withdrawn or revoked), or (d) prepayment of the Term Loan resulting in the termination of any outstanding Swap Agreement between Borrower and Lender which results in loss or damage to Lender, then, in any such event, the Borrower shall compensate the Lender, within five (5) Business Days after written demand from

the Lender, or in the case of a Loan prepayment, at the time of and as a condition to Lender's acceptance of such prepayment, for any loss, cost or expense attributable to such event. Such loss, cost or expense shall be deemed to include an amount determined by the Lender to be the excess, if any, of (A) the amount of interest that would have accrued on the principal amount of such Loan if such event had not occurred at the Floating Rate applicable to such Loan for the period from the date of such event to the last day of the then current Interest Period therefor (or in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such Loan) over (B) the amount of interest that would accrue on the principal amount of such Loan for the same period if the Floating Rate were set on the date such Loan was prepaid or converted or the date on which the Borrower failed to borrow, convert or continue such Loan. A certificate as to any additional amount payable under this Section submitted to the Borrower by the Lender shall be conclusive, absent manifest error.

2.10. Payments Generally. The Borrower shall make each payment required to be made by it hereunder (whether of principal, interest, or otherwise) prior to 12:00 noon Pacific Time, on the date when due, in immediately available funds, without set-off or counterclaim. Any amounts received after such time on any date may, in the discretion of the Lender, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Lender at the address set forth in Paragraph 7.1. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be made payable for the period of such extension.

2.11 Credit Support.

(A) Security. The Obligations shall be secured by the following:

(i) Any Security Agreement dated of even date hereof or hereafter (the "Security Agreement"), duly executed by Borrower; and

(ii) Any mortgage, leasehold mortgage, deed of trust, leasehold deed of trust, deed to secure debt, or leasehold deed to secure debt dated of even date hereof or hereafter (each hereinafter referred to as a "Mortgage"), duly executed by Borrower.

(iii) Any Guaranty dated of even date hereof or hereafter (the "Guaranty"), duly executed by Richard G. Reinis and Roger E. Glickman.

(iv) The other documents, agreements and certificates listed on Schedule 3.01 which shall be delivered by Borrower to Lender on or prior to the Closing Date of the Loan.

(B) Further Assurances. Borrower shall execute and deliver, or cause to be executed and delivered, to Lender such additional security agreements, pledge agreements and other instruments, agreements, certificates, opinions and documents (including, without limitation, Uniform Commercial Code financing statements and fixture filings and landlord waivers and estoppels) as Lender may reasonably request to establish, maintain, perfect, protect and evidence the rights provided to Lender pursuant to the Loan Documents.

2.12 Loan Assignment and Assumption. The obligations of Borrower under this Agreement and the other Loan Documents may not be assigned by Borrower or assumed by any third party. The receipt of loan payments, the cashing of such payment checks, or such similar acts by Lender shall not constitute a waiver of this prohibition.

Section III CONDITIONS PRECEDENT.

3.1 Documentary and Related Conditions Precedent. The obligation of Lender to make the Loan is subject to receipt by Lender, on or prior to the Closing Date, of an original of each item listed in Schedule 3.01, each duly authorized, executed and delivered by the parties thereto, as applicable, and each in form and substance satisfactory to Lender.

3.2 Conditions Precedent to Development Revolver Advances. In addition to the conditions set forth in section 2.2 and section 3.1 above, the obligation of Lender to make Advances for acquisitions of Property, Units and Equipment under the Development Revolver is subject to satisfaction of the following additional conditions:

(A) Acquisition Documents. Receipt by Lender of copies of each of the Unit acquisition documents, instruments and agreements, including, without limitation, purchase and sale agreements, deeds, leases, title policies, environmental reports, bills of sale, assignments, invoices, closing statements, inventories, etc. (collectively the "Acquisitions Documents"), all of which Acquisition Documents shall be in form and substance acceptable to Lender in its reasonable discretion.

(B) Due Diligence Review. Completion by Lender of its review of all due diligence materials relating to the Unit, Property or Equipment. Due diligence materials for the initial Advance for any Unit or Property shall include copies of purchase contract or lease for the Property, copies of all development/building permits and a certificate of insurance for builder's risk coverage. Due diligence materials for the final disbursement for any such Unit or Property shall include a copy of the duly issued certificate of occupancy and a hazard and liability insurance policy in form satisfactory to Lender naming Lender as mortgagee/additional insured.

(C) Collateral Value. Receipt by Lender of evidence satisfactory to Lender of the value of the Property and Equipment for which the Advance is requested.

(D) Security. Receipt by Lender of evidence satisfactory to Lender that all Property, Equipment and other Collateral acquired with any Advance shall be pledged to Lender pursuant to documents approved by Lender and its counsel and granting to Lender a first priority lien and security interest therein. Such documentation may include, without limitation, Mortgages, Security Agreements, financing statements, pledge agreements, and assignments.

(E) Closing Conditions Satisfied. Receipt by Lender of evidence satisfactory to Lender that all conditions precedent to the acquisition of the Property, Unit, Equipment or other Collateral have been satisfied at the time of delivery of the Notice of Revolving Borrowing.

3.3 Conditions Precedent to Term Loan Advances. In addition to the conditions set forth above for loan closing and Development Revolver Advances, Borrower shall provide, at Lender's option, for each Property being refinanced by the Term Loan, title policies, surveys, environmental reports, zoning letters, operating permits, service contracts, leases, business licenses, and any additional material required by Lender.

Section IV REPRESENTATIONS AND WARRANTIES.

4.1 Borrower's Representations and Warranties. To induce Lender to enter into this Agreement and to make the Loan hereunder, Borrower represents and warrants to Lender that the following matters are true and correct:

(A) Legal Status. Borrower (i) is duly organized and existing and in good standing under the laws of the state in which it is organized, (ii) has the power and authority to own, lease and operate its properties and conduct its business as now conducted, and (iii) is duly qualified, licensed to do business and in good standing in all jurisdictions in which such qualification or licensing is required.

(B) Authorization and Validity. All of the Loan Documents have been duly authorized, and upon their execution and delivery will constitute legal, valid and binding agreements and obligations of Borrower or the party (other than Lender) which executes the same, enforceable in accordance with their respective terms, except as limited by bankruptcy, insolvency or other laws of general application relating to or affecting the enforcement of creditors' rights generally.

(C) Formation and Organizational Documents. Borrower has delivered to Lender all formation and organizational documents of Borrower and of its general partners, if any, managing members, if any, and of all guarantors of the Loan, if any, and all such formation and organizational documents remain in full force and effect and have not been amended or modified since they were delivered to Lender. Borrower shall promptly provide Lender with copies of any amendments or modifications of the formation or organizational documents.

(D) No Violation. The execution, delivery and performance by Borrower of each of the Loan Documents do not: (i) require any consent or approval not heretofore obtained under any partnership agreement, articles of incorporation, bylaws, operating agreement, or other document; (ii) to Borrower's actual knowledge, violate any governmental requirement applicable to the Unit or any other statute, law, regulation or ordinance or any order or ruling of any court or governmental entity; (iii) conflict with, or constitute a breach or default or permit the acceleration of obligations under any material agreement, contract, lease, or other document by which Borrower, the Collateral or the Unit are bound or regulated; or (d) to Borrower's actual knowledge, violate any statute, law, regulation or ordinance, or any order of any court or governmental entity with jurisdiction over Borrower, the Collateral, or the Unit.

(E) Permits and Licenses. Borrower has, and at all times shall have obtained, all material permits, licenses, exemptions and approvals necessary to construct, occupy, operate the Units, and shall maintain compliance in all material respects with all governmental requirements applicable to the Units (including, without limitation, all Environmental Laws applicable to any the Units) and all other applicable statutes, laws, regulations and ordinances necessary for the transaction of its business.

(F) Litigation. Except as set forth (with estimates of the dollar amounts involved) in Schedule 4.01(f), there are no actions (including, without limitation, derivative actions), suits, proceedings or investigations pending or, to the actual knowledge of Borrower, threatened against Borrower, Guarantor or any Related Person, at law or in equity in any court or before any other governmental authority which (i) could (alone or in the aggregate) have a Material Adverse Effect or (ii) seek to enjoin, either directly or indirectly, the execution, delivery or performance by Borrower or Guarantor of the Loan Documents or the transactions contemplated thereby.

(G) Title. Borrower owns and has good and marketable title in fee simple absolute to, or a valid leasehold interest in, the Units and all its other real properties and good title to its other assets and properties constituting Collateral hereunder as reflected in the most recent Financial Statements delivered to Lender (except those assets and properties disposed of in the ordinary course of business or otherwise in compliance with this Agreement since the date of such Financial Statements) and all respective assets and properties constituting Collateral hereunder acquired by Borrower since such date (except those disposed of in the ordinary course of business or otherwise in compliance with this Agreement). Such assets and properties are subject to no Lien, except for Permitted Liens.

(H) Financial Statements. The respective Financial Statements of Borrower and Guarantors which have been delivered to Lender, (i) are in accordance with the books and records of Borrower and Guarantors, which have been maintained in accordance with good business practice; (ii) if required by Franchisor or if otherwise available, have been prepared in conformity with GAAP, and (iii) fairly present the respective financial positions of Borrower and Guarantors at such date. None of Borrower, Guarantors or any Related Person has any contingent obligations, liability for taxes or other outstanding obligations which are material in the aggregate, except as disclosed in the Financial Statements furnished by Borrower to Lender. There has been no material adverse change in the condition, financial or otherwise, of Borrower or of the Unit since Borrower's December 31, 2001 financials were submitted to Lender. Except as disclosed in such Financial Statements, there are no accruing franchise royalty payments or other obligations owed to Franchisor except for current and ordinary royalty payments and expenses.

(I) Solvency, Etc. None of the transactions contemplated by the Loan Documents will be or have been made with an actual intent to hinder, delay or defraud any present or future creditors of Borrower [or Guarantor]. Borrower acknowledges that it will have received fair and reasonably equivalent value in good faith for the grant of the lien or security interest effected by the Loan Documents. Borrower is able to pay its debts as they become due.

(J) Franchise Agreement and Leases. Borrower is an authorized franchisee under the Franchise Agreement. Each of the Franchise Agreement and the Leases constitutes the legal, valid and binding obligation of the parties thereto. Neither Borrower nor, to Borrower's actual knowledge, any other party is in material default under, and no circumstance exists which with the passage of time could give rise to a default under, the Franchise Agreement or the Leases. There are no amendments, modifications or supplements to the Franchise Agreement or the Leases other than those already provided to Lender. Borrower has not received any notices under the Franchise Agreement or the Leases with respect to Borrower's compliance with either, other than notices, copies of which have been furnished to Lender. The Loan Maturity Date will occur prior to the expiration date[s] of the Franchise Agreement and the Leases including any lessee or franchisee option to extend such term. Borrower acknowledges and agrees that no claim or defense which Borrower may at any time have against Franchisor or any affiliate of Franchisor shall relieve Borrower of its obligations under this Agreement or under the other Loan Documents.

(K) Accuracy of Information Furnished. The information set forth in the Schedules and Exhibits to this Agreement, is true, complete and correct in all material respects. None of the Loan Documents and none of the other certificates, statements or information furnished to Lender by or on behalf of Borrower [or Guarantor] in connection with the Loan Documents or the transactions contemplated thereby contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

(L) Leasehold Mortgage. With respect to any Loan which is secured by a Mortgage constituting a lien on any interest of Borrower as tenant under a Lease of the related Property but not by the related fee interest in such Property (a "Leasehold Mortgage"), Borrower represents that:

(i) The Lease is valid, legal and binding and enforceable in accordance with its terms; such Lease or a memorandum thereof has been duly recorded; and such Lease permits the interest of the tenant thereunder to be encumbered by the related Leasehold Mortgage and does not restrict the use of the Property and related improvements by such tenant, its successors or assigns; and

(ii) Such Lease has an original term (or an original term plus one or more optional renewal terms which under all circumstances may be exercised by Borrower and can be enforced by Lender on behalf of Borrower) which extends not less than two (2) months beyond the stated maturity of the related Loan.

(M) Margin Regulations. None of the proceeds of any of the Loans will be used for "purchasing" or "carrying" any "margin stock" with the respective meanings of each of such terms under Federal Reserve Regulation U as now and from time to time hereafter in effect or for any purpose that violates the provisions of the applicable margin regulations.

(N) ERISA. No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, could reasonably be expected to result in a Material Adverse Effect.

(O) Environmental.

(i) To Borrower's actual knowledge, no Hazardous Materials (hereinafter defined) have been, are, or will be, while any part of the Indebtedness remains unpaid, contained in, treated, stored, handled, generated, located on, discharged from, or disposed of on, or constitute a part of, the Property. As used herein, the term "Hazardous Materials" includes, without limitation, any asbestos, urea formaldehyde foam insulation, flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related or unrelated substances or materials defined, regulated, controlled, limited or prohibited by Environmental Law;

(ii) All of the Property complies and will comply in all material respects with applicable Environmental Laws, rules, regulations, and court or administrative orders; and

- (iii) There are no pending claims or, to Borrower's actual knowledge, threats of claims by private or governmental or administrative authorities relating to environmental impairment, conditions, or regulatory requirements with respect to any Property.

(P) Payment of Taxes. Borrower has duly filed in correct form all tax reports and returns required to be filed by it and has duly paid, or made adequate provision for the payment of, all taxes and other charges due or claimed to be due from it by federal, state, or local taxing authorities (including, without limitation, those due in respect of Borrower's Property, Equipment, income, franchises, licenses, sales and payrolls); there are no tax liens upon any of the Equipment or Property (other than for current taxes not yet due); and there are no pending claims asserted for taxes or assessments against Borrower, and there is no basis for any such claim.

(Q) Principal Place of Business. Borrower's chief executive office and principal place of business are located in the state and county specified in Paragraph 7.1.

Section V. COVENANTS.

5.1 Affirmative Covenants. Until the termination of this Agreement and the satisfaction in full by Borrower of all Obligations, Borrower shall comply, and shall cause compliance, with the following affirmative covenants unless Lender shall otherwise consent in writing:

(A) Compliance Certificates. Borrower shall provide to Lender a compliance certificate in the form attached hereto as Exhibit C within forty five (45) days of the end of each calendar quarter, with an income statement and balance sheet for the 12-month period ending with such calendar quarter.

(B) Communications with Franchisor. Borrower shall provide to Lender (i) copies of annual Unit reports (and such other reports as Lender may from time to time request) required under the Franchise Agreement at the same time it provides such reports to the Franchisor, and (ii) complete copies of any material communications from Franchisor to Borrower, the Unit or the Collateral including, without limitation, any notices of an event of default or other event or condition which could have a Material Adverse Effect, promptly following receipt by Borrower, provided that such disclosure would not create a breach of the Franchise Agreement. If, and to the extent, that any disclosure required under clauses (i) or (ii) of the preceding sentence is not made because of the provision in the last clause of the preceding sentence, notice of such nondisclosure and the nature of information not disclosed shall be provided to Lender at the time such disclosure would have been required to be made.

(C) Other Documents. Borrower shall provide copies of such other instruments, agreements, certificates, opinions, statements, documents and information relating to the operations or condition (financial or otherwise) of Borrower and Guarantor, and compliance by Borrower with the terms of this Agreement and the other Loan Documents as Lender may from time to time reasonably request.

(D) Books and Records. Borrower shall at all times keep proper books of record and account in which full, true and correct entries will be made of their dealings and transactions in accordance with GAAP if required by Franchisor and otherwise in accordance with good business practice and in a manner that will enable Borrower to provide Lender with Financial Statements which fairly present the financial positions of Borrower and of all Units as of Borrower's fiscal year end.

(E) Inspections. Borrower shall permit any Person designated by Lender, upon reasonable notice and during normal business hours, to visit and inspect the Units and offices of Borrower, to examine and make abstracts from the record and books of account of Borrower and Guarantor and to discuss the affairs, finances and accounts of Borrower and Guarantor with, and to be advised as to the same by, their officers, auditors and accountants (and by this provision Borrower and Guarantor authorize said auditors and accountants to so discuss the affairs, finances, business, operations, properties and accounts of Borrower and Guarantor), all at such times and intervals as Lender may reasonably request.

(F) Insurance. At Borrower's sole cost and expense, Borrower shall:

(i) Keep the Collateral and the Units insured as may be required by the Franchisor or Lender, including, without limitation, fire, extended coverage, business interruption, life, peril and special form insurance upon the real property insuring against loss or damage by fire with extended coverage and against any other risks or hazards which, in the opinion of Lender should be insured against, in an amount not less than the full insurable value thereof on a full replacement cost basis, with an inflation guard endorsement, but in no event less than the minimum amount required to prevent the imposition of any coinsurance requirement on the insured. If any Unit is in an area identified in the Federal Register by the Flood Emergency Management Agency as having special flood hazards (and such flood insurance has been made available), Borrower shall carry a flood insurance policy meeting the requirements of the current guidelines of the Federal Insurance Administration with an insurance carrier generally acceptable, in an amount representation coverage equal to the full insurable value of such Unit. Borrower shall also carry comprehensive general public liability insurance providing coverage not less than \$1,000,000 per occurrence for bodily injury and \$500,000 per occurrence for property damage, and business interruption insurance an amount equal to twelve (12) months of operating income including financing costs;

(ii) Cause all insurance policies insuring the Unit and the Collateral (1) to contain a standard lender's loss payable endorsement or mortgagee's endorsement providing for payment directly to Lender and/or its designees, (2) to provide for a minimum of thirty (30) day's notice to Lender prior to cancellation or modification or nonrenewal, (3) to provide that timely payment of the premium will otherwise cause the policy to remain in force, (4) to provide coverage on all Units, detached buildings, or other structures, by direct mention or allowance in the policy, (5) to contain loan number, property address and insured names, and (6) to be issued by companies authorized to issue such policies in the state in which the Unit is located having a General Policy Rating of "A-8" or better in Best's Key Rating Guide;

(iii) Timely pay all premiums, fees and charges required in connection with all of its insurance policies and otherwise continue to maintain such policies in full force and effect; and

(iv) Promptly deliver copies of the insurance policies, certificates (and renewals) thereof or other evidence of compliance herewith to Lender.

Borrower hereby (A) pledges and assigns to Lender and agrees to transfer and deliver to Lender all moneys which may become due and payable with respect to the Units and the Collateral under any policy insuring the Units and the Collateral, including return of unearned premium, (B) directs any such insurance company to make payment directly to Lender and (C) authorizes Lender, in its sole discretion, to apply the same as set forth in herein. If Borrower fails to insure the Units and the Collateral or to take any other action as required by this subparagraph, Lender may, in addition to its other rights and remedies and in its sole discretion (and without any obligation) obtain such insurance or take such other action. Borrower shall immediately reimburse Lender for all costs and expenses incurred by Lender in obtaining such insurance or taking such action.

(G) Governmental Charges and Other Indebtedness. Borrower shall promptly pay and discharge when due (i) all taxes and other Governmental Charges prior to the date upon which penalties accrue thereon and (ii) all Indebtedness.

(H) Use of Proceeds. Borrower shall use the proceeds of the Loan only for the purposes indicated in Schedule 5.1(h), which are not primarily for personal, family or household purposes.

(I) General Business Operations. Borrower shall (i) preserve and maintain its organizational existence and all of its rights, privileges and franchises reasonably necessary to the conduct of its business, (ii) conduct its business activities and maintain the Unit and the Collateral in substantially the same manner as it is being conducted and maintained at the date of this Agreement and in compliance in all material respects with all Legal Requirements and Contractual Obligations applicable to the Units or such Collateral, (iii) keep all property useful and necessary in its business in good working order and condition, ordinary wear and tear excepted, and (iv) maintain its chief

executive office and principal place of business in the state and county specified in Paragraph 7.1. Borrower shall be and remain a franchisee in good standing under the Franchise Agreement.

(J) Notices of Material Events. The Borrower will furnish to the Lender prompt written notice of the following:

- (i) the occurrence of any Default or Event of Default;
- (ii) the filing or commencement of any action, suit or proceeding by or before any arbitrator or governmental authority against or, to the knowledge of the Borrower, affecting the Borrower or any Subsidiary which, if adversely determined, could reasonably be expected to result in a Material Adverse Effect;
- (iii) the occurrence of any event or any other development by which the Borrower (1) fails to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (2) becomes subject to any Environmental Liability, (3) receives notice of any claim with respect to any Environmental Liability, or (4) becomes aware of any basis for any Environmental Liability and in each of the preceding clauses, which individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect;
- (iv) the occurrence of any ERISA Event that alone, or together with any other ERISA Events that have occurred, could reasonably be expected to result in liability of the Borrower and its Subsidiaries in an aggregate amount exceeding \$100,000.00; and
- (v) any other development that results in, or could reasonably be expected to result in, a Material Adverse Effect.

Each notice delivered under this Section shall be accompanied by a written statement of a Responsible Officer setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

(K) Loan Documents. Comply with and observe all terms and conditions of the Loan Documents.

(L) Permitted Contests. After prior notice to Lender, Borrower may contest, by appropriate legal or other proceedings conducted in good faith and with due diligence, the amount, validity or application, in whole or in part, of any Imposition or lien therefor, any Legal Requirement, or any lien of any laborer, mechanic, materialman, supplier or vendor, provided that (a) the Collateral or any Unit, or any part thereof or estate or interest therein, shall not be in any danger of being sold, forfeited or lost by reason of such proceedings; (b) in the case of (i) liens of laborers, mechanics, materialmen, suppliers or vendors or (ii) the Impositions, or liens therefor, such proceedings shall suspend the foreclosure of any such lien or any other collection thereof from the Collateral or a Unit; (c) in the case of a Legal Requirement, Lender shall not be in any danger of any criminal liability or, unless Borrower shall have furnished a bond or other security therefor reasonably satisfactory to Lender, any additional civil liability for failure to comply therewith, and any Unit, or any part thereof or estate or interest therein, shall not be subject to the imposition of any lien as a result of such failure which is not properly contested pursuant to this subparagraph; and (d) if reasonably required by Lender, Borrower shall have furnished to Lender a bond or other security reasonably satisfactory to Lender.

(M) Performance by Lender. If Borrower shall fail to pay or perform any of its obligations herein contained or under any other Loan Documents, Lender upon five (5) days prior written notice to Borrower (except as otherwise expressly permitted by any Loan Document in the event of an emergency when no notice need be given) may, but need not, make (or cause to be made) any such payment or perform (or cause to be performed) any such obligation of Borrower hereunder or thereunder (provided Borrower is not contesting such payment or performance as permitted by Subparagraph 5.1(L) and the failure to so perform such obligation would have a Material Adverse Effect), in any form and manner deemed reasonably expedient by Lender as agent or attorney-in-fact of Borrower,

and any amount so paid or expended (plus reasonable compensation to Lender for its out-of-pocket and other expenses (including legal expenses) for each matter for which it acts under this Agreement), with interest thereon at the Default Interest rate, shall be added to the Obligations and shall be repaid to Lender upon demand. No such action of Lender shall be considered as a waiver of any right accruing to it on account of the occurrence of any default on the part of Borrower under this Agreement, any Default, any Event of Default, or any default or event of default under any other Loan Document.

(N) Casualty and Condemnation.

(i) In the event of any casualty or Condemnation (a "Loss"), Borrower shall give prompt written notice thereof to Lender. Any Insurance Proceeds or awards with respect to such Loss in an amount greater than \$10,000 (the "Loss Proceeds") shall be payable to Lender. Borrower shall have no right to settle or compromise, and shall not settle or compromise, any claim or proceeding relating to such Loss or Loss Proceeds without Lender's reasonable consent. Borrower shall proceed promptly and diligently to prosecute in good faith the settlement or compromise of any and all claims or proceedings relating to such Loss or Loss Proceeds; provided, however, any such settlement or compromise shall be subject to Lender's reasonable consent. Borrower hereby authorizes and directs any affected insurance company and any affected governmental body responsible for such Condemnation to make payment of the Loss Proceeds directly to Lender. If Borrower receives any Loss Proceeds, Borrower shall promptly pay over such Loss Proceeds to Lender. Borrower hereby covenants that until such Loss Proceeds are so paid over to Lender, Borrower shall hold such Loss Proceeds in trust for the benefit of Lender and shall not commingle such Loss Proceeds with any other funds or assets of Borrower or any other party.

(ii) Borrower hereby irrevocably assigns to Lender all Loss Proceeds to which Borrower may become entitled by reason of its interests in the Unit if a Loss occurs. All Loss Proceeds shall be paid to Lender and applied pursuant to this subparagraph. Subject to the last sentence of this subparagraph, Borrower shall take all appropriate action in connection with each such proceeding, settlement and adjustment and shall pay all expenses thereof, including, if Lender shall elect to participate therein, the cost of Lender's participation; provided, however, that any final settlement or adjustment shall be subject to the prior written consent of Lender unless the Loss Proceeds are sufficient to prepay the Note in full, together with the prepayment amount and all accrued and unpaid interest thereon. So long as an Event of Default shall have occurred and be continuing, Lender may, at its option and with respect to its interests as set forth herein, commence, appear in and prosecute, in its own name, any such action or proceeding or make any compromise or settlement in connection with such damage, destruction or taking and obtain directly all Loss Proceeds.

(iii) So long as no Event of Default shall have occurred and be continuing, if any Unit suffers a Loss, Borrower shall either restore the Unit to the same condition, as nearly as possible, as existed immediately prior to such casualty or taking, whether or not the Loss Proceeds are sufficient therefore or reduce the Obligations. If the cost of any restoration made by Borrower shall exceed the amount of the Loss Proceeds, such deficiency shall be paid by Borrower. The Loss Proceeds shall be held by Lender or its agent and shall be disbursed to Borrower as hereinafter set forth provided that if the estimated cost of such restoration exceeds the amount of the Loss Proceeds, Borrower shall deliver to Lender or its agent the estimated deficiency before commencing work. Lender or its agent shall release such Loss Proceeds to Borrower, subject to such reasonable procedural requirements as Lender or its agent may prescribe, from time to time and provided that such amounts shall be disbursed not more often than once monthly, as the restoration progresses, upon Borrower's written request, accompanied by a certificate of the architect or engineer in charge of the restoration or by an authorized officer or managing partner of Borrower, stating that the sum then requested either has been paid by Borrower or is justly due to the named persons (whose addresses shall also be stated) who have rendered services or furnished materials for certain portions of the restoration. The certificate shall give a brief description of such services and materials, shall list the amounts so paid or owing to each of such persons, shall state the estimated cost of the balance of the work yet to be performed, and shall state that no part of such expenditures has been or is being made the basis for any other request for payment. Upon compliance with the foregoing, Lender or its agent shall pay out of the Loss Proceeds to the extent available to the persons named in the certificate the respective amounts stated to be due to them or shall pay to Borrower the amount stated to have been paid by Borrower to such persons.

(iv) So long as an Event of Default shall have occurred and be continuing, then such Loss Proceeds shall be applied at the option and direction of Lender either to the restoration of the Unit as set forth above or, on the next Loan Installment Date, to the prepayment of the outstanding principal amount of the Loan, at a price equal to 100% of the unpaid principal amount to be prepaid, plus accrued and unpaid interest thereon, together with other outstanding fees.

(O) Leases. Borrower shall comply with all provisions of all Leases and, if necessary, exercise any option or other extension right necessary to cause the Lease terms to extend to a date beyond the Loan Maturity Date.

(P) Financial Statements and Other Information. The Borrower will deliver to the Lender:

(i) as soon as available and in any event within 120 days after the end of each fiscal year of Borrower, a copy of the annual audited consolidated report for such fiscal year for the Borrower, containing a balance sheet of the Borrower as of the end of such fiscal year and the related statements of income, member equity and cash flows (together with all footnotes thereto) of the Borrower for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and reported on by independent public accountants of nationally recognized standing (without a "going concern" or like qualification, exception or explanation and without any qualification or exception as to scope of such audit) to the effect that such financial statements present fairly in all material respects the financial condition and the results of the consolidated operations of the Borrower for such fiscal year in accordance with GAAP and that the examination by such accountants in connection with such financial statements has been made in accordance with generally accepted auditing standards;

(ii) as soon as available and in any event within 45 days after the end of each fiscal quarter, an unaudited consolidated balance sheet of the Borrower as of the end of such fiscal quarter and the related unaudited statements of income and cash flows of the Borrower for such fiscal quarter, setting forth in each case in comparative form the figures for the corresponding quarter and the corresponding portion of Borrower's previous fiscal year, all certified by the chief financial officer or treasurer of the Borrower as presenting fairly in all material respects the consolidated financial condition and results of operations of the Borrower in accordance with GAAP, subject to normal year-end audit adjustments and the absence of footnotes;

(iii) concurrently with the delivery of the financial statements referred to in clauses (i) and (ii) above, a certificate of a Responsible Officer, (a) certifying as to whether there exists a Default or Event of Default on the date of such certificate, and if a Default or an Event of Default then exists, specifying the details thereof and the action which the Borrower has taken or proposes to take with respect thereto, (b) setting forth in reasonable detail calculations demonstrating compliance with Article VI and (c) stating whether any change in GAAP or the application thereof has occurred since the date of the Borrower's last delivered audited financial statements and, if any change has occurred, specifying the effect of such change on the financial statements accompanying such certificate;

(iv) as soon as available and in any event within 45 days after the end of each fiscal year of Borrower, annual store level financial statements, certified by a Responsible Officer;

(v) concurrently with the delivery of the financial statements referred to in clause (i) above, a certificate of the accounting firm that reported on such financial statements stating whether they obtained any knowledge during the course of their examination of such financial statements of any Default or Event of Default (which certificate may be limited to the extent required by accounting rules or guidelines);

(vi) on or prior to the first day of each fiscal year of Borrower an annual operating budget certified by a Responsible Officer; and

(vii) promptly following any request therefor, such other information regarding the results of operations, business affairs and financial condition of the Borrower or any Subsidiary as the Lender may reasonably request.

(Q) Payment of Obligations The Borrower will pay and discharge at or before maturity (or within any applicable grace period), all of its obligations and liabilities (including without limitation all tax liabilities and claims that could result in a statutory Lien) before the same shall become delinquent or in default, except where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings, (b) the Borrower has set aside on its books adequate reserves with respect thereto in accordance with GAAP and (c) the failure to make payment pending such contest could not reasonably be expected to result in a Material Adverse Effect.

5.2 Financial Covenants. Until the termination of this Agreement and the satisfaction in full by Borrower of all Obligations, Borrower shall comply, and shall cause compliance, with the following financial covenants unless Lender shall otherwise consent in writing:

(A) Pre-Distribution Fixed Charge Coverage Ratio. Borrower will not permit the ratio of EBITDA plus rent expense divided by scheduled principal payments and current portion of capitalized Leases plus rent expense plus interest expense to be less than 1.30 to 1.0.

(B) Post-Distribution Fixed Charge Coverage Ratio. Borrower will not permit the ratio of EBITDA plus rent expense less distributions and loans/advances to Affiliates divided by scheduled principal payments and current portion of capitalized Leases plus rent expense plus interest expense to be less than 1.10 to 1.0.

(C) Adjusted Funded Debt to EBITDA Ratio. Borrower will not permit the ratio of total funded Loan Indebtedness ("Funded Debt") minus New Unit Adjustment divided by EBITDA to be greater than:

- (i) 5.50 to 1.0 as of the last day of the 2nd fiscal quarter of 2002
- (ii) 5.00 to 1.0 as of the last day of the 3rd fiscal quarter of 2002
- (iii) 4.00 to 1.0 as of the last day of fiscal year 2002 and thereafter

The ratios in Sections 5.2 (A), (B) and (C) will be computed on a rolling twelve (12) month basis, and compliance tested quarterly.

5.3 Negative Covenants. Until the termination of this Agreement and the satisfaction in full by Borrower of all Obligations, Borrower shall comply, and shall cause compliance, with the following negative covenants unless Lender shall otherwise consent in writing:

(A) Liens. Borrower shall not directly or indirectly create, incur, assume or permit to exist any Lien on or with respect to any Unit or the Collateral, whether now owned or hereafter acquired, except for Permitted Liens.

(B) Asset Dispositions. Borrower shall not sell, assign, convey, lease, transfer or otherwise dispose of or permit to be sold, assigned, conveyed, leased, transferred or otherwise disposed of, whether voluntarily, involuntarily or by operation of law, any Unit or the Collateral, whether now owned or hereafter acquired, except for inventory in the ordinary course of Borrower's business or as expressly permitted by this Agreement or any other Loan Document; provided, however, that Borrower may replace the Unit's Equipment or acquire new Equipment and accessions to any Unit's Equipment in the ordinary course of Borrower's business; and provided, further, that any such Equipment may not be acquired subject to a purchase money security interest without the prior written consent thereto of Lender.

(C) Franchise Agreement and Leases. Borrower shall not (i) violate any of the provisions of any Franchise Agreement or the Leases or otherwise cause or permit any default under any Franchise Agreement or the Leases; (ii) amend, modify or terminate, or permit termination, material amendment or material modification of the Franchise Agreement or the Leases; (iii) transfer, assign or waive any of its rights under the Franchise Agreement or the Leases; or (iv) enter into any agreement with Franchisor by which franchise royalty payments under the Franchise Agreement are permitted to accrue.

(D) Sale of Managing Member Interests. Without obtaining the prior written consent of Lender, Borrower shall not cause, permit or acquiesce in any sale or other disposition of the interests of, or other change in, any of the managing members in Borrower.

(E) Change in Control. Borrower will not permit and the managing member of Borrower will not permit any Persons (other than the controlling member of Borrower) to own, either directly or beneficially, membership interest of Borrower which in the aggregate exceeds fifty-one percent (51%) of the total outstanding membership interest of Borrower.

(F) Transactions with Affiliates. The Borrower will not sell, lease or otherwise transfer any property or assets to, or purchase, lease or otherwise acquire any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates, except in the ordinary course of business at prices and on terms and conditions not less favorable to the Borrower than could be obtained on an arm's-length basis from unrelated third parties.

(G) Investments, Loans, Guarantees. The Borrower will not purchase, hold or acquire (including pursuant to any merger with any Person), any common stock, evidence of indebtedness or other securities (including any option, warrant, or other right to acquire any of the foregoing) of, make or permit to exist any loans or advances to, guaranty any obligations of, or make or permit to exist any investment or any other interest in, any other Person (all of the foregoing being collectively called "Investments"), or purchase or otherwise acquire (in one transaction or a series of transactions) any assets of any other Person.

(H) Repurchase of Membership Interests. The Borrower will not make any payment on account of, or set apart assets for a sinking or other analogous fund for, the purchase, redemption, retirement, defeasance or other acquisition of, any membership interests of the Borrower or any options, warrants, or other rights to purchase such membership interests, whether now or hereafter outstanding.

(I) Indebtedness. The Borrower will not create, incur, assume or suffer to exist any Indebtedness, except:

(i) Indebtedness created pursuant to the Loan Documents;

(ii) other unsecured Indebtedness (whether or not subordinate to the Loan Indebtedness) in an aggregate principal amount not to exceed \$250,000 at any time outstanding.

(J) Change in Business. The Borrower will not engage to any material extent in any business other than the business conducted by the Borrower on the date hereof and businesses reasonably related thereto.

Section VI. DEFAULT.

6.1 Events of Default. The occurrence or existence of any one or more of the following shall constitute an "Event of Default" hereunder:

(A) Monetary. Borrower's failure to pay within ten (10) calendar days after the due date thereof any principal, interest, prepayment amount or other payment required under the terms of this Agreement or any of the other Loan Documents; or Borrower shall fail to pay, when due (but subject to any applicable grace period) any other indebtedness of Borrower to Lender or any third parties;

(B) Performance of Obligations. Borrower's failure to perform or observe any term, covenant, condition or obligation contained in this Agreement, the other Loan Documents or the Leases other than those set forth in subsection (a) above or as otherwise provided in this paragraph within ten (10) Business Days after receipt of written notice from Lender or such longer cure period as may be provided in the Loan Documents; provided, however, if such default cannot be cured with such period, Borrower shall have such longer period of time to cure such default provided, in Lender's reasonable discretion, Borrower is proceeding with due diligence, but in no event shall such period of time exceed thirty (30) Business Days; or

(ii) Borrower's failure to perform or observe any term, covenant, condition or obligation owed to Lender contained in any loan or credit agreement (other than this Agreement and the other Loan Documents), subject to applicable grace periods;

(C) Representations and Warranties. Any representation, warranty, certificate, or other statement (financial or otherwise) made or furnished by or on behalf of Borrower or a guarantor, if any, to Lender in or in connection with the Loan or any of the Loan Documents, or as an inducement to Lender to make the Loan, shall be false, incorrect, incomplete or misleading in any material respect when made or furnished;

(D) Liens, Attachment; Condemnation. The recording of any claim of lien against any Unit or the Collateral which is not being contested by Borrower as permitted under this Agreement;

(ii) the Condemnation of, or occurrence of an uninsured casualty with respect to any material portion of any Unit; or

(iii) the sequestration or attachment of, or any levy or execution upon any Unit, the Collateral, or any other collateral provided by Borrower under any of the Loan Documents, which sequestration, attachment, levy or execution is not released, expunged or dismissed within thirty (30) days and before the sale of the assets affected thereby.

(E) Withdrawal. The retirement, incapacity, withdrawal or dissolution, as applicable, of: (i) Borrower; (ii) any controlling member of Borrower, or (iii) any guarantor; and Borrower's failure to provide a substitute or replacement acceptable to Lender within thirty (30) days after the occurrence of any such event;

(F) Transfer of Interest in Borrower. Except as otherwise permitted under this Agreement, Borrower shall not, without the prior written consent of Lender, sell, transfer, mortgage, pledge, hypothecate, assign, encumber or otherwise dispose of, whether voluntarily, involuntarily or by operation of law, any interest (whether general or limited partnership interest, limited liability company interest, stock or otherwise) in Borrower;

(G) Adverse Financial Condition. Any change in the financial condition of Borrower, or any managing member, guarantor, or any other person or entity from the condition shown on the financial statement(s) submitted to Lender and relied upon by Lender in making the Loan which change has a Material Adverse Effect;

(H) Termination or Revocation of Guaranty. Any guarantor shall terminate or revoke or attempt or purport to terminate or revoke its guaranty of Borrower's obligations to Lender except as permitted herein.

(I) Default under Franchise Agreements. Any failure by Borrower or any Related Person to perform any obligation under the Franchise Agreement or any other franchise agreement of Borrower or any Related Person with Franchisor, and such failure shall not have been cured on or before the first date on which Krispy Kreme Doughnut Corporation may terminate such franchise agreement by reason of such failure; or any Krispy Kreme Doughnut Corporation franchise agreement of Borrower or any Related Person is terminated or cancelled.

(J) Default under Other Material Agreements. Any failure of Borrower to perform its obligations under any Leases or other material contract relating to any Unit and such failure shall continue beyond any cure period contained in such agreement; except where (a) the failure to perform is being contested in good faith by appropriate proceedings, (b) the Borrower has set aside with Lender additional security for the Loan, and (c) the failure to perform such obligations could not reasonably be expected to result in a Material Adverse Effect.

(K) Voluntary Bankruptcy; Insolvency; Dissolution. (i) The filing of a petition by Borrower for relief under the Bankruptcy Reform Act of 1978 (11 USC § 101-1330), or under any other present or future federal or state law regarding bankruptcy, reorganization or other debtor relief (the "Bankruptcy Code"); (ii) the filing of any pleading or an answer by Borrower in any involuntary proceeding under the Bankruptcy Code or other debtor relief law which admits the jurisdiction of the court or the petition's material allegations regarding Borrower's insolvency; (iii) a general assignment by Borrower for the benefit of creditors; (iv) Borrower applying for, or the appointment of,

a receiver, trustee, custodian or liquidator of Borrower or any of its property; or (v) the filing by or against Borrower of a petition seeking the liquidation or dissolution of Borrower or the commencement of any other procedure to liquidate or dissolve Borrower;

(L) Involuntary Bankruptcy. The failure of Borrower to effect a full dismissal of any involuntary petition under the Bankruptcy Code or any other debtor relief law that is filed against Borrower or in any way restrains or limits Borrower or Lender regarding the Loan, the Unit, or the Collateral, prior to the earlier of the entry of any court order granting relief sought in such involuntary petition, or thirty (30) days after the date of filing of such involuntary petition; or

(M) Managing Members/Guarantors. The occurrence of any of the events specified in Subparagraph (K) or (L) above as to any managing member of Borrower or as to any guarantor of the Loan.

(N) Cross Default. The occurrence of any Event of Default under and as defined in any of the Loan Documents.

(O) ERISA. An ERISA Event shall have occurred that, in the opinion of the Lender, could reasonably be expected to result in liability having a Material Adverse Affect on the Borrower or its business; or

(P) Monetary Judgment. Any judgment or order for the payment of money in excess of \$100,000.00 in the aggregate shall be rendered against the Borrower and either (i) enforcement proceedings shall have been commenced by any creditor upon such judgment or order or (ii) there shall be a period of 30 consecutive days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect; or

(Q) Non Monetary Judgment. Any non-monetary judgment or order shall be rendered against the Borrower that could reasonably be expected to have a Material Adverse Effect, and there shall be a period of 30 consecutive days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect

6.2 Remedies. Upon the occurrence or existence of any Event of Default (other than an Event of Default referred to in Subparagraph (K), (L) or (M)) and at any time thereafter during the continuance of such Event of Default, Lender may, by written notice to Borrower, declare all outstanding Obligations (including the prepayment amount) payable by Borrower hereunder, as well as all other obligations owed by Borrower to Lender under any other loan or credit agreement, to be immediately due and payable without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived, anything contained herein or in the Note to the contrary notwithstanding. Upon the occurrence or existence of any Event of Default described in Subparagraph (K), (L) or (M), immediately and without notice, all outstanding Obligations (including the prepayment amount) payable by Borrower hereunder, as well as all other obligations owed by Borrower to Lender under any other loan or credit agreement, shall automatically become immediately due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived, anything contained herein or in the Note to the contrary notwithstanding. In addition to the foregoing remedies, upon the occurrence or existence of any Event of Default, Lender may exercise any other right, power or remedy granted to it by the Loan Documents or otherwise permitted to it by law, either by suit in equity or by action at law, or both. Failure of Lender to notify Borrower or to acknowledge a delinquency or an Event of Default shall not be deemed to be a waiver, forbearance or forgiveness of the delinquency or Borrower's obligation to perform under this Agreement.

Section VII. MISCELLANEOUS.

7.1 Notices. Except as otherwise provided herein, all notices, requests, demands, consents, instructions or other communications to or upon Lender or Borrower under this Agreement or the other Loan Documents shall be in writing and telecopied, mailed or delivered to each party at its telecopier number or address set forth below (or to such other telecopier number or address for any party as indicated in any notice given by that party to the other party). All such notices and communications shall be effective (a) when sent by Federal Express or

other overnight service of recognized standing, on the Business Day following the deposit with such service; (b) when mailed, first class postage prepaid and addressed as aforesaid through the United States Postal Service, upon receipt; (c) when delivered by hand, upon delivery; and (d) when telecopied, upon confirmation of receipt.

Lender: Bank of America, N.A.
GA1-006-13-20
600 Peachtree Street, NE
Atlanta, Georgia 30308-2214
Attention: Chief Credit Officer, Franchise Financing Services
Telecopy No.: 404/607-4075

Borrower: 550 South Hope Street
20th Floor
Los Angeles, California 90071
Attention: Richard Reinis
Telecopy No.: 213/489-9963:

In any case where this Agreement authorizes notices, requests, demands or other communications by Borrower to Lender to be made by telephone or telecopy, Lender may conclusively presume that anyone purporting to be a person designated in any borrowing resolution, incumbency certificate or in any other such document delivered by Borrower to Lender, is such a person.

7.2 Expenses. Borrower shall pay on demand, (a) all reasonable fees and expenses, including reasonable attorneys' fees and expenses, incurred by Lender in connection with the preparation, execution and delivery of, and the exercise of its duties under, this Agreement and the other Loan Documents, and the preparation, execution and delivery of amendments, consents and waivers hereunder and thereunder; and (b) all reasonable fees and expenses, including reasonable attorneys' fees and expenses, incurred by Lender in the enforcement or attempted enforcement of any of the Obligations or in preserving any of Lender's rights and remedies.

7.3 Indemnification. To the fullest extent permitted by law, Borrower agrees to protect, indemnify, defend and hold harmless Lender and its respective shareholders, members, beneficial owners, directors, partners, managers, officers, employees, agents, attorneys, successors, assigns and any affiliate thereof ("Indemnitees") from and against any and all liabilities, losses, damages (whether direct or consequential), obligations, claims, penalties, causes of action, fines, injunctions, costs or expenses of any kind or nature (including, without limitation, those arising out of, in respect of, as a consequence of or in connection with any violation or failure to comply with any Environmental Law) and from any and all suits, claims or demands (including, without limitation, in respect of or for reasonable attorney's fees and other expenses whether incurred within or outside the judicial process) arising on account of or in connection with any matter or thing or action or failure to act by Indemnitees, or any of them, arising out of or relating to Borrower, the Unit or the Loan Documents, whether prior to or after the date of this Agreement and whether prior to or after Borrower became the owner of the Unit including, without limitation, any use by Borrower of any proceeds of the Loans, except to the extent such liability arises from the willful misconduct or gross negligence of the Indemnitees. Upon receiving knowledge of any suit, claim or demand asserted by a third party that Lender believes is covered by this indemnity, Lender shall give Borrower notice of the matter and an opportunity to defend it, at Borrower's sole cost and expense, with legal counsel satisfactory to Lender. Any failure or delay of Lender to notify Borrower of any such suit, claim or demand shall not relieve Borrower of its obligations under this Paragraph 7.3. The obligations of Borrower under this Paragraph 7.3 shall survive the payment and performance of the Obligations and the exercise of any rights or remedies by Lender.

7.4 Waivers; Amendments. Any term, covenant, agreement or condition of this Agreement or any other Loan Document may be amended or waived if such amendment or waiver is in writing and is signed by Borrower and Lender provided, however, that if the Loan is sold to a trust, no such amendment or waiver may be made unless Borrower has provided to Lender an opinion of counsel satisfactory to Lender that such amendment or waiver will not affect the tax treatment of the trust. No failure or delay by Lender in exercising any right hereunder

shall operate as a waiver thereof or of any other right nor shall any single or partial exercise of any such right preclude any other further exercise thereof or of any other right. Unless otherwise specified in such waiver or consent, a waiver or consent given hereunder shall be effective only in the specific instance and for the specific purpose for which given.

7.5 Successors and Assigns.

(A) Binding Effect. This Agreement and the other Loan Documents shall be binding upon and inure to the benefit of Borrower, Lender, all future holders of the Notes and their respective successors and permitted assigns, except that Borrower may not assign or transfer any of its rights or obligations under any Loan Document without the prior written consent of Lender. All references in this Agreement to any Person shall be deemed to include all successors and assigns of such Person.

(B) Loan Sales and Participation; Disclosure of Information. Borrower agrees that Lender may elect, at any time, to sell, assign, securitize or grant a participation in all or any portion of Lender's rights and obligations under the Loan Documents, and that any such sale, assignment, securitization or participation may be to one or more financial institutions, private investors, public securities marketplace, trust and/or other entities, at Lender's sole discretion. Borrower further agrees that Lender may disseminate to any such actual or potential purchaser(s), assignee(s), trustee(s), participant(s) or such other party(s), including any servicer of the Loan or any governmental authority regulating any of the foregoing or as may be required by any governmental authority or any other authority having jurisdiction over Lender, all documents and information (including, without limitation, all financial information) which has been or is hereafter provided to or known to Lender with respect to: (a) the Property, the Collateral, and the Unit operations; (b) any party connected with the Loan (including, without limitation, the Borrower, any partner of Borrower, any constituent partner or member of Borrower, any Related Person, and any guarantor); and/or (c) any lending relationship other than the Loan which Lender may have with any party connected with the Loan. In the event of any such sale, assignment, securitization or participation, Lender and the parties to such transaction shall share in the rights and obligations of Lender as set forth in the Loan Documents only as and to the extent they agree among themselves. In connection with any such sale, assignment, securitization or participation, Borrower further agrees that the Loan Documents shall be sufficient evidence of the obligations of Borrower to each purchaser, assignee, trustee, participant or such other party, and upon written request by Lender, Borrower shall, within fifteen (15) days after request by Lender, deliver an estoppel certificate verifying for the benefit of Lender and to any other party designated by Lender the status and the terms and provisions of the Loan in form and substance acceptable to Lender. The indemnity obligations of Borrower under the Loan Documents shall also apply with respect to any purchaser, assignee, trustee, participant or such other party.

7.6 Setoff. In addition to any rights and remedies of Lender provided by law, Lender shall have the right, without prior notice to Borrower, any such notice being expressly waived by Borrower to the extent permitted by applicable law, upon the occurrence and during the continuance of a Default or an Event of Default, to set-off and apply against any indebtedness, whether matured or unmatured, of Borrower to Lender (including, without limitation, the Obligations), any amount owing from Lender to Borrower. The aforesaid right of set-off may be exercised by Lender against Borrower or against any trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, receiver or execution, judgment or attachment creditor of Borrower or against anyone else claiming through or against Borrower or such trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, receiver, or execution, judgment or attachment creditor, notwithstanding the fact that such right of set-off shall not have been exercised by Lender prior to the occurrence of a Default or an Event of Default. Lender agrees promptly to notify Borrower after any such set-off and application made by Lender, provided that the failure to give such notice shall not affect the validity of such set-off and application.

7.7 No Third Party Rights. Nothing expressed in or to be implied from this Agreement or any other Loan Document is intended to give, or shall be construed to give, any Person, other than the parties hereto and thereto and their permitted successors and assigns, any benefit or legal or equitable right, remedy or claim under or by virtue of this Agreement or any other Loan Document.

7.8 Partial Invalidity. If at any time any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality; validity or enforceability of the remaining provisions of this Agreement nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired thereby.

7.9 Jury Trial. EACH OF BORROWER AND LENDER, HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR FOR ANY COUNTERCLAIM THEREIN.

7.10 Counterparts. This Agreement may be executed in any number of identical counterparts, any set of which signed by all the parties hereto shall be deemed to constitute a complete, executed original for all purposes.

7.11 Arbitration. ANY CONTROVERSY OR CLAIM BETWEEN OR AMONG THE PARTIES HERETO INCLUDING BUT NOT LIMITED TO THOSE ARISING OUT OF OR RELATING TO THIS INSTRUMENT, AGREEMENT OR DOCUMENT OR ANY RELATED INSTRUMENTS, AGREEMENTS OR DOCUMENTS, INCLUDING ANY CLAIM BASED ON OR ARISING FROM AN ALLEGED TORT, SHALL BE DETERMINED BY BINDING ARBITRATION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT (OR IF NOT APPLICABLE, THE APPLICABLE STATE LAW), THE RULES OF PRACTICE AND PROCEDURE FOR THE ARBITRATION OF COMMERCIAL DISPUTES OF J.A.M.S./ENDISPUTE OR ANY SUCCESSOR THEREOF ("J.A.M.S."), AND THE "SPECIAL RULES" SET FORTH BELOW. IN THE EVENT OF ANY INCONSISTENCY, THE SPECIAL RULES SHALL CONTROL. JUDGMENT UPON ANY ARBITRATION AWARD MAY BE ENTERED IN ANY COURT HAVING JURISDICTION. ANY PARTY TO THIS INSTRUMENT, AGREEMENT OR DOCUMENT MAY BRING AN ACTION, INCLUDING A SUMMARY OR EXPEDITED PROCEEDING, TO COMPEL ARBITRATION OF ANY CONTROVERSY OR CLAIM TO WHICH THIS AGREEMENT APPLIES IN ANY COURT HAVING JURISDICTION OVER SUCH ACTION.

A. SPECIAL RULES. THE ARBITRATION SHALL BE CONDUCTED IN THE COUNTY OF ANY BORROWER'S DOMICILE AT THE TIME OF THE EXECUTION OF THIS INSTRUMENT, AGREEMENT OR DOCUMENT AND ADMINISTERED BY J.A.M.S. WHO WILL APPOINT AN ARBITRATOR; IF J.A.M.S. IS UNABLE OR LEGALLY PRECLUDED FROM ADMINISTERING THE ARBITRATION, THEN THE AMERICAN ARBITRATION ASSOCIATION WILL SERVE. ALL ARBITRATION HEARINGS WILL BE COMMENCED WITHIN 90 DAYS OF THE DEMAND FOR ARBITRATION; FURTHER, THE ARBITRATOR SHALL ONLY, UPON A SHOWING OF CAUSE, BE PERMITTED TO EXTEND THE COMMENCEMENT OF SUCH HEARING FOR UP TO AN ADDITIONAL 60 DAYS.

B. RESERVATION OF RIGHTS. NOTHING IN THIS ARBITRATION PROVISION SHALL BE DEEMED TO (I) LIMIT THE APPLICABILITY OF ANY OTHERWISE APPLICABLE STATUTES OF LIMITATION OR REPOSE AND ANY WAIVERS CONTAINED IN THIS INSTRUMENT, AGREEMENT OR DOCUMENT; OR (II) BE A WAIVER BY LENDER OF THE PROTECTION AFFORDED TO IT BY 12 U.S.C. SEC. 91 OR ANY SUBSTANTIALLY EQUIVALENT STATE LAW; OR (III) LIMIT THE RIGHT OF LENDER HERETO (A) TO EXERCISE SELF HELP REMEDIES SUCH AS (BUT NOT LIMITED TO) SETOFF, OR (B) TO FORECLOSE AGAINST ANY REAL OR PERSONAL PROPERTY COLLATERAL, OR (C) TO OBTAIN FROM A COURT PROVISIONAL OR ANCILLARY REMEDIES SUCH AS (BUT NOT LIMITED TO) INJUNCTIVE RELIEF, WRIT OF POSSESSION OR THE APPOINTMENT OF A RECEIVER. LENDER MAY EXERCISE SUCH SELF HELP RIGHTS, FORECLOSE UPON SUCH PROPERTY, OR OBTAIN SUCH PROVISIONAL OR ANCILLARY REMEDIES BEFORE, DURING OR AFTER THE PENDENCY OF ANY ARBITRATION PROCEEDING BROUGHT PURSUANT TO THIS INSTRUMENT, AGREEMENT OR DOCUMENT. NEITHER THIS EXERCISE OF SELF HELP REMEDIES NOR THE INSTITUTION OR MAINTENANCE OF AN ACTION FOR FORECLOSURE OR PROVISIONAL OR ANCILLARY REMEDIES SHALL CONSTITUTE A WAIVER OF THE RIGHT OF ANY PARTY, INCLUDING THE CLAIMANT IN ANY

SUCH ACTION, TO ARBITRATE THE MERITS OF THE CONTROVERSY OR CLAIM OCCASIONING RESORT TO SUCH REMEDIES.

7.12 Cumulative Rights. The rights, powers and remedies of Lender hereunder are cumulative and in addition to all rights, powers and remedies provided under any and all agreements between Borrower and Lender relating hereto, at law, in equity or otherwise.

7.13 Survival. All representations, warranties, covenants and agreements herein contained on the part of Borrower shall be effective until the Loan is paid and performed in full, or longer as expressly provided herein.

7.14 Lender Discussions with the Franchisor. Borrower hereby authorizes Lender to discuss with the Franchisor Borrower's financial condition, operations and any other matters relating to Borrower, the Franchise Agreement, the Unit or the Property. Borrower further (a) consents to the release to Lender by the Franchisor of any information relating to the foregoing matters and (b) instructs the Franchisor to release any information relating to the foregoing matters upon the request of Lender.

7.15 Time Is of the Essence. Time is of the essence of this Agreement, and of each provision hereof.

7.16 NO ORAL AGREEMENT. THIS WRITTEN LOAN AGREEMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.

IN WITNESS WHEREOF, Borrower and Lender have caused this Agreement to be executed as of the day and year first above written.

BORROWER:

Great Circle Family Foods, LLC, a California limited liability company

By: Richard G. Reinis, CEO
Name: Richard G. Reinis
Title: CEO

GCFF-Canoga, LLC, a Delaware limited liability company

By: Richard G. Reinis, CEO
Name: Great Circle Family Foods, LLC
Title: Mgr. Member

GCFF-Huntington Park, LLC, a Delaware limited liability company

By: Richard G. Reinis, CEO
Name: Great Circle Family Foods, LLC
Title: Mgr. Member

GCFF-Ontario, LLC, a Delaware limited liability company

By: Richard G. Reinis, CEO
Name: Great Circle Family Foods, LLC
Title: Mgr. Member

GCFF-Orange, LLC, a Delaware limited liability company

By: Richard G. Reinis, CEO
Name: Great Circle Family Foods, LLC
Title: Mgr. Member

GCFF-San Diego, LLC, a Delaware limited liability company

By: Richard G. Reinis, CEO
Name: Great Circle Family Foods, LLC
Title: Mgr. Member

GCFF-Ventura, LLC, a Delaware limited liability company

By: Richard G. Reinis, CEO
Name: Great Circle Family Foods, LLC
Title: Mgr. Member

[Signatures continued on next page.]

LENDER:

BANK OF AMERICA, N.A.,
A national banking association

By: _____
Name: _____
Title: _____

SCHEDULE 1.01

DEFINITIONS

"Affiliate" shall mean (a) any entity which Borrower, directly or indirectly, owns or controls, whether beneficially or as a trustee, guardian or other fiduciary, twenty-five percent (25%) or more of any class of stock or partnership interest of such entity, or (b) any entity that controls, is controlled by or is under common control with Borrower. For the purpose of this definition, "control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of its management or policies, whether through the ownership of voting securities, partnership interest, by contract or otherwise.

"Adjusted LIBOR Rate" shall mean, with respect to each Interest Period for a Loan, the rate per annum obtained by dividing (i) LIBOR for such Interest Period by (ii) a percentage equal to 1.00 *minus* the Eurodollar Reserve Percentage.

"Agreement" shall mean this Loan Agreement.

"Availability Period" shall mean the period from the Closing Date to the Commitment Termination Date.

"Borrower" shall have the meaning given to that term in clause (1) of the introductory paragraph hereof, together with any Person succeeding thereto by merger, consolidation or acquisition of Borrower's assets substantially as an entirety or any legal representative, heir, estate, successor or assignee thereof, and further together with any Person subsequently becoming a party hereto by execution and delivery of a joinder agreement in form and substance satisfactory to Lender.

"Business Day" shall mean any day other than a Saturday, Sunday or legal holiday or other day on which commercial banks in California are authorized or required by law to close. All references in this Agreement to a "day" or a "date" shall be to a calendar day unless specifically referenced as a Business Day.

"Closing Date" shall mean the date of disbursement of the Loan.

"Collateral" shall mean the meaning given to that term in the Security Agreement.

"Commitment" shall mean the Revolving Commitment or the Term Loan Commitment or any combination thereof (as the context shall permit or require).

"Commitment Termination Date" shall mean as to the Revolving Commitment the earliest of (i) the date which is twenty-four months from date hereof (ii) the date on which the Revolving Commitment is terminated pursuant this Agreement and (iii) the date on which all amounts outstanding under this Agreement have been declared or have automatically become due and payable (whether by acceleration or otherwise).

"Condemnation" means any condemnation or other taking or temporary or permanent requisition of the Unit, any interest therein or right appurtenant thereto, or any change of grade affecting the Unit, as the result of the exercise of any right of condemnation or eminent domain. A transfer in lieu or anticipation of Condemnation shall be deemed to be a Condemnation.

"Contractual Obligation" of any Person shall mean, any indenture, note, security, deed of trust, mortgage, security agreement, lease, guaranty, instrument, contract, agreement or other form of obligation or undertaking to which such Person is a party or by which such Person or any of its property is bound, and shall include, in the case of Borrower, without limitation, the Franchise Agreement and the Lease.

"Cross Default Documents" shall mean each of the Loan Documents, as defined in the loan agreement.

"Debt Service" shall mean, for any period, an amount equal to the sum of all payments required to be made by Borrower during such period with respect to any Indebtedness.

"Default" shall mean any event or circumstance not yet constituting an Event of Default but which, with the giving of any notice or the lapse of any period of time or both, would become an Event of Default.

"Disbursement Date" shall mean the date on which the Loan proceeds are funded into escrow in connection with the closing of the Loan.

"EBITDA" shall mean a number determined as follows:

Net income + interest expense + income tax expense + depreciation + amortization +/- other non-cash items

"Effective Fixed Rate" shall mean the interest rate per annum equal to the Effective Fixed Rate Index plus the appropriate credit spread based on the following grid:

<u>ADJUSTED FUNDED DEBT TO EBITDA</u>	<u>LIBOR MARGIN</u>
Greater than 5.00	3.50%
Greater than 4.00 but less than or equal to 5.00	3.00%
Greater than 3.50 but less than or equal to 4.00	2.75%
Greater than 3.00 but less than or equal to 3.50	2.50%
Less than or equal to 3.00	2.25%

"Effective Fixed Rate Index" shall mean the LIBOR rate as of the date Borrower exercises option to fix rate by executing a Swap Agreement.

"Effective Fixed Rate Loan" shall mean the Term Loan or portion thereof after conversion of the interest rate to an Effective Fixed Rate.

"Environmental Indemnity" shall mean that certain Environmental Indemnity dated of even date herewith executed by Borrower in favor of Lender.

"Environmental Laws" means all present and future Legal Requirements relating to the protection of human health and safety or the environment, including, without limitation, (a) all Legal Requirements, pertaining to reporting, licensing, permitting, investigation, and remediation of emissions, discharges, releases, or threatened releases of hazardous materials, 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 presence, generation, discharge, release, removal, manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of chemical substances, pollutants, emissions, contaminants, or hazardous, radioactive or toxic substances, materials, or wastes, whether solid, liquid, or gaseous in nature; and (b) all Legal Requirements pertaining to the protection of the health and safety of employees or the public.

"Environmental Liability" shall mean any liability, contingent or otherwise (including any liability for damages, costs of environmental investigation and remediation, costs of administrative oversight, fines, natural resource damages, penalties or indemnities), of the Borrower or any Subsidiary directly or indirectly resulting from or based upon (a) any actual or alleged violation of any Environmental Laws, (b) the generation, use, handling, transportation, storage, treatment or disposal of any hazardous materials, (c) any actual or alleged exposure to any hazardous materials, (d) the release or threatened release of any hazardous materials or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"Equipment" shall mean all equipment, furniture and fixtures held or maintained at the Units or otherwise used in the ownership or operation of the Units (including, without limitation, food preparation equipment, decorations, seating, signage, furniture, and other machinery and office equipment), together with all additions and accessions thereto and replacements therefore.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time, and any successor statute.

"ERISA Affiliate" shall mean any trade or business (whether or not incorporated), which, together with the Borrower, is treated as a single employer under Section 414(b) or (c) of the Code or, solely for the purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

"ERISA Event" shall mean (a) any "reportable event", as defined in Section 4043 of ERISA or the regulations issued thereunder with respect to a Plan (other than an event for which the 30-day notice period is waived); (b) the existence with respect to any Plan of an "accumulated funding deficiency" (as defined in Section 412 of the Code or Section 302 of ERISA), whether or not waived; (c) the filing pursuant to Section 412(d) of the Code or Section 303(d) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (d) the incurrence by the Borrower or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan; (e) the receipt by the Borrower or any ERISA Affiliate from the PBGC or a plan administrator appointed by the PBGC of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan; (f) the incurrence by the Borrower or any of its ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal from any Plan or Multiemployer Plan; or (g) the receipt by the Borrower or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from the Borrower or any ERISA Affiliate of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA.

"Estoppels" shall mean the estoppel certificate(s) delivered on the Closing Date by Landlords and Franchisor.

"Eurodollar" when used in reference to any Loan, refers to whether such Loan bears interest at a rate determined by reference to the Adjusted LIBOR Rate.

"Eurodollar Reserve Percentage" shall mean the aggregate of the maximum reserve percentages (including, without limitation, any emergency, supplemental, special or other marginal reserves) expressed as a decimal (rounded upwards to the next 1/100th of 1%) in effect on any day to which the Lender is subject with respect to the Adjusted LIBOR Rate pursuant to regulations issued by the Board of Governors of the Federal Reserve System (or any Governmental Authority succeeding to any of its principal functions) with respect to eurocurrency funding (currently referred to as "eurocurrency liabilities" under Regulation D). Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to the Lender under Regulation D. The Eurodollar Reserve Percentage shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

"Event of Default" shall have the meaning given to that term in Paragraph 6.1.

"Financial Statements" shall mean, with respect to any accounting period for any Person, statements of income and of changes in cash flow of such Person for such period, and balance sheets of such Person as of the end of such period, setting forth in each case in comparative form figures for the corresponding period in the preceding fiscal year if such period is less than a full fiscal year or, if such period is a full fiscal year, corresponding figures from the preceding annual audit, all prepared in reasonable detail.

"Floating Rate" shall mean the interest rate per annum equal to the 30-day Adjusted LIBOR Rate plus the credit spread based on the following grid, which Floating Rate shall be fixed for each Interest Period:

<u>ADJUSTED FUNDED DEBT TO EBITDA</u>	<u>LIBOR MARGIN</u>
Greater than 5.00	3.50%
Greater than 4.00 but less than or equal to 5.00	3.00%
Greater than 3.50 but less than or equal to 4.00	2.75%
Greater than 3.00 but less than or equal to 3.50	2.50%
Less than or equal to 3.00	2.25%

"Floating Rate Loan" shall mean a Revolving Loan or Term Loan accruing interest at the Floating Rate.

"Franchise Agreement" shall mean the Franchise Agreement between Franchisor and Borrower with respect to each Unit.

"Franchisor" shall mean Krispy Kreme Doughnut Corporation, or its successors or assigns under the Franchise Agreement.

"Funded Debt" shall mean the aggregate Indebtedness of Borrower to Lender or to any other Person, outstanding from time to time, except for Indebtedness that is expressly subordinate to the Loan.

"GAAP" shall mean generally accepted accounting principles and practices as in effect in the United States of America from time to time, consistently applied.

"Governmental Charges" shall mean all levies, assessments, fees, claims or other charges imposed by any governmental authority upon or relating to (i) Borrower or Guarantor, (ii) the Loan, (iii) employees, payroll, income or gross receipts of Borrower or Guarantor, or (iv) the ownership or use of any of its assets by Borrower or Guarantor.

"Guarantor" shall Richard G. Reinis and Roger E. Glickman, jointly or severally, together with any Person succeeding thereto by merger, consolidation or acquisition of any Guarantor's assets substantially as an entirety or any legal representative, heir, estate, successor or assignee thereof.

"Guaranty" shall mean those certain Guaranty dated of even date herewith executed by each Guarantor guaranteeing payment of the Loan to Lender.

"Impositions" shall mean all taxes, assessments and other governmental charges, ground rents, or other rents, rates and charges, excises, levies, fees and other charges (public or private) which may be assessed, levied, confirmed or imposed on, or in respect of or be a lien upon the Collateral or the Unit or any part thereof or any interest therein.

"Indebtedness" shall mean and include (i) with respect to any Person, (a) all items of indebtedness and liabilities which, in accordance with GAAP, would be included in determining liabilities that are shown on the liability side of the balance sheet of such Person, (b) all indebtedness and liabilities of other Persons assumed or guaranteed by such Person or in respect to which such Person is secondarily or contingently liable whether by any agreement to acquire indebtedness and liabilities or to supply or advance funds or otherwise, and (c) all indebtedness and liabilities of other Persons secured by any Lien in any property of such Person; and, (ii) with respect to any Unit, (a) all items of indebtedness and liabilities which, in accordance with GAAP, would be included in determining liabilities that are shown on the liability side of the balance sheet of such Unit, (b), to the extent such indebtedness or liability specifically relates to the Unit or depends on Unit cash flow for repayment (as provided in an assumption of debt, guaranty or other agreement), all indebtedness and liabilities of other Persons assumed or guaranteed by any Person or in respect of which such Person is secondarily or contingently liable whether by any agreement to acquire indebtedness and liabilities or to supply or advance funds or otherwise and (c) all indebtedness and liabilities secured by any Lien on any property used in the operation of such Unit, to the extent not included pursuant to clauses (a) and (b).

"Insurance Proceeds" means, at any time, all insurance proceeds or payments to which Borrower may be or become entitled by reason of any casualty under the insurance policies with respect to the Unit required to be maintained pursuant to this Agreement plus (i) the amounts of any deductibles under such insurance policies; (ii) if Borrower fails to maintain any of the insurance policies required under this Agreement, the amounts which would have been available with respect to such casualty had Borrower maintained such insurance policies; and (iii) all insurance proceeds and payments to which Borrower may be or become entitled, including, without limitation, pursuant to title insurance or by reason of any casualty under any other insurance policies coverage maintained by Borrower with respect to the Unit.

"Interest Period" shall mean, with respect to any Floating Rate Loan, a period of one month; provided, that:

(i) the initial Interest Period for any such Loan shall commence on the date of such Loan (including the date of any conversion from an Effective Fixed Rate Loan) and each Interest Period occurring thereafter in respect of such Loan shall commence on the day on which the next preceding Interest Period expires;

(ii) if any Interest Period would otherwise end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day, unless such Business Day falls in another calendar month, in which case such Interest Period would end on the next preceding Business Day;

(iii) any Interest Period which begins on the last Business Day of a calendar month or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period shall end on the last Business Day of such calendar month;

(iv) each principal installment of the Term Loan shall have an Interest Period ending on each installment payment date and the remaining principal balance (if any) of the Term Loan shall have an Interest Period determined as set forth above; and

(v) no Interest Period may extend beyond the Commitment Termination Date or the Maturity Date, as the case may be.

"Leases" shall mean the Lease Agreements set forth on Schedule 4.01(j) attached hereto and any modification, renewal or replacement therefore.

"Leasehold Mortgage" shall have the meaning given to such term in Subparagraph 4.1(L).

"Legal Requirements" shall mean all laws, rules, regulations, judgments, orders, permits, licenses, authorizations and other requirements of and agreements with all governments, department agencies, courts and officials, which now or hereafter shall be applicable to the Collateral or the Unit or any part thereof or any use or condition thereof including, without limitation, all Environmental Laws.

"Lender" shall have the meaning given to that term in clause (2) of the introductory paragraph hereof.

"LIBOR" shall mean, for any applicable Interest Period with respect to any Loan, the rate per annum for deposits in Dollars for a period equal to such Interest Period appearing on the display designated as Page 3750 on the Dow Jones Markets Service (or such other page on that service or such other service designated by the British Banker's Association for the display of such Association's Interest Settlement Rates for Dollar deposits) as of 11:00 a.m. (London, England time) on the day that is two Business Days prior to the first day of the Interest Period or if such Page 3750 is unavailable for any reason at such time, the rate which appears on the Reuters Screen ISDA Page as of such date and such time; provided, that if the Lender determines that the relevant foregoing sources are unavailable for the relevant Interest Period, LIBOR shall mean the rate of interest determined by the Lender to be the average (rounded upward, if necessary, to the nearest 1/100th of 1%) of the rates per annum at which deposits in Dollars are offered to the Lender two (2) Business Days preceding the first day of such Interest Period by leading banks in the London interbank market as of 10:00 a. m. for delivery on the first day of such Interest Period, for the number of days comprised therein and in an amount comparable to the amount of the Loan of the Lender.

"Lien" shall mean, with respect to any property, any security interest, mortgage, pledge, lien, claim, charge or other encumbrance in, of, or on such property or the income therefrom, including, without limitation, the interest of a vendor or lessor under a conditional sale agreement, capital lease or other title retention agreement, or any agreement to provide any of the foregoing, and the filing of any financing statement or similar instrument under the Uniform Commercial Code or comparable law of any jurisdiction.

"Loan" shall mean the Revolving Loans and/or the Term Loan as the context requires.

"Loan Documents" shall mean and include this Agreement, the Note, the Security Agreement, the Mortgages, the Guarantees, the Environmental Indemnity, the Estoppels, any Swap Agreement and all other documents, instruments and agreements delivered to Lender in connection with this Agreement including those certain documents, instruments and agreements hereinafter to be delivered to Lender in connection with any subsequent loan which states that it is subject to this Agreement.

"Loan Installment Date" shall have the meaning given to that term in the Note.

"Loan Maturity Date" or "Maturity Date" shall as to the Term Loan mean the date which is five (5) years from the date hereof.

"Material Adverse Effect" shall mean a material adverse effect on (a) the business, assets, operations, prospects or financial or other condition of Borrower, any Unit or any Guarantor; (b) the ability of Borrower or Guarantor to pay or perform the Obligations in accordance with the terms of this Agreement and the other Loan Documents; (c) the rights and remedies of Lender under this Agreement, the other Loan Documents or any related document, instrument or agreement; or (d) the value or use of the Collateral, Lender's Liens in the Collateral or the perfection or priority of such Liens; or (e) the Franchise Agreement or the Leases.

"Mortgage" shall mean any mortgage, deed of trust, deed to secure debt or other security instrument granting a lien upon or security title to real Property.

"New Unit" shall mean any Unit that has been in operation by Borrower for less than twelve (12) months.

"New Unit Adjustment" shall mean an amount determined as follows:

1 – (number of full months a New Unit has been in operation / 12) x total funded
Loan Indebtedness for such New Unit

"Note" shall mean the Revolving Note and/or the Term Note , as the context requires.

"Obligations" shall mean and include all loans, advances, debts, liabilities, and obligations, howsoever arising, owed by Borrower to Lender of every kind and description (whether or not evidenced by any note or instrument and whether or not for the payment of money), direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising pursuant to the terms of this Agreement, any of the other Loan Documents, including, without limitation, all interest, prepayment amount, fees, charges, expenses, attorneys' fees and accountants' fees chargeable to Borrower or payable by Borrower hereunder or thereunder.

"Permitted Liens" shall mean and include:

(a) Liens for taxes or other governmental charges not at the time delinquent or thereafter payable without penalty or being contested in good faith;

(b) Liens of carriers, warehousemen, mechanics, materialmen, vendors, and landlords incurred in the ordinary course of business for sums not overdue or being contested in good faith;

(c) Deposits under workers' compensation, unemployment insurance and social security laws or to secure the performance of bids, tenders, contracts (other than for the repayment of borrowed money) or leases, or to secure statutory obligations of surety or appeal bonds or to secure indemnity, performance or other similar bonds in the ordinary course of business;

(d) Liens securing the Obligations; and

(e) As to any Property, the liens as set forth in the title policy issued on the Closing Date.

"Person" shall mean and include an individual, a partnership, a corporation (including a business trust), a joint stock company, an unincorporated association, a joint venture or other entity or a governmental authority.

"Plan" means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which the Borrower or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA.

"Prime Rate" shall mean the fluctuating rate of interest established by Lender from time to time, at its discretion, whether or not such rate shall be otherwise published. The Prime Rate is established by Lender as an index and may or may not at any time be the best or lowest rate charged by Lender on any loan.

"Property" shall mean the real property described in each of the Mortgages and the Leases.

"Related Persons" shall mean collectively, all Affiliates and Subsidiaries of Borrower.

"Remaining Average Life" shall mean, with respect to the Loan on any date, the number of years (calculated to the nearest one-twelfth year) obtained by dividing (a) the sum of the products obtained by multiplying (i) each remaining principal payment (but not interest thereon) by (ii) the number of years (calculated to the nearest one-twelfth year) which will elapse between the date of determination and the scheduled due date of such remaining principal payment by (b) the outstanding principal balance of the Loan.

"Responsible Officer" shall mean any of the president, the chief executive officer, the chief operating officer, the chief financial officer, the treasurer or a vice president of the Borrower or such other representative of the Borrower as may be designated in writing by any one of the foregoing with the consent of the Lender; and, with respect to the financial covenants only, the chief financial officer or the treasurer of the Borrower.

"Revolving Commitment" shall mean the obligation of the Lender to make Revolving Loans to the Borrower in an aggregate principal amount not exceeding \$6,500,000.

"Security Agreement" shall have the meaning given to that term in Subparagraph 2.11(A)

"Subsidiary" of Borrower shall mean (a) any corporation of which more than 50% of the issued and outstanding stock having ordinary voting power to elect a majority of the Board of Directors of such corporation (irrespective of whether at the time capital stock of any other class or classes of such corporation shall or might have voting power upon the occurrence of any contingency) is at the time directly or indirectly owned or controlled by Borrower, by Borrower and one or more of its other Subsidiaries or by one or more of Borrower's other Subsidiaries, (b) any partnership, joint venture, or other association of which more than 50% of the equity interest having the power to vote, direct or control the management of such partnership, joint venture or other association is at the time owned and controlled by Borrower, by Borrower and one or more of its other Subsidiaries or by one or more of Borrower's other subsidiaries and (c) any other entity included in the Financial Statements of Borrower on a consolidated basis.

"Swap Agreement" shall mean any interest rate swap, cap or collar agreement, interest rate future or option contract, currency swap agreement, currency future or option contract, commodity agreement and other similar agreement or arrangement designed to protect against fluctuations in interest rates, currency values or commodity values. Any such Swap Agreement shall be in form and with a provider satisfactory to the Lender in its sole discretion.

"Tri-Party Agreement" shall mean the Tri-Party Agreement executed in connection with the Loan among the Franchisor, Borrower and Lender.

"Unit" shall mean any factory unit or donut and coffee shop unit upon which Lender shall have a lien or security interest pursuant to the Loan Documents.

"Unused Portion" shall mean during any period throughout the Loan term, the average daily amount of unused portion of the Revolving Loan Commitment.

"Unused Portion Fee" shall mean a fee payable by Borrower to Lender for the Revolving Loans for the period commencing on the Effective Date and continuing through the Commitment Termination Date, computed on the Unused Portion during the period for which payment is made at the rate per annum equal to the Applicable Fee Percentage (as determined in accordance with subsection (B) of Section 2.7 of this Agreement).

SCHEDULE 3.01

CONDITIONS PRECEDENT TO ADVANCES

I. ALL ADVANCES

A. Execution and Delivery of the Principal Credit Documents.

- ✓ (1) The Loan Agreement, duly executed by Borrower or a reaffirmation agreement if the Loan Agreement has been previously executed;
- (2) The Notes payable to Lender, duly executed by Borrower;
- (3) The Security Agreement, duly executed by Borrower;
- (4) The Guaranty, duly executed by each Guarantor;
- (5) The Mortgages, duly executed by Borrower;
- (6) Lessor Estoppels;
- (7) UCC-1 Financing Statements (state and local filings);
- (8) Environmental Indemnity;
- (9) International Swap Dealers Association Agreement;
- (10) Assignment of License Agreement;
- (11) Assignment of Franchise Agreements (if required);
- (12) Collateral Assignment of Lease;
- (13) Mortgagor's Affidavit;
- (14) Cross Collateral and Cross Default Agreement; and
- (15) Tri-Party Agreement.

B. Delivery of Corporate/Partnership/Limited Liability Documents.

- (1) The Articles or Certificate of Organization and Operating Agreement of Borrower, certified as of a recent date prior to the Closing Date by the Secretary of State of California and Delaware;
- (2) A Certificate of Good Standing or comparable certificate for Borrower, certified as of a recent date prior to the Closing Date by the Secretary of State of California and Delaware;
- (3) A certificate of the Managing Member of Borrower, dated the Closing Date, certifying (a) that the Certificate of Organization of Borrower, in the form certified by the Secretary of State of California and Delaware and delivered to Lender pursuant to item B(1) hereof, is in full force and effect and has not been amended, supplemented, revoked or repealed since the date of such certification; (b) that attached thereto is a true and correct copy of the Operating Agreement of Borrower as in effect on the Closing Date; (c) that attached thereto are true and correct copies of resolutions duly adopted by the Members of Borrower and continuing in effect, which authorize the

execution, delivery and performance by Borrower of this Agreement and the other Credit Documents executed or to be executed by Borrower and the consummation of the transactions contemplated hereby and thereby; and (d) that there are no proceedings for the dissolution or liquidation of Borrower (commenced or threatened); and

(4) A certificate of the Managing Member of Borrower, dated the Closing Date, certifying the incumbency, signatures and authority of the members of Borrower authorized to execute, deliver and perform this Agreement and the other applicable Loan Documents on behalf of Borrower.

C. Other Items.

(1) A favorable written opinion of counsel for Borrower and each Guarantor, dated the Closing Date and addressed to Lender, in form and substance acceptable to Lender and Lender's counsel. (Lender may require supplements to such opinion and/or additional opinions upon acquisition by Borrower of additional Units).

(2) Payment to Lender of the Revolving Loan Commitment Fee and the Term Loan Fee;

(3) Payment to Lender of the fees and expenses of Lender's counsel;

(4) Policies or certificates of insurance evidencing the compliance of the Borrower with the provisions of this Agreement relating to insurance.

II. CONDITIONS PRECEDENT TO ADVANCES UNDER THE DEVELOPMENT REVOLVER

A. Insurance. A certificate or policy of builder's risk insurance naming Lender as mortgagee/additional insured;

B. Contracts. Copies of purchase contract or lease for the subject Property or Unit;

C. Permits. Copies of all development/building permits relating to the Property or Unit.

III. OTHER CONDITIONS PRECEDENT AS MAY BE REQUIRED BY LENDER

A. Title. A policy (or a binding and enforceable commitment therefor conditional only upon advance of the funds and without condition regarding payment of premium) of mortgage title insurance with respect to each Property, on the ALTA standard loan policy, revised coverage, most recent form, and dated no earlier than the Closing Date. Such title insurance policy or commitment and all reinsurance agreements shall be satisfactory in form and substance to Lender. Such insurance policy shall insure Lender of a valid first mortgage lien of each Property against loss in an amount not less than the aggregate original principal amount of the Notes, contain no exceptions other than Permitted Liens that are satisfactory to Lender and shall contain such endorsements and affirmative coverages as may be reasonably required by Lender;

B. Survey. An ALTA Survey of each Property satisfactory in form and substance to Lender.

C. Environmental.

1. Environmental Report of each Property;

2. An environmental questionnaire completed by Borrower. If any such elicited information reveals the need for additional review, then Borrower shall have obtained any environmental assessments as are required by Lender and any remediation recommended therein to be performed shall have been performed to Lender's satisfaction;

D. Subordination of Franchise Agreement from Franchisor (if required);

E. A development budget, draw schedule, and/or holdback agreement;

F. Final financial report;

G. Zoning letters;

H. Copy of business licenses.

I. Such other evidence as Lender may reasonably request to establish the accuracy and completeness of the representations and warranties and the compliance with the terms and conditions contained in this Agreement and the other Loan Documents.

SCHEDULE 4.01(f)

LITIGATION

None.

SCHEDULE 4.01(j)

LEASES

1. Shopping Center Lease dated September 13, 1999 by and between Best California Gas, Ltd. ("Landlord") and GCFF-Canoga, LLC ("Tenant") for property commonly known as 6841 Topanga Canyon Boulevard, Canoga Park 91303.
2. Ground Sublease dated June 24, 2002 by and between Arena Group 2000 L.P. ("Landlord") and GCFF-San Diego, LLC ("Tenant") for property commonly known as 3570 Sports Arena Boulevard, San Deigo, California 92110.
3. Ground Lease Agreement dated September 18, 2001 by and between Macerich Cerritos, LLC ("Landlord") and GCFF-Canoga, LLC ("Tenant") for property commonly known as 18605 Gridley Road, Cerritos, California 90703.
4. Shopping Center Ground Lease dated November 17, 1999 by and between McGaelic Group ("Landlord") and GCFF-Ventura, LLC ("Tenant") for property commonly known as 2040 Rose Avenue, Oxnard, California 93030.
5. Commercial Center Ground Lease dated June 4, 2001 by and between ZRP Burbank, LLC ("Landlord") and GCFF-Canoga, LLC ("Tenant") for property commonly known as 1521 N. Victory Place, Burbank, California 91504.
6. Shopping Center Lease dated August 12, 1998 by and between M&H Realty Partners L.P. ("Landlord") and Great Circle Family Foods, LLC ("Tenant") for property located at 1801 W. Imperial Highway, La Habra, California 90631.
7. Ground Lease dated December 16, 1998 by and between Ontario Mills Residual Limited Partnership ("Landlord") and Great Circle Family Foods, L.L.C. ("Tenant") for property located at 4485 Mills Circle Road, Ontario, California 91764.
8. Memorandum of Lease dated April 27, 2000 by and between Orange City Mills Limited Partnership ("Landlord") and GCFF-Orange, LLC ("Tenant") for property located at 330 City Drive South, Orange, California 92868.
9. Shopping Center Lease dated February 8, 1999 by and between 2911 Florence LLC ("Landlord") and Great Circle Family Foods, LLC ("Tenant") for property located at 2931 Florence Avenue, Huntington Park, California 90241.
10. Standard Industrial/Commercial Single-Tenant Lease dated September 3, 1999 by and between Regentview Partners ("Landlord") and Great Circle Family Foods, LLC ("Tenant") for property located at 9858 Firestone Boulevard, Downey, California 90241.

SCHEDULE 5.01(h)

USE OF PROCEEDS

Borrower shall use the proceeds of the Loan for the following business purposes(s):

Development of one or more Units

Remodel or upgrades to existing Unit(s)

Acquisition of one or more Units from another franchisee or Franchisor

Refinance existing debt

Working capital for Unit operations

Other:

EXHIBIT "A"

REVOLVING NOTE

\$ _____, 2002

Atlanta, Georgia

For value received, **Great Circle Family Foods, LLC**, a California limited liability company; **GCFF-Canoga, LLC**, a Delaware limited liability company; **GCFF-Huntington Park, LLC**, a Delaware limited liability company; **GCFF-Ontario, LLC**, a Delaware limited liability company; **GCFF-Orange, LLC**, a Delaware limited liability company; **GCFF-San Diego, LLC**, a Delaware limited liability company; and **GCFF-Ventura, LLC**, a Delaware limited liability company (collectively "Borrower") hereby promise to pay to the order of **BANK OF AMERICA, N.A.**, or its assigns ("Lender"), at Lender's Principal Office located at 600 Peachtree Street NE, Atlanta, Georgia 30308-2214, in lawful money of the United States and in immediately available funds, the principal amount of _____ MILLION AND NO/100 DOLLARS (\$ _____) or (if less) the aggregate unpaid principal amount of all Revolving Loan advances that Lender has made to Borrower, on the Commitment Termination Date (as such term is defined in the Loan Agreement referenced below), and to pay interest (computed on the basis of a year of 360 days for the actual number of days elapsed) from the date of this Note on the unpaid principal amount of this Note, in like money, at that Principal Office, at the Floating Rate from time to time in effect in accordance with the terms of that certain Revolving Credit and Term Loan Agreement dated as of _____, 2002, (as hereafter amended, modified or supplemented, the "Loan Agreement") in strict accordance with the terms thereof. Any amount of principal hereof which is not paid when due, whether at stated maturity, by acceleration, or otherwise, shall bear interest from the date when due until it is paid in full, payable on demand, at a rate per annum set according to the terms of the Loan Agreement.

Borrower hereby consents to Lender's maintenance of records of (x) all Advances made by Lender to Borrower, (y) all payments made by Borrower on Advances, and (z) all other appropriate debits and credits as provided in the Loan Agreement and this Note. However, Lender's failure to make such an entry with respect to any Advance or payment or other debit or credit shall not limit or otherwise affect Borrower's obligations under the Loan Agreement or this Note.

Borrower shall make all payments hereunder in lawful money of the United States and in same day or immediately available funds. If any payment is to be made on a day other than a Business Day, such payment shall instead be made on the following Business Day, and such extension of time shall be included in computing the interest payable.

This Note is hereby expressly limited in that in no event shall the interest payable under this Note exceed the highest lawful rate as applicable to Borrower. If for any reason whatsoever, the provision of any Loan Document, at the time performance of such provision occurs, involves the payment of interest in excess of that permitted by law, and if, under any circumstances, Lender receives as interest any amount which would exceed the highest lawful rate applicable to Borrower, such amount which would be excessive interest shall be applied to reduce the unpaid principal balance and not the payment of interest.

This Note is a "Revolving Note" as defined in the Loan Agreement. Terms used in this Note that are defined in the Loan Agreement have the same meanings as in the Loan Agreement. The Loan Agreement contains provisions for acceleration of the maturity of this Note upon the happening of certain events and also for full or partial repayments on account of principal of this Note before it is scheduled to mature. This Note is secured by the Loan Agreement, which describes the Collateral provided and the rights of Borrower and Lender with respect to that Collateral.

This Note, the Loan Agreement and the other Loan Documents are not subject to any valid right of rescission, set-off, abatement, diminution, counterclaim or defense as against Lender, including the defense of usury, and the operation of any of the terms of the loan, or the exercise of any right thereunder, will not render the Loan unenforceable, in whole or in part, or subject to any right of rescission, set-off, abatement, diminution, counterclaim or defense, including the defense of usury, and Lender has not taken any action which would give rise to the assertion of any of the foregoing and no such right of rescission, set-off, abatement, diminution, counterclaim or defense, including the defense of usury, has been asserted with respect thereto.

Should the indebtedness represented by this Note or any part hereof be collected at law or in equity or in bankruptcy, receivership or other court proceeding, or should this Note be placed in the hands of attorneys for collection after default, the Borrower agrees to pay, in addition to the principal, interest due and payable hereon and any other sums due and payable hereon, all reasonable costs of collecting or attempting to collect this Note, including reasonable attorneys' fees and expenses (including those incurred in connection with any appeal).

Borrower and all endorsers and guarantors of this Note hereby waive presentment, demand, notice, protest, stay of execution, and all other defenses to payment generally, assent to the terms hereof, and agree that any renewal, extension, or postponement of the time for payment or any other indulgence or any substitution, exchange, or release of collateral or the additional release of any person or entity primarily or secondarily liable, may be affected without notice to and without releasing Borrower, any endorser or any guarantor from any liability hereunder or under any related guaranty.

This Note shall be governed by the laws of the State of Georgia.

TIME IS OF THE ESSENCE OF THIS NOTE.

The obligation of each Borrower under this Note shall be joint and several.

BORROWER:

Great Circle Family Foods, LLC, a California limited liability company

By: Richard S. Ferner
Title: CEO

GCFF-Canoga, LLC, a Delaware limited liability company

By: Richard S. Ferner, CEO Great Circle Family Foods, LLC
Title: Managing Member

GCFF-Huntington Park, LLC, a Delaware limited liability company

By: Richard S. Ferner, CEO Great Circle Family Foods, LLC
Title: Managing Member

GCFF-Ontario, LLC, a Delaware limited liability company

By: Richard S. Ferner, CEO Great Circle Family Foods, LLC
Title: Managing Member

GCFF-Orange, LLC, a Delaware limited liability company

By: Richard S. Ferner, CEO Great Circle Family Foods, LLC
Title: Managing Member

GCFF-San Diego, LLC, a Delaware limited liability company

By: Richard S. Ferner, CEO Great Circle Family Foods, LLC
Title: Managing Member

GCFF-Ventura, LLC, a Delaware limited liability company

By: Richard S. Ferner, CEO Great Circle Family Foods, LLC
Title: Managing Member

EXHIBIT "B"

TERM NOTE

\$13,500,000

_____, 2002

FOR VALUE RECEIVED, **Great Circle Family Foods, LLC**, a California limited liability company; **GCFF-Canoga, LLC**, a Delaware limited liability company; **GCFF-Huntington Park, LLC**, a Delaware limited liability company; **GCFF-Ontario, LLC**, a Delaware limited liability company; **GCFF-Orange, LLC**, a Delaware limited liability company; **GCFF-San Diego, LLC**, a Delaware limited liability company; and **GCFF-Ventura, LLC**, a Delaware limited liability company (collectively "Borrower") hereby promise to pay to the order of BANK OF AMERICA, N.A., or its assigns ("Lender"), at Lender's Principal Office located at 600 Peachtree Street NE, Atlanta, Georgia 30308-2214, in lawful money of the United States and in immediately available funds, the principal sum of THIRTEEN MILLION FIVE HUNDRED THOUSAND AND NO/100TH DOLLARS (\$13,500,000.00) and all other amounts advanced by Lender to or on behalf of Borrower pursuant to the Loan Agreement (as hereinafter defined) or any other Loan Document, and interest thereon from the date hereof until the maturity hereof, at the Floating Rate from time to time in effect in accordance with the terms of the Loan Agreement (hereinafter defined) until converted to an Effective Fixed Rate Loan in accordance with the terms and conditions of the Loan Agreement. All computations of interest shall be based upon a 360-day year on the actual number of days elapsed in such month.

From the date hereof, though the Final Term Loan Advance Date (as defined in the Loan Agreement) accrued interest only shall be due and payable monthly on the first day of each month. Beginning on the first day of the second calendar month following the Final Term Loan Advance Date, Borrower shall pay to Lender combined monthly principal and interest payment installments in accordance with the amortization schedule attached hereto as Schedule I and by this reference made a part hereof. The payments shall continue without interruption on the first day of each calendar month thereafter (a "Loan Installment Date") through _____, 2007 (the "Loan Maturity Date"). The total term of this loan is sixty (60) months. Notwithstanding the foregoing, all amounts due, owing and unpaid under the Loan Documents as defined in the Loan Agreement (described below) shall be paid on the Loan Maturity Date.

Borrower shall make all payments hereunder in lawful money of the United States and in same day or immediately available funds. If any payment is to be made on a day other than a Business Day, such payment shall instead be made on the following Business Day, and such extension of time shall be included in computing the interest payable.

This Note is the "Term Note" referred to in the Revolving Credit and Loan Agreement, dated as of _____, 2002, between Borrower and Lender (together with all supplements and amendments thereto, the "Loan Agreement") which is incorporated herein by reference and is subject to the provisions of and entitled to the benefits of the Loan Agreement, including, without limitation, the provisions regarding the interest rate, Default Rate, and principal payments; restrictions on and requirements for prepayment; and rights of acceleration. This Note also is subject to, secured by, and has the benefit of the other Loan Documents. Terms used herein have the meanings assigned to those terms in the Loan Agreement, unless otherwise defined herein.

This Note is hereby expressly limited in that in no event shall the interest payable under this Note exceed the highest lawful rate as applicable to Borrower. If for any reason whatsoever, the provision of any Loan Document, at the time performance of such provision occurs, involves the payment of interest in excess of that permitted by law, and if, under any circumstances, Lender receives as interest any amount which would exceed the highest lawful rate applicable to Borrower, such amount which would be excessive interest shall be applied to reduce the unpaid principal balance and not the payment of interest.

This Note, the Loan Agreement and the other Loan Documents are not subject to any valid right of rescission, set-off, abatement, diminution, counterclaim or defense as against Lender, including the defense of usury,

and the operation of any of the terms of the loan, or the exercise of any right thereunder, will not render the Loan unenforceable, in whole or in part, or subject to any right of rescission, set-off, abatement, diminution, counterclaim or defense, including the defense of usury, and Lender has not taken any action which would give rise to the assertion of any of the foregoing and no such right of rescission, set-off, abatement, diminution, counterclaim or defense, including the defense of usury, has been asserted with respect thereto.

Should the indebtedness represented by this Note or any part hereof be collected at law or in equity or in bankruptcy, receivership or other court proceeding, or should this Note be placed in the hands of attorneys for collection after default, the Borrower agrees to pay, in addition to the principal, interest due and payable hereon and any other sums due and payable hereon, all costs of collecting or attempting to collect this Note, including reasonable attorneys' fees and expenses (including those incurred in connection with any appeal).

Borrower and all endorsers and guarantors of this Note hereby waive presentment, demand, notice, protest, stay of execution, and all other defenses to payment generally, assent to the terms hereof, and agree that any renewal, extension, or postponement of the time for payment or any other indulgence or any substitution, exchange, or release of collateral or the additional release of any person or entity primarily or secondarily liable, may be affected without notice to and without releasing Borrower, any endorser or any guarantor from any liability hereunder or under any related guaranty.

This Note shall be governed by the laws of the State of Georgia.

TIME IS OF THE ESSENCE OF THIS NOTE.

IN WITNESS WHEREOF, the undersigned has executed and delivered this Note as of the date and year first above written.

BORROWER:

Great Circle Family Foods, LLC, a California limited liability company

By: Richard G. Reinis
Name: Richard G. Reinis
Title: CEO

GCFF-Canoga, LLC, a Delaware limited liability company

By: Richard G. Reinis, CEO
Name: Great Circle Family Foods, LLC
Title: Mng. Member

GCFF-Huntington Park, LLC, a Delaware limited liability company

By: Richard G. Reinis, CEO
Name: Great Circle Family Foods, LLC
Title: Mng. Member

GCFF-Ontario, LLC, a Delaware limited liability company

By: Richard G. Reinis, CEO
Name: Great Circle Family Foods, LLC
Title: Mng. Member

GCFF-Orange, LLC, a Delaware limited liability company

By: Richard G. Reinis, CEO
Name: Great Circle Family Foods, LLC
Title: Mng. Member

GCFF-San Diego, LLC, a Delaware limited liability company

By: Richard G. Reinis, CEO
Name: Great Circle Family Foods, LLC
Title: Mng. Member

GCFF-Ventura, LLC, a Delaware limited liability company

By: Richard G. Reinis, CEO
Name: Great Circle Family Foods, LLC
Title: Mng. Member

BANK OF AMERICA, N.A.

CROSS-COLLATERAL AND CROSS-DEFAULT AGREEMENT

GREAT CIRCLE FAMILY FOODS, LLC, a California limited liability company, **GCFF-CANOGA, LLC**, a Delaware limited liability company, **GCFF-HUNTINGTON PARK, LLC**, a Delaware limited liability company, **GCFF-ONTARIO, LLC**, a Delaware limited liability company, **GCFF-ORANGE, LLC**, a Delaware limited liability company, **GCFF-SAN DIEGO, LLC**, a Delaware limited liability company, and **GCFF-VENTURA, LLC**, a Delaware limited liability company (collectively hereinafter "Borrower") and **RICHARD G. REINIS and ROGER E. GLICKMAN** ("Guarantors") have heretofore and contemporaneously herewith executed various promissory notes, loan agreements, security agreements, deeds of trust, mortgage and security agreements, collateral assignments, guaranty agreements, UCC financing statements and other security instruments, and may execute in the future further and additional promissory notes, loan agreements, security agreements, deeds of trust, mortgage and security agreements, UCC financing statements, collateral assignments, guaranty agreements and other security instruments, creating, evidencing and securing certain liabilities, obligations, and indebtednesses owing and to become owing to **BANK OF AMERICA, N.A.** (hereinafter "BOA"). All such indebtednesses now or hereafter owing from Borrower and/or Guarantors to BOA, howsoever evidenced and acquired are hereinafter referred to collectively as "Obligations" and all such instruments creating, evidencing and securing the repayment thereof are hereinafter referred to collectively as "Security Instruments".

As an inducement to, and in consideration of, BOA's agreement to make a loan or loans to Borrower of even date herewith from Borrower in accordance with a Revolving Credit and Term Loan Agreement, to be secured by, among other documents, a mortgage and security agreement, a security agreement and assignment of lease, covering certain collateral described more fully therein and to grant other financial accommodations to Borrower, BOA has required that all Obligations owing and to become owing to it including, without limitation the promissory notes referred to herein, and all collateral now or hereafter existing as security for Obligations be cross-defaulted and cross-collateralized.

NOW, THEREFORE, for and in consideration of the premises and \$10.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower and Guarantors do hereby covenant, stipulate and agree in favor of BOA, its legal representatives, successors and assigns that:

1. Any default or event of default under any of Obligations or any renewal, extension, modification or rearrangement thereof, any Security Instruments or any renewal, extension, modification or rearrangement thereof, or any other instrument hereafter executed by or on behalf of Borrower or Guarantors relating to Obligations in favor of or held by BOA, whenever or however acquired, shall at BOA's option, be deemed to be a default and event of default under any and all other Security Instruments to the same extent and effect as if such Security Instruments specifically so provided therein.
2. All property and other collateral mortgaged, assigned, pledged, or in which a security interest has been granted to BOA for any of Obligations shall serve as security and collateral for all other Obligations of Borrower and Guarantors to BOA, to the same extent and effect as if so provided in the original documentation evidencing and/or securing each such Obligation.
3. The security interest in any and all property and other collateral mortgaged, assigned, pledged, or in which a security interest has been granted to BOA for any of Obligations shall not be terminated in whole or in part until and unless all Obligations are fully paid and satisfied and the terms of every Security Instrument has been fully performed by Borrower and Guarantors. It is further agreed that any and all security interests in all property covered by the Security Instruments are to be retained, notwithstanding the fact that a portion of Obligations may become fully paid.
4. All rights granted to BOA hereunder shall be cumulative and not alternative, shall be in addition to and shall in no manner impair or affect BOA's rights and remedies under any existing Security Instruments, statute or rule of law.

This agreement may not be varied or altered nor its provisions waived except by Bank of America, N.A.'s duly executed written agreement. This agreement shall inure to the benefit of Bank of America, N.A.'s successors and assigns and shall be binding upon the undersigned's heirs, administrators, executors, legal representatives, successors and assigns.

(Signatures begin on following page)

IN WITNESS WHEREOF, this agreement is executed this ____ day of August, 2002.

BORROWER:

GREAT CIRCLE FAMILY FOODS, LLC, a California limited liability company

By: Richard G. Reinis
Name: Richard G. Reinis
Title: CEO

GUARANTORS:

Richard G. Reinis (SEAL)
Richard G. Reinis

Roger E. Glickman (SEAL)
Roger E. Glickman

GCFF-CANOGA, LLC, a Delaware limited liability company

By: Richard G. Reinis, CEO
Name: Great Circle Family Foods, LLC
Title: Managing Member

GCFF-HUNTINGTON PARK, LLC, a Delaware limited liability company

By: Richard G. Reinis, CEO
Name: Great Circle Family Foods, LLC
Title: Managing Member

GCFF-ONTARIO, LLC, a Delaware limited liability company

By: Richard G. Reinis, CEO
Name: Great Circle Family Foods, LLC
Title: Managing Member

GCFF-ORANGE, LLC, a Delaware limited liability company

By: Richard G. Reinis, CEO
Name: Great Circle Family Foods, LLC
Title: Managing Member

GCFF-SAN DIEGO, LLC, a Delaware limited liability company

By: Richard G. Reinis, CEO
Name: Great Circle Family Foods, LLC
Title: Managing Member

GCFF-VENTURA, LLC, a Delaware limited liability company

By: Richard G. Reinis, CEO
Name: Great Circle Family Foods, LLC
Title: Managing Member

This instrument was prepared by
and, when recorded, should be returned to:
Morris, Manning & Martin, LLP
1600 Atlanta Financial Center
3343 Peachtree Road
Atlanta, GA 30326
Attn: Frederick C. C. Boyd, III, Esq.

Unit:
Unit No. 998
3570 Sports Arena Boulevard
San Diego, San Diego County,
California 92110

LEASEHOLD DEED OF TRUST,
ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING

dated as of September ____, 2002

from

GCFF-SAN DIEGO, LLC,
a Delaware limited liability company,
as Trustor,

to

FIRST AMERICAN TITLE,
as Trustee,

for the benefit of

BANK OF AMERICA, N.A.,
a national banking association,
as Beneficiary

Premises: 3570 Sports Arena Boulevard, San Diego, San Diego County, California 92110
Assessors Parcel Number: _____

**LEASEHOLD DEED OF TRUST,
ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING**

THIS LEASEHOLD DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING (herein called this "Deed of Trust") dated as of September _____, 2002, is executed by **GCFE-SAN DIEGO, LLC**, a Delaware limited liability company, as the trustor (herein, together with its successors and assigns, called "Trustor"), with a mailing address at 550 South Hope Street, 20th Floor, Los Angeles, California 90027, to **FIRST AMERICAN TITLE**, with a mailing address of 3625 Fourteenth Street, Riverside, California 92501, as the trustee (herein, together with its successors and assigns, called "Trustee"), for the benefit of **BANK OF AMERICA, N.A.**, a national banking association, as the beneficiary (herein, together with its successors and assigns, called "Beneficiary"), with a mailing address at GA1-006-13-20, 600 Peachtree Street, NE, Atlanta, Georgia 30308-2214.

RECITALS:

A. Loan Agreement. Reference is hereby made to that certain Revolving Credit and Term Loan Agreement (the "Loan Agreement") dated as of the date hereof by and between Trustor, as borrower, and Beneficiary, as lender. Pursuant to the Loan Agreement, Beneficiary has agreed to loan certain funds to Trustor (the "Loan") and Trustor has executed and delivered to Beneficiary that certain Note or Notes evidencing Trustor's obligation to repay the Loan (collectively, the "Note").

B. Secured Obligations. The obligations secured by this Deed of Trust (the "Obligations") are comprised at any time of the following:

(i) the full and punctual payment by Trustor when due of (a) all principal of and interest on the Loan and the Note; and (b) all other amounts payable by Trustor pursuant to the Loan Agreement, the Note or any other document or instrument evidencing or securing the Loan (together with the Loan Agreement, the Note and this Deed of Trust, the "Loan Documents" or individually a "Loan Document");;

(ii) the full and punctual payment when due of all amounts payable by Trustor under this Deed of Trust, including, without limitation, indemnification obligations and advances made pursuant to the Loan Documents;

(iii) the performance and observance by Trustor of each other term, covenant, agreement, requirement, condition and other provision to be performed or observed by Trustor under any Loan Document; and

(iv) the performance and observance by Trustor of each other term, covenant, agreement, requirement, condition and other provision to be performed or observed by Trustor under all amendments, supplements, consolidations, replacements, renewals, extensions or other modifications of the foregoing, in each case whether now existing or hereafter arising

The Obligations shall include, without limitation, any interest, costs, fees and expenses which accrue on or with respect to any of the foregoing, whether before or after the commencement of any case, proceeding or other action relating to the bankruptcy, insolvency or reorganization of Trustor.

GRANTING CLAUSES

NOW THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, for the purpose of securing the due and punctual payment, performance and observance of the Obligations and intending to be bound hereby, Trustor hereby grants, conveys, mortgages, transfers and assigns to Trustee in trust, for the benefit of Beneficiary or to Beneficiary as expressly set forth below, subjected to the Permitted Liens, and for the purpose and upon the terms and conditions

hereinafter set forth, with power of sale and right of entry and possession, all of the property and rights described in the following Granting Clauses (all of which property and rights are herein collectively called the "Mortgaged Property"), to wit:

GRANTING CLAUSE I.

Land. All estate, right, title and interest of Trustor in, to, under or derived from those certain lots, pieces, tracts or parcels of land located in certain cities and/or counties in the State of California, more particularly described in Exhibit A, Part I attached hereto and incorporated herein by this reference (the "Real Estate"; together with the Leasehold Estate, herein called the "Land").

Leasehold Estate. All estate, right, title and interest of Trustor in, to, under or derived from the lease described in Exhibit A, Part II (the "Site Lease") affecting the Real Estate (the "Leasehold Estate"); together with all amendments, supplements, consolidations, extensions, renewals and other modifications of the Site Lease now or hereafter entered into in accordance with the provisions thereof; together with all other, further, additional or greater estate, right, title or interest of Trustor in, to, under or derived from the Real Estate, the Leasehold Estate and the Improvements now or hereafter located thereon which may at any time be acquired by Trustor by the terms of the Site Lease by reason of the exercise of any option thereunder or otherwise.

GRANTING CLAUSE II.

Improvements. All right, title and interest of Trustor in, to, under or derived from all buildings, structures, facilities and other improvements of every kind and description now or hereafter located on the Land or attached to the improvements which by the nature of their location thereon or attachment thereto are real property under applicable law (the foregoing being collectively the "Improvements"; and the Land with the Improvements thereon and Equipment therein and Appurtenant Rights thereto being collectively called the "Premises").

GRANTING CLAUSE III.

Equipment. All estate, right, title and interest of Trustor in, to, under or derived from all machinery, equipment, fixtures and accessions thereof and renewals, replacements thereof and substitutions therefor, and all other customary franchise fast food restaurant equipment and other tangible property of every kind and nature whatsoever owned by Trustor, or in which Trustor has or shall have an interest, now or hereafter located upon the Land, or usable exclusively in connection with the present or future operation and occupancy of the Land or the Improvements (hereinafter collectively called the "Equipment").

GRANTING CLAUSE IV.

Appurtenant Rights. All estate, right, title and interest of Trustor in, to, under or derived from all tenements, hereditaments and appurtenances now or hereafter relating to the Premises; all development, operating or similar rights appurtenant to the Land (including, without limitation, all rights arising from reciprocal access agreements, use or development agreements, and parking agreements); and all easements, licenses and rights of way now or hereafter appertaining to the Premises (hereinafter collectively called "Appurtenant Rights").

GRANTING CLAUSE V.

General Intangibles, Payment Rights and Agreements. All estate, right, title and interest of Trustor in, to, under or derived from all contract rights, chattel paper, instruments, general intangibles, accounts, guaranties and warranties, letters of credit, and documents, in each case relating to the Premises or to the present or future operation or occupancy of the Premises, and all plans, specifications, maps, surveys, studies, records, insurance policies, guarantees and warranties, all relating to the Premises or to the present or future operation or occupancy of the Premises, all management contracts, all supply and service contracts for water, sanitary and storm sewer, drainage, electricity, steam, gas, telephone and other utilities relating to the Premises (the foregoing being herein

collectively called the "Agreements") and all other agreements affecting or relating to the use, enjoyment or occupancy of the Land or the Equipment.

GRANTING CLAUSE VI.

Leases. All estate, right, title and interest of Trustor in, to, under and derived from any lease, tenancy, subtenancy, license, concession or other occupancy agreement relating to the Premises (together with all amendments, supplements, consolidations, replacements, restatements, extensions, renewals and other modifications of any thereof) (the "Leases"), other than the Site Lease assigned under Granting Clause I, now or hereafter in effect, whether or not of record; and the right to bring actions and proceedings under the Lease or for the enforcement thereof and to do anything which Trustor or any lessor is or may become entitled to do under the Lease.

GRANTING CLAUSE VII.

Rents, Issues and Profits. All estate, right, title and interest of Trustor in, to, under or derived from all rents, royalties, issues, profits, receipts, revenue, income, earnings and other benefits now or hereafter accruing with respect to all or any portion of the Premises, including all rents and other sums now or hereafter payable pursuant to the Leases; and all other claims, rights and remedies now or hereafter belonging or accruing with respect to the Premises, including oil, gas and mineral royalties (herein collectively called the "Rents"), all of which Trustor hereby irrevocably directs be paid to Beneficiary, subject to the license granted to Trustor pursuant to Section 5.7, to be held, applied and disbursed as provided in this Deed of Trust.

GRANTING CLAUSE VIII.

Permits. All estate, right, title and interest of Trustor in, to, under or derived from all licenses, certificates, variances, consents and other permits now or hereafter pertaining to the Premises and all estate, right, title and interest of Trustor in, to, under or derived from all tradenames or business names relating to the Premises or the present or future operation or occupancy of the Premises (herein collectively called the "Permits"), excluding, however, from the grant under this Granting Clause (but not the definition of the term "Permits" for the other purposes hereof) any Permits which cannot be transferred or encumbered by Trustor without causing a default thereunder or a termination thereof.

GRANTING CLAUSE IX.

Proceeds and Awards. All estate, right, title and interest of Trustor in, to, under or derived from all proceeds of any sale, transfer, taking by Condemnation (or any proceeding or purchase in lieu thereof), whether voluntary or involuntary, of any of the Mortgaged Property described above, including all Insurance Proceeds and awards and title insurance proceeds, now or hereafter relating to any of the Mortgaged Property, all of which Trustor hereby irrevocably directs be paid to Beneficiary to the extent provided hereunder, to be held, applied and disbursed as provided in this Deed of Trust.

TO HAVE AND TO HOLD the Mortgaged Property unto Trustee, its successors and assigns, for the benefit of Beneficiary, its successors and assigns, under and subject to the terms and conditions of this Deed of Trust, and for the security and enforcement of the prompt and complete payment and performance when due of all of the Obligations and the performance and observance by Trustor of all covenants, obligations and conditions to be performed or observed by Trustor pursuant to the Loan Agreement, the Note, and the other Loan Documents.

PROVIDED, HOWEVER, that this Deed of Trust is upon the condition that, if Trustor shall pay in full all of the Obligations and perform and observe all such covenants, obligations and conditions, this Deed of Trust shall cease, terminate pursuant to and in accordance with Section 6.2 and, thereafter, be of no further force effect (except as provided in Sections 4.1, 4.2 and 5.6 hereof); otherwise this Deed of Trust shall remain and be in full force and effect.

FURTHER PROVIDED, that Trustee and Beneficiary may from time to time release or reconvey all or a portion of the Mortgaged Property, in accordance with the terms and conditions of the Loan Agreement and applicable law.

TRUSTOR ADDITIONALLY COVENANTS AND AGREES WITH TRUSTEE AND BENEFICIARY AS FOLLOWS:

ARTICLE I DEFINITIONS

Section 1.1 Definitions. Capitalized terms used, but not otherwise defined herein, are defined in, or by reference to the Loan Agreement and have the same meanings herein as therein.

ARTICLE II CERTAIN WARRANTIES AND COVENANTS OF TRUSTOR

Section 2.1 Authority and Effectiveness. (a) Trustor represents, warrants and covenants that (i) Trustor is and shall be a limited liability company duly organized, validly existing and in good standing under the laws of its state of incorporation or organization, and qualified to do business and in good standing in the state in which the Premises is located and has and will have all governmental licenses, authorizations, consents and other qualifications required to carry on its business as now conducted, to own the Mortgaged Property and to execute, deliver and perform this Deed of Trust; (ii) the execution, delivery and performance by Trustor of this Deed of Trust are within Trustor's limited liability company power, have been duly authorized by all necessary limited liability company action, require no action by or in respect of, or filing with, any governmental body, agency or official and do not and will not contravene, or constitute a default under, any provision of the organizational documents of Trustor or of any agreement, judgment, injunction, order, decree or other instrument binding upon Trustor or relating to the Premises; and (iii) this Deed of Trust constitutes a legal, valid, binding and enforceable agreement of Trustor.

(b) Trustor shall cause the representations and warranties in subsection (a) of this Section to continue to be true in each and every respect at all times prior to the termination of this Deed of Trust.

Section 2.2 Title and Further Assurances. (a) Trustor hereby represents and warrants to Beneficiary that:

(i) Trustor is the owner of a valid and subsisting leasehold interest in the Land and the Improvements and holds good and marketable title to the Improvements, the Equipment and the Mortgaged Property, free from all liens, security interests, Leases, charges or encumbrances whatsoever, except for such liens as are permitted under the Loan Agreement ("Permitted Liens");

(ii) Trustor has good and lawful right to mortgage the Mortgaged Property to Beneficiary without the consent of any Person other than those consents which have been obtained;

(iii) the lien created by this Deed of Trust constitutes a valid, binding and enforceable lien on the Mortgaged Property;

(iv) the Site Lease creates and constitutes in the tenant thereunder a valid and subsisting leasehold interest in the Leasehold Estate; the Site Lease has not been modified or amended, except as disclosed to Beneficiary in writing; there is no default under the Site Lease, all rents due have been paid in full; no action has commenced and is pending to terminate the Site Lease; and Trustor is the owner of the leasehold interest under the Site Lease and Trustor is the owner of the Improvements, in each case subject to the provisions of the Site Lease; and

(v) the Permitted Liens do not materially interfere with or materially adversely affect the use, value or operation of the Premises.

(b) Trustor shall (i) cause the representations and warranties in subsection (a) of this Section to continue to be true in each and every respect at all times prior to the termination of this Deed of Trust; and (ii) preserve, protect, warrant and defend (A) the estate, right, title and interest of Trustor in and to its Mortgaged Property (B) the validity, enforceability and priority of the lien of this Deed of Trust, and (C) the right, title and interest of Beneficiary and any purchaser at any sale of the Mortgaged Property hereunder or relating hereto.

(c) Upon full execution, acknowledgment and the recording of this Deed of Trust in the county recording office of the county in which the Land is located, the lien of this Deed of Trust shall be a perfected mortgage lien and fixture filing on the Mortgaged Property.

(d) Trustor shall perform all acts that may be necessary to continue, maintain, preserve, protect and perfect the Mortgaged Property, the lien granted to Beneficiary therein and the perfected priority of such lien. Upon request by Beneficiary, Trustor shall at its sole cost and expense (i) promptly correct any defect or error which may be discovered in this Deed of Trust or any financing statement or other document relating hereto; and (ii) promptly execute, acknowledge, deliver, record, and re-record, register and re-register, and file and re-file this Deed of Trust and any fixture filings, financing statements or other documents which Beneficiary may reasonably require from time to time (all in form and substance reasonably satisfactory to Beneficiary) in order (A) to effectuate, complete, perfect, continue or preserve the lien of this Deed of Trust on the Mortgaged Property, whether now owned or hereafter acquired, (B) to correct or change the name of Trustor following any change in its identity, sale of the Mortgaged Property, or (C) to effectuate, complete, perfect, continue or preserve any right, power or privilege granted or intended to be granted to Beneficiary hereunder.

Section 2.3 Secured Obligations. Trustor shall duly and punctually pay, perform and observe the Obligations binding upon Trustor.

Section 2.4 Impositions. Subject to Section 2.6 and Section 2.9, Trustor shall (i) duly and punctually pay all Impositions before any fine, penalty, interest or cost may be added for nonpayment; and (ii) promptly notify Beneficiary of the receipt by Trustor of any notice of default in the payment of any Imposition. The term "Impositions" means all taxes, assessments and other governmental charges, ground rents, or other rents, charges, excises, levies, fees and other charges (public or private) which may be assessed, levied or imposed on, or in respect of or be a lien upon the Mortgaged Property or any part thereof or any interest therein.

Section 2.5 Compliance with Legal and Insurance Requirements. (a) Trustor represents and warrants that (i) as of the date hereof, and to Borrower's actual knowledge, the Premises and the use and operation thereof comply in all material respects with all Legal Requirements (as defined below), Insurance Requirements (as defined below) and Contractual Obligations; (ii) to Borrower's actual knowledge, there is no material default under any Legal Requirement, Insurance Requirement and Contractual Obligation; and (iii) the execution, delivery and performance of this Deed of Trust does not require any consent the failure of which to obtain would contravene any provision of and constitute a material default under, any Legal Requirement, Insurance Requirement or Contractual Obligation. Notwithstanding the limitations set forth in the preceding sentence, Trustor represents and warrants that as of the date hereof, to Borrower's actual knowledge, the Premises and the use thereof comply with all Environmental Laws and that Trustor has complied and shall comply with all Environmental Laws.

(b) Subject to Section 2.6 and Section 2.9, Trustor shall promptly perform and observe, or cause to be performed and observed and cause the Premises to comply with, if the failure to so perform and observe would have a Material Adverse Effect, (i) all laws, rules, regulations, judgments, orders, permits, licenses, authorizations and other requirements of and agreements with all governments, department agencies, courts and officials, which now or hereafter shall be applicable to the Mortgaged Property or any part thereof or any use or condition thereof including, without limitation, all Environmental Laws (herein collectively called the "Legal Requirements"); (ii) all terms of any insurance policy covering or applicable to the Mortgaged Property or any part thereof as required by the Loan Agreement, all requirements of the issuer of any such policy, and all orders, rules,

regulations and other requirements of the National Board of Fire Underwriters (or any other body exercising similar functions) applicable to the Mortgaged Property or any part thereof or any use or condition thereof (herein collectively called the "Insurance Requirements"); and (iii) all Permits required for any construction, reconstruction, repair, alteration, addition, improvement, maintenance, use and operation of the Premises.

(c) Trustor shall promptly notify Beneficiary of the receipt by Trustor of any notice of default under any Legal Requirement, Insurance Requirement, Contractual Obligation or Permit or of the receipt by Trustor of any notice of any threatened or actual termination of any Permit or Insurance Policy, Franchise Agreement or Site Lease and furnish to Beneficiary a copy of such notice of default or termination.

Section 2.6 Impound and Security Account. At Beneficiary's option and upon its demand and except where and to the degree prohibited by law, Trustor shall, until all Obligations have been paid in full, pay to Beneficiary each month an amount estimated by Beneficiary to be equal to (i) the Impositions, (ii) all payments and premiums with respect to the Insurance Requirements, and (iii) all lease payments under the Site Lease next due. Estimated payments of Impositions, Insurance Requirements and Site Lease payments shall be calculated by dividing the amount next due by, in each instance, the number of months to lapse preceding the month in which the same, respectively, will become due. All sums so paid shall not bear interest, except to the extent and in the minimum amount required by law, and Beneficiary shall, unless Trustor is otherwise in default hereunder or under any obligation secured hereby, apply said funds to the payment of, or at the sole option of Beneficiary release said funds to Trustor for application to and payment of, such Impositions, Insurance Requirements and Site Lease payments. However, upon the occurrence of an Event of Default by Trustor hereunder or under any obligation secured hereby, Beneficiary may, at its sole option, apply all or any part of said sums to any Obligations or to advance sums to pay such Imposition, Insurance Requirement or Site Lease payment, which advance shall not cure Trustor's default hereunder.

Section 2.7 Sale; Liens. (a) Except as otherwise provided in the Loan Agreement, Trustor shall not sell, assign, transfer, convey, lease, mortgage, pledge, hypothecate, or permit to be sold, assigned, transferred, conveyed, leased, mortgaged, pledged, hypothecated or otherwise disposed of, the Mortgaged Property (other than Inventory sold in the normal course of business) or any part thereof or interest therein (for the purposes of this Section, a "Transfer"), and shall not create, suffer or permit to be created or exist any lien attaching to the Mortgaged Property or any part thereof or interest therein, except as permitted by the Loan Agreement. In the event of any Transfer or the creation, suffering, permitting to be created of any lien attaching to the Mortgaged Property or any part thereof, that is not expressly permitted hereunder or under the terms of the Loan Agreement and is without the prior written consent of Beneficiary, Beneficiary shall have the absolute right at its option, without prior demand or notice, to declare all of the Obligations immediately due and payable and pursue its rights and remedies under Article V. Consent to one such Transfer or lien shall not be deemed to be a waiver of the right to require the consent to future or successive Transfers or liens. Beneficiary shall have the right to grant or deny such consent in its absolute discretion. If consent should be given to a Transfer and if this Deed of Trust is not released to the extent of the Mortgaged Property transferred or subjected to a lien by a writing signed by Beneficiary and recorded in the proper city, town, county or parish records, then any such Transfer or lien shall be subject to this Deed of Trust and any such transferee shall assume all obligations hereunder and agree to be bound by all of the provisions contained hereunder.

(b) The Loan may be not assumed by a new borrower without the express written consent of Beneficiary, which consent may be withheld in Beneficiary's sole discretion.

Section 2.8 Status and Care of the Premises. (a) Trustor represents and warrants that (i) the Premises is served by all necessary water, sanitary and storm sewer, electric, gas, telephone and other utility facilities which facilities have capacities which are sufficient to serve the current and anticipated future use and occupancy of the Premises as presently constructed; (ii) the Premises has legal access to public streets or roads sufficient to serve the current and anticipated future use and operation of the Premises as presently constructed; (iii) to the extent that the Premises is located in an area identified by the Secretary of Housing and Urban Development or a successor thereto as an area having special flood hazards or as an area designated as "flood prone" or a "flood risk area" pursuant to the National Flood Insurance Act of 1968 or the Flood Disaster Protection Act of 1973, and

any amendments or supplements thereto or substitutions therefor, Trustor has purchased flood insurance to the extent available; and (iv) all activities and conditions on the Premises are currently in compliance with all Legal Requirements.

(b) Trustor (i) shall use and operate the Premises, or cause the same to be used and operated, pursuant to the terms and provisions of the Loan Agreement and a Franchise Agreement with Krispy Kreme Doughnut Corporation, a true and correct copy of which has been previously delivered to Beneficiary, and Trustor shall continue to operate the Premises as a Krispy Kreme Doughnut restaurant and shall not permit or suffer any default to occur under said Franchise Agreement; (ii) agrees that all activities on the Premises shall at all times comply with all Legal Requirements; (iii) shall operate and maintain the Premises, or cause the same to be operated and maintained, in good order, repair and condition except (subject to the provisions of this Section) for reasonable wear and tear; (iv) subject to the provisions of Section 3.2, shall promptly make, or cause to be made, all repairs, replacements, alterations, additions and improvements of and to the Premises necessary or appropriate to keep the Premises in good order, repair and condition; (v) shall not initiate or affirmatively support any change in the applicable zoning adversely affecting the Premises, seek any variance (or any change in any variance), under the zoning adversely affecting the Premises; and (vi) shall, promptly after receiving notice or obtaining knowledge of any proposed or threatened change in the zoning affecting the Premises which would result in the current use of the Premises being a non-conforming use, notify Beneficiary thereof and diligently contest the same at Trustor's expense by any action or proceeding deemed appropriate by Trustor or requested by Beneficiary.

Section 2.9 Permitted Contests. After prior notice to Beneficiary, Trustor may contest at Trustor's expense, by appropriate legal or other proceedings conducted in good faith and with due diligence, the amount, validity or application, in whole or in part, of any Imposition or lien therefor, any Legal Requirement, or any lien of any laborer, mechanic, materialman, supplier or vendor, provided that (a) the Mortgaged Property, or any part thereof or estate or interest therein, shall not be in any danger of being sold, forfeited or lost by reason of such proceedings; (b) in the case of (i) liens of laborers, mechanics, materialmen, suppliers or vendors or (ii) the Impositions, or liens therefor, such proceedings shall suspend the foreclosure of any such lien or any other collection thereof from the Mortgaged Property; (c) in the case of a Legal Requirement, Beneficiary shall not be in any danger of any criminal liability or, unless Trustor shall have furnished a bond or other security therefor reasonably satisfactory to Beneficiary, any additional civil liability for failure to comply therewith, and the Mortgaged Property, or any part thereof or estate or interest therein, shall not be subject to the imposition of any lien as a result of such failure which is not properly contested pursuant to this Section 2.9; and (d) if reasonably required by Beneficiary, Trustor shall have furnished to Beneficiary a bond or other security reasonably satisfactory to Beneficiary.

Section 2.10 Inspection. Beneficiary and its authorized agents and employees and any person designated by Beneficiary shall have the right to enter on and into the Premises at all reasonable times and, except in the event of an emergency, after reasonable notice for the purpose of inspecting the same, provided such inspection shall not unreasonably disturb business activities at the Premises.

Section 2.11 Compliance with Instruments. Trustor shall promptly perform and observe, or cause to be performed and observed, all of the terms, covenants and conditions of all other instruments affecting the Premises if the failure to so perform or observe would have a Material Adverse Effect and shall do or cause to be done all things necessary to preserve intact and unimpaired any and all easements, appurtenances and other interests and rights in favor of or constituting any portion of the Mortgaged Property if the failure so to do would have a Material Adverse Effect.

Section 2.12 Improvements. All improvements on the Land lie wholly within the boundary and building restriction lines of the Land and no improvements on adjoining properties encroach upon the Land in any respect so as to have a Material Adverse Effect on the use, operation or value of the Premises.

Section 2.13 Casualty; Condemnation. The Mortgaged Property is free of material damage and waste and, to Trustor's knowledge, there is no proceeding pending or threatened for the total or partial Condemnation thereof.

Section 2.14 Zoning and Other Laws. The Premises and the use thereof, separate and apart from any other properties, constitute a legal and conforming use in compliance with the zoning regulations for which the Premises is located. The Premises complies with all applicable subdivision laws, ordinances and regulations, such that failure to comply would not have a Material Adverse Effect. All inspections, licenses and certificates required, whether by law, ordinance, regulation or insurance standards, to be made or issued with respect to the Premises have been made by or issued by appropriate authorities, such that a failure to obtain such inspections, licenses or certificates would not have a Material Adverse Effect.

Section 2.15 Site Lease. (a) Trustor represents and warrants that (i) Exhibit A, Part II contains a description of the Site Lease; (ii) Trustor has furnished to Beneficiary a copy of the Site Lease certified as true and correct by Trustor; (iii) except as described in Exhibit A, Part II, the Site Lease has not been modified, assigned by Trustor or, to the knowledge of Trustor, assigned by the landlord thereunder; (iv) the Site Lease is in full force and effect and, to the knowledge of Trustor, there is no default, or existing condition which with the giving of notice or passage of time or both would cause a default under the Site Lease; and (v) the execution, delivery and performance of this Deed of Trust do not require any consent under, and will not contravene any provision of or cause a default under, the Site Lease.

(b) Trustor (i) shall duly and punctually pay, perform and observe (unless being paid pursuant to Section 2.6 or being contested pursuant to Section 2.9) all of its obligations under the Site Lease; (ii) shall do all things reasonably necessary or appropriate to enforce, preserve and keep unimpaired the rights of Trustor; (iii) shall not enter into any amendment or other agreement or take any other action or fail to take any action that would modify or terminate any rights or obligations of Trustor or of the landlord under the Site Lease or subordinate any right of Trustor under the Site Lease to any lien; (iv) shall notify Beneficiary in writing not later than ninety (90) days prior to the last date on which Trustor can exercise (A) any right to extend the term of the Site Lease or (B) any option to purchase or otherwise acquire the interest of the landlord under the Site Lease, of the existence of such right or option; (v) to the extent the current term of the Site Lease does not extend beyond the maturity date of the Loan, shall exercise (not later than thirty (30) days prior to the last date on which Trustor may timely do so) each right or option of Trustor under the Site Lease to extend the term thereof; (vi) shall notify Beneficiary (promptly after receipt or contemporaneously when given, as the case may be) of the receipt or giving by Trustor of any notice of default under, or any notice of the possible or actual termination of, the Site Lease, accompanied by a copy of such notice (the failure of Trustor to comply with this subclause (vi) shall constitute an Event of Default hereunder); and (vii) shall promptly notify Beneficiary, upon Trustor's acquisition of knowledge thereof, of the occurrence of any event or condition which with the passage of time or giving of notice would constitute a default under the Site Lease. [Add following language if current term of Site Lease does not extend beyond Loan term and if Site Lease provides options to extend the term or contains a purchase option: Beneficiary is hereby irrevocably appointed the true and lawful attorney of Trustor and any subsequent owner of the Premises to exercise, in its own name and stead or in the name of Trustor, each right or option of Trustor under the Site Lease to extend the term thereof or to purchase or otherwise acquire the interest of the landlord under the Site Lease, and for that purpose Beneficiary may execute all necessary documents and instruments to exercise each option and may substitute Persons with like power, Trustor or any subsequent owner of the Premises hereby ratifying and confirming all that their said attorney or such substitutes shall lawfully do by virtue hereof. Nevertheless, Trustor or any subsequent owner of the Premises, if so requested in writing by Beneficiary shall ratify and confirm the exercise of any such option by executing and delivering to Beneficiary or to such purchasers any instrument which, in the judgment of Beneficiary, is suitable or appropriate therefor. Trustor acknowledges (i) that this power of attorney is given to Beneficiary in consideration for Beneficiary's (A) making of the Loan and (B) not requiring Trustor to exercise the option to extend the term of the Site Lease or exercise any purchase option before the Closing Date, (ii) that it is reasonable for Beneficiary to require the leasehold term to extend beyond the maturity of the Note; (iii) that if any option is exercised by Beneficiary, Trustor agrees it is and shall remain solely liable with respect thereto as tenant under the Site Lease and releases Beneficiary from any and all liability with respect thereto or claims relating thereto.]

(c) So long as any portion of the Obligations shall remain unpaid, unless Beneficiary shall otherwise consent, the fee title to the Land and the leasehold estate therein created pursuant to the provisions of the Site Lease shall not merge but shall always be kept separate and distinct, notwithstanding the union of such estates

in Trustor, the owner, or in any other person by purchase, operation of law or otherwise. Beneficiary reserves the right, at any time, to release portions of the Mortgaged Property, including, but not limited to, the leasehold estate created by the Site Lease, with or without consideration, at Beneficiary's election, without waiving or affecting any of its rights hereunder or under the Loan Documents and any such release shall not affect Beneficiary's rights in connection with the portion of the Mortgaged Property not so released.

(d) So long as any portion of the Obligations remains unpaid, if Trustor shall become the owner and holder of the fee title to the Land, the lien of this Deed of Trust shall be spread to cover Trustor's fee title to the Land and said fee title shall be deemed to be included in the Mortgaged Property. Trustor agrees to execute any and all documents or instruments necessary to subject its fee title to the Land to the lien of this Deed of Trust, in form and substance satisfactory to Beneficiary.

(e) Trustor hereby unconditionally assigns, transfers and sets over to Beneficiary all of Trustor's claims and rights to the payment of damages arising from any rejection by the owner of the Site Lease under the Bankruptcy Code. Beneficiary shall have the right to proceed in its own name or in the name of Trustor in respect of any claim, suit, action or proceeding relating to the rejection of the Site Lease, including, without limitation, the right to file and prosecute, to the exclusion of Trustor, any proofs of claim, complaints, motions, applications, notices and other documents, in any case in respect of the owner under the Bankruptcy Code. Subject to the provisions of Section 6.15, this assignment constitutes a present, irrevocable and unconditional assignment of the foregoing claims, rights and remedies, and shall continue in effect until all of the Obligations shall have been satisfied and discharged in full. Any amounts received by Beneficiary as damages arising out of the rejection of the Site Lease as aforesaid shall be applied first to all costs and expenses of Beneficiary (including, without limitation, attorneys' fees and disbursements) incurred in connection with the exercise of any of its rights or remedies under this Section 2.15(e).

(f) Trustor shall not, without Beneficiary's prior written consent, elect to treat the Site Lease as terminated under Section 365(h)(1) of the Bankruptcy Code. Any such election made without Beneficiary's prior written consent shall be void.

(g) If pursuant to Section 365(h)(1) of the Bankruptcy Code, Trustor seeks to offset against the Rent reserved in the Site Lease the amount of any damages caused by the non-performance by the owner of any of the owner's obligations under the Site Lease after the rejection by the owner of the Site Lease under the Bankruptcy Code, Trustor shall, prior to effecting such offset, notify Beneficiary of its intention to do so, setting forth the amounts proposed to be so offset and the basis therefor. Beneficiary shall have the right, within (10) days after receipt of such notice from Trustor, to reasonably object to all or any part of such offset, and, in the event of such reasonable objection, Trustor shall not effect any offset of the amounts so objected to by Beneficiary for a period of thirty (30) days after Beneficiary has delivered its objection notice to Trustor during which time Beneficiary shall have the right to bring its objections to the attention of any court supervising the bankruptcy of the owner of the Site Lease and both Beneficiary and Trustor agree to abide by the decision of any such court. If (A) Beneficiary has failed to object as aforesaid within ten (10) days after notice from Trustor or (B) the court fails to render its decision within the above-mentioned thirty (30) day period, Trustor may proceed to effect such offset in the amounts set forth in Trustor's notice. Neither Beneficiary's failure to object as aforesaid nor any objection or other communication between Beneficiary and Trustor relating to such offset shall constitute an approval of any such offset by Beneficiary.

(h) If any action, proceeding, motion or notice shall be commenced or filed in respect of Trustor or the Mortgaged Property in connection with any case under the Bankruptcy Code (other than a case under the Bankruptcy Code commenced with respect to Trustor), Beneficiary shall have the option, to the exclusion of Trustor, exercisable upon notice from Beneficiary to Trustor, to conduct and control any such litigation with counsel of Beneficiary's choice. Beneficiary may proceed in its own name or in the name of Trustor in connection with any such litigation, and Trustor agrees to execute any and all powers, authorizations, consents and other documents required by Beneficiary in connection therewith. Trustor shall pay to Beneficiary all costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements) paid or incurred by Beneficiary in connection with the prosecution or conduct of any such proceedings within five (5) days after notice from Beneficiary setting forth

such costs and expenses in reasonable detail. Any such costs or expenses not paid by Trustor as aforesaid shall be secured by the lien of this Deed of Trust and shall be added to the principal amount of the indebtedness secured hereby. Trustor shall not commence any action, suit, proceeding or case, or file any application or make any motion, in respect of the Site Lease in any such case under the Bankruptcy Code (other than a case under the Bankruptcy Code commenced with respect to Trustor) without the prior written consent of Beneficiary, which consent shall not be unreasonably withheld.

(i) Trustor shall promptly, after obtaining knowledge thereof, notify Beneficiary of any filing by or against the owner of the Land of a petition under the Bankruptcy Code, setting forth any information available to Trustor as to the date of such filing, the court in which such petition was filed, and the relief sought therein. Trustor shall promptly deliver to Beneficiary following receipt any and all notices, summonses, pleadings, applications and other documents received by Trustor in connection with any such petition and any proceedings relating thereto.

(j) If there shall be filed by or against Trustor a petition under the Bankruptcy Code, and Trustor, as the tenant under the Site Lease, shall determine to reject the Site Lease pursuant to Section 365(a) of the Bankruptcy Code, then Trustor shall give Beneficiary not less than ten (10) days' prior notice of the date on which Trustor shall apply to the bankruptcy court for authority to reject the Site Lease. Beneficiary shall have the right, but not the obligation, to serve upon Trustor within such 10-day period a notice stating that (i) Beneficiary demands that Trustor assume and assign the Site Lease to Beneficiary pursuant to Section 365 of the Bankruptcy Code and (ii) Beneficiary covenants to cure or provide adequate assurance of prompt cure of all defaults and provide adequate assurance of future performance of Trustor's obligations under the Site Lease. If Beneficiary serves upon Trustor the notice described in the preceding sentence, Trustor shall not seek to reject the Site Lease and shall seek court approval to comply with the demand provided for in clause (i) of the preceding sentence within thirty (30) days after the notice shall have been given, subject to the performance by Beneficiary of the covenant provided for in clause (ii) of the preceding sentence.

(k) Effective upon the entry of an order for relief in respect of Trustor under the Bankruptcy Code, Trustor hereby assigns and transfers to Beneficiary a non-exclusive right to apply to the bankruptcy court under Section 365(d)(4) of the Bankruptcy Code for an order extending the period during which the Site Lease may be rejected or assumed.

Section 2.16 Use of Proceeds. Trustor shall use the proceeds of the Loan only for the purposes set forth in the Loan Agreement which uses are not primarily for personal, family or household purposes.

ARTICLE III INSURANCE, CASUALTY AND CONDEMNATION

Section 3.1 Insurance. Trustor shall comply with all of the terms and provisions and shall maintain, or cause to be maintained, with respect to the Premises the insurance required by the Loan Agreement. If Trustor fails to maintain the insurance policies required to be maintained under this Section, Beneficiary shall have the right (but not the obligation) to obtain such insurance policies and pay the premiums therefor. If Beneficiary obtains such insurance policies or pays the premiums therefor, upon demand, Trustor shall reimburse Beneficiary for its expenses in connection therewith, together with interest thereon pursuant to Section 4.3.

Section 3.2 Casualty and Condemnation. Trustor's right to collect or use any Insurance Proceeds or awards resulting from any casualty loss or Condemnation shall be subject to, and applied in accordance with, the terms and provisions of the Loan Agreement. Trustor hereby authorizes and directs any affected insurance company and any affected governmental body responsible for such Condemnation to make payment of the Insurance Proceeds or awards directly to Beneficiary. Trustor hereby irrevocably assigns to Beneficiary all Insurance Proceeds and awards to which Trustor may become entitled by reason of its interests in the Premises if a loss occurs.

ARTICLE IV
EXPENSES AND INDEMNIFICATION

Section 4.1 Expenses. Upon written demand, Trustor (a) shall reimburse Beneficiary for all out-of-pocket expenses, including reasonable attorneys' fees and expenses, paid or incurred by Beneficiary in connection with (i) any default or alleged default, (ii) the perfection, protection, exercise or enforcement of any right or remedy under or with respect to this Deed of Trust or any other Loan Document, and (iii) the execution, delivery, administration or performance of this Deed of Trust or any other Loan Document and any consent or waiver thereunder and any amendment thereof, or (b) if an Event of Default occurs, shall reimburse Beneficiary for all out-of-pocket expenses, including reasonable attorneys' fees and expenses, (i) paid or incurred by Beneficiary in connection with (A) such Event of Default and collection, bankruptcy, insolvency and enforcement proceedings resulting therefrom or (B) the exercise or enforcement of any right or remedy under or with respect to this Deed of Trust or any other Loan Document or (ii) otherwise paid or incurred with respect to this Deed of Trust or any other Loan Document, together, in each case, with interest thereon at the Default Rate from the date paid by Beneficiary through the date repaid to Beneficiary, as the case may be. All such funds advanced in the reasonable exercise of Beneficiary's judgment that the same are needed to protect the Mortgaged Property, the lien of this Deed of Trust, or the Obligations are to be deemed obligatory advances hereunder and shall constitute additional indebtedness secured by this Deed of Trust. The obligations of Trustor under this Section shall be part of the Obligations and shall survive any foreclosure or transfer in lieu of foreclosure of this Deed of Trust and the release of this Deed of Trust.

Section 4.2 Indemnification. To the fullest extent permitted by law, Trustor shall protect, defend, indemnify and save harmless Beneficiary, and its stockholders, members, directors, managers, officers, employees, beneficial owners, attorneys, agents and other representatives or affiliates of, and partners in, Beneficiary (each an "Indemnified Person") from and against any and all liabilities, losses, actions, fines, injunctions, obligations, claims, damages (whether direct or consequential), penalties, causes of action, costs and expenses of any kind or nature (including, without limitation, in respect of or for reasonable attorneys' fees and expenses whether incurred within or outside the judicial process), imposed upon or incurred by or asserted against any such Indemnified Person including, without limitation, by reason of (i) this Deed of Trust or the Mortgaged Property or any interest therein or receipt of any Rents; (ii) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Mortgaged Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (iii) any failure on the part of Trustor to perform or comply with any of the terms of this Deed of Trust; (iv) any violation or failure to comply with any Legal Requirement by Trustor or the Premises in any way; and (v) performance of any labor or services or the furnishing of any materials or other property in respect of the Mortgaged Property or any part thereof, provided that any claims arising out of the willful misconduct or gross negligence of any Indemnified Person or act of any Indemnified Person after taking title to the Premises shall be excluded from the foregoing indemnification of such Indemnified Person. Any amounts payable to Beneficiary by reason of the application of this Section 4.2 shall be secured by this Deed of Trust as an Obligation and shall become immediately due and payable and shall bear interest at the Default Rate from the date loss or damage is sustained by Beneficiary until paid. The obligations and liabilities of Trustor under this Section 4.2 shall survive any termination, satisfaction, assignment, entry of a judgment of foreclosure or delivery of a deed in lieu of foreclosure of this Deed of Trust and the exercise of any rights or remedies by Beneficiary.

Section 4.3 Interest. If any Obligation arising hereunder (including, to the extent permitted under applicable law, any interest obligation) shall not be paid when due, such Obligation shall bear interest at the Default Rate commencing from the due date through the date paid. Such interest shall be part of the Obligations and shall be secured by this Deed of Trust.

Section 4.4 Increased Costs; Change of Taxation. In the event of the enactment after the date hereof of any applicable law deducting from the value of the Premises for the purpose of taxation of any lien thereon or changing in any way the applicable taxation of mortgages, deeds of trust or other liens or obligations secured thereby, or the manner of collection of such taxes, so as to affect this Deed of Trust, the Obligations or Beneficiary, upon demand by Beneficiary, to the extent permitted under applicable law, Trustor shall pay or reimburse Beneficiary for all taxes, assessments or other charges which Beneficiary is obligated to pay as a result

thereof; provided, however, if for any reason payment by the Trustor of any such new or additional taxes, assessments or other charges would be unlawful or if the payment thereof would constitute usury or render the Loan wholly or partially usurious under any of the terms or provisions of the Loan Agreement, Note, or this Deed of Trust, or otherwise, the Beneficiary may, at its sole option, upon thirty (30) days' written notice to the Trustor, declare the whole indebtedness secured by this Deed of Trust with interest thereon, to be immediately due and payable. Such taxes, assessments or other charges shall be part of the Obligations and shall be secured by this Deed of Trust.

ARTICLE V DEFAULTS, REMEDIES AND RIGHTS

Section 5.1 Events of Default. The occurrence of any of the following events shall be deemed an event of default ("Event of Default") hereunder and shall, at the option of Beneficiary make all amounts then remaining unpaid on the Obligations immediately due and payable, all without further demand, presentment, notice or other requirements of any kind, all of which are expressly waived by Trustor, and the lien, encumbrance and security interest evidenced or created hereby shall be subject to foreclosure in any manner provided for herein or provided for by law and all other remedies available at law or in equity:

(a) The occurrence of any Event of Default (as defined in the Loan Agreement) under the Loan Agreement; or

(b) Trustor shall default in the performance or observance of any term, covenant or condition required to be observed by Trustor under this Deed of Trust.

Section 5.2 Fixtures. Upon the occurrence of any Event of Default, or at any time thereafter, Beneficiary may, to the extent permitted under applicable law, elect to treat the fixtures included in the Mortgaged Property either as real property or personal property, or both, and proceed to exercise such rights as apply thereto. With respect to any sale of real property included in the Mortgaged Property made under the power of sale herein granted and conferred, Beneficiary may, to the extent permitted by applicable law, include in such sale any personal property and fixtures included in the Mortgaged Property relating to such real property.

Section 5.3 Remedies Cumulative. All notice and cure periods provided in this Deed of Trust, the Loan Agreement or any other Loan Document shall run concurrently with any notice or cure periods provided under applicable law. No remedy or right of Beneficiary or Trustee hereunder, under the Loan Agreement and any other Loan Document or otherwise, or available under applicable law, shall be exclusive of any other right or remedy, but each such remedy or right shall be in addition to every other remedy or right now or hereafter existing at law or in equity under any such document or under applicable law. No failure or delay by Beneficiary in exercising any right hereunder shall operate as a waiver thereof or of any other right nor shall any single or partial exercise of any such right preclude any other further exercise thereof or of any other right. Unless otherwise specified in such waiver or consent, a waiver or consent given hereunder shall be effective only in the specific instance and for the specific purpose for which given. Every such remedy or right may be exercised concurrently or independently, and when and as often as may be deemed expedient by Beneficiary or Trustee. All obligations of Trustor, and all rights, powers and remedies of Beneficiary and Trustee expressed herein shall be in addition to, and not in limitation of, those provided by law, equity or in the Loan Agreement and any other Loan Document.

Section 5.4 Possession of Premises. Trustor hereby waives, while any Event of Default exists, all right to the possession, income, earnings, revenues, issues, profits and Rents of the Premises. Beneficiary or a Receiver (as the case may be as the Person exercising the rights under this Section) is hereby expressly authorized and empowered to the extent permitted by applicable law, but not obligated, while any Event of Default exists, (i) to enter into and upon and take possession of, and operate all facilities on, the Premises or any part thereof, personally, or by its agents or attorneys, and exclude Trustor therefrom without liability for trespass, damages or otherwise; (ii) to enter upon and take and maintain possession of all of the documents, books, records, papers and accounts of Trustor relating to the possession and operation of the Mortgaged Property; (iii) to conduct, either personally or by its agents, the business of the Premises; (iv) to exercise all rights of Trustor with respect to the

Mortgaged Property, including, without limitation, the right to sue for or otherwise collect the Rents, including those that are unpaid; (v) to complete any alteration or restoration in progress on the Premises at the expense of Trustor at reasonable and customary cost or at such cost previously agreed to by Trustor, and (vi) to apply all income of the Premises less the necessary or appropriate expenses of collection thereof, either for the operation, care and preservation of the Premises, or, at the election of the Person exercising the rights under this Section in its sole discretion, as provided in Section 5.9 hereof. The Person exercising the rights under this Section is also hereby granted full and complete authority while any Event of Default exists (vii) to employ watchmen to protect the Mortgaged Property; (viii) to continue any and all outstanding contracts for the erection and completion of Improvements to the Premises; (ix) to make all necessary and proper repairs, renewals, replacements, alterations, additions, betterments and improvements to the Premises that, in its sole discretion, it may deem appropriate; (x) to insure and reinsure the Premises for all risks incidental to Beneficiary's possession, operation and management thereof; (xi) to make and enter into any contracts or obligations wherever necessary in its own name for the operation, care and preservation of the Mortgaged Property, and (xii) to pay and discharge all debts, obligations and liabilities incurred thereby, all at the expense of Trustor. The Person exercising the rights under this Section shall not be liable to account for any action taken hereunder, and shall not be liable for any loss sustained by Trustor resulting from any act or omission of such Person, except to the extent such loss is caused by such Person's willful misconduct or gross negligence. All such expenditures by the Person exercising the rights under this Section shall be Obligations hereunder.

Section 5.5 Foreclosure; Receiver. While any Event of Default exists, Beneficiary and Trustee, with or without entry, shall also have the following rights:

- (a) to institute a proceeding or proceedings, by advertisement, judicial process or otherwise, as provided under applicable law, for the complete or partial foreclosure of this Deed of Trust or the complete or partial sale of the Mortgaged Property under the power of sale hereunder or under any applicable provision of law;
- (b) to sell the Mortgaged Property and all estate, right, title and interest of Trustor therein as a whole or in separate parcels, at one or more sales, at such time and place and upon such terms and conditions as may be required by applicable law;
- (c) to take such steps to protect and enforce rights, whether by action, suit or proceeding in equity or at law, for the specific performance of any provision in the Loan Documents, or in aid of the execution of any power herein granted, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy Beneficiary shall elect;
- (d) to apply for the appointment of a receiver, supervisor, trustee, liquidator, conservator or other custodian (a "Receiver") of the Mortgaged Property or any part thereof and all earnings, revenues, Rents, issues, profits and income thereof, to the extent permitted by law without giving notice to any other party and without regard to the adequacy or inadequacy of the security of the Mortgaged Property or the solvency of either Trustor or any other Person and Trustor agrees that it shall not oppose the appointment of a Receiver; and
- (e) to take all such other steps and to assert all such other rights and remedies as shall be permitted by applicable law.

The purchase money, proceeds or avails of any foreclosure or sale after default and any other sums which then may be held by Beneficiary under this Deed of Trust shall be applied as provided in Section 5.9 hereof.

Section 5.6 No Liability on Beneficiary. Notwithstanding anything contained herein, this Deed of Trust is only intended as security for the Obligations and Beneficiary shall not be obligated to perform or discharge, and Beneficiary need not perform or discharge, any obligation, duty or liability of Trustor with respect to any of the Mortgaged Property. Beneficiary shall not have responsibility for the control, care, management or repair of the Premises nor shall Beneficiary be responsible or liable for any negligence in the management, operation, upkeep, repair or control of the Mortgaged Property resulting in loss or injury or death to any licensee, employee, tenant or stranger. No liability shall be enforced or asserted against Beneficiary in its exercise of the powers herein

granted to it, and Trustor expressly waives and releases any such liability. Should Beneficiary or any Person exercising rights on its behalf incur any such liability, loss or damage, under or by reason hereof, or in the defense of any claims or demands, Trustor agrees to reimburse Beneficiary and such Person, immediately upon demand (provided such demand is accompanied by an itemized statement) for the amount thereof, including costs, expenses and reasonable attorneys' fees, and any such obligations of Trustor shall be Obligations hereunder and shall survive any foreclosure or transfer in lieu of foreclosure of this Deed of Trust and the release of this Deed of Trust.

Section 5.7 Assignment of Leases. (a) Subject to paragraph (d) below, the assignments of the Leases and the Rent under Granting Clauses VI and VII are and shall be present, absolute and irrevocable assignments by Trustor to Beneficiary and, subject to the license to Trustor under Section 5.7(b), Beneficiary or a Receiver appointed pursuant to Section 5.5(d) (as the case may be as the Person exercising the rights under this Section) shall have the absolute, immediate and continuing right to collect and receive all Rents now or hereafter, including during any period of redemption, accruing with respect to the Premises. At the request of Beneficiary or such Receiver, Trustor shall promptly execute, acknowledge, deliver, record, register and file any additional general assignment of the Leases or specific assignment of any Lease which Beneficiary or such Receiver may require from time to time (all in form and substance reasonably satisfactory to Beneficiary or such Receiver) to effectuate, complete, perfect, continue or preserve the assignments of the Leases and the Rents under Granting Clauses VI and VII.

(b) As long as no Event of Default exists, Trustor shall have the right under a license granted hereby, subject to Section 5.7(c), to collect all Rents upon, but not prior to fifteen (15) days before, the due date thereof.

(c) If any Event of Default exists, Beneficiary or Receiver appointed pursuant to Section 5.5(d) (as the case may be as the Person exercising the rights under this Section) shall have the right to do any of the following: (i) terminate the license granted under Section 5.7(b) by notice to Trustor (ii) exercise the rights and remedies provided to Trustor under the Site Lease; (iii) exercise the rights and remedies provided under Section 5.4, Section 5.5 or under applicable law; (iv) as attorney in-fact or agent of Trustor, or in its own name as the Person exercising the rights under this Section and under the powers herein granted, hold, operate, manage and control the Premises and all other Mortgaged Property, either personally or by its agents, contractors or nominees, with full power to use such measures, legal or equitable, as in its discretion may be deemed proper and necessary to enforce the payment of any Rents, the Leases and other Mortgaged Property relating thereto (including actions for the recovery of Rent, actions in forcible detainer and actions in distress of Rent); (v) cancel or terminate any Lease or sublease for any cause or on any ground which would entitle Trustor to cancel the same; (vi) elect to disaffirm any Lease or sublease made subsequent hereto or subordinated to the lien hereof; and (vii) perform such other acts in connection with the management and operation of the Mortgaged Property as the Person exercising the rights under this Section in its discretion may deem proper, Trustor hereby granting full power and authority to exercise each and every one of the rights, privileges and powers contained herein at any and all times while an Event of Default exists without notice to Trustor.

(d) Nothing in this Section 5.7 shall be construed to be an assumption by the Person exercising the rights under this Section, or to otherwise make such Person liable for the performance, of any of the obligations of Trustor under the Leases.

Section 5.8 Sales. Except as otherwise provided herein, to the extent permitted under applicable law, at the election of Beneficiary, the following provisions shall apply to any sale of the Mortgaged Property hereunder, whether made pursuant to the power of sale hereunder, any judicial proceeding, or any judgment or decree of foreclosure or sale or otherwise;

(a) Beneficiary or Trustee or the court officer (as the case may be as the Person conducting any sale) may conduct any number of sales as Beneficiary may direct from time to time. The power of sale hereunder or with respect hereto shall not be exhausted by any sale as to any part or parcel of the Mortgaged Property which is not sold, unless and until the Obligations shall have been paid in full, and shall not be exhausted or impaired by any sale which is not completed or is defective. A sale may be as a whole or in part or parcels and

Trustor hereby waives its right to direct the order in which the Mortgaged Property or any part or parcel thereof is sold.

(b) Any sale may be postponed or adjourned by public announcement at the time and place appointed for such sale or such postponed or adjourned sale without further notice.

(c) Any statement of fact or other recital made in any instrument given by the Person conducting any sale as to the nonpayment of any Obligation, the existence of an Event of Default, the amount of the Obligations due and payable, the request to Beneficiary or Trustee to sell, the notice of the time, place and terms of sale and of the Mortgaged Property to be sold having been duly given, or any other act or thing having been duly done or not done by Trustor, Beneficiary, Trustee or any other Person, shall be taken as conclusive and binding against all other Persons as evidence of the truth of the facts so stated or recited.

(d) Any sale shall operate to divest all of the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Trustor in and to the Mortgaged Property sold, and (to the extent permitted under applicable law) shall be a perpetual bar both at law and in equity against Trustor and any and all Persons claiming such Mortgaged Property or any interest therein by, through or under Trustor.

(e) At any sale, Beneficiary may bid for and acquire the Mortgaged Property sold and, in lieu of paying cash therefor may make settlement for the purchase price by causing the Secured Parties to credit against the Obligations, including the expenses of the sale and the cost of any enforcement proceeding hereunder, the amount of the bid made therefor to the extent necessary to satisfy such bid.

(f) In the event that Trustor or any Person claiming by, through or under Trustor shall transfer or fail to surrender possession of the Mortgaged Property after any sale thereof, then Trustor or such Person shall be deemed tenant at sufferance of the purchaser at such sale, subject to eviction by means of forcible entry and unlawful detainer proceedings, or subject to any other right or remedy available, hereunder or under applicable law.

(g) Upon any sale, it shall not be necessary for the Person conducting such sale to have any Mortgaged Property being sold present or constructively in its possession.

(h) To the extent permitted under applicable law, in the event that a foreclosure hereunder shall be commenced by Beneficiary or Trustee, Beneficiary or Trustee may at any time before the sale abandon the sale, and may institute suit for the collection of the Obligations or for the foreclosure of this Deed of Trust; or in the event that Beneficiary should institute a suit for collection of the Obligations or the foreclosure of this Deed of Trust, Beneficiary may at any time before the entry of final judgment in said suit dismiss the same and sell the Mortgaged Property in accordance with the provisions of this Deed of Trust.

Section 5.9 Application of Proceeds. The proceeds of any sale of any of the Mortgaged Property made pursuant to this Article V shall be applied as follows:

(a) First, to the payment of all costs and expenses incident to the enforcement of this Deed of Trust paid or incurred by Trustee, Beneficiary or the agent for enforcement, protection or collection, including, without limitation, reasonable costs, attorneys' fees, stenographers' fees, costs of advertising, costs of documentary evidence of title (including title search and insurance), all other related charges and costs, and a reasonable compensation to the agents, attorneys and in-house counsel of Trustee, Beneficiary and of agent;

(b) Second, to the payment or prepayment of the Obligations, in such order as Beneficiary shall elect; and

(c) Third, the remainder, if any, shall be paid to Trustor or such other person or persons as may be entitled thereto by law;

provided, however, if applicable law requires such proceeds to be paid or applied in a manner other than as set forth above in this Section 5.9, then such proceeds shall be paid or applied in accordance with such applicable law.

ARTICLE VI GENERAL

Section 6.1 Fixture Filing. To the extent that the Mortgaged Property includes items of personal property which are or are to become fixtures under applicable law, and to the extent permitted under applicable law, the filing of this Deed of Trust in the real estate records of the county in which such Mortgaged Property is located shall also operate from the time of filing as a fixture filing (within the meaning of Section 9313 of the California Commercial Code) with respect to such Mortgaged Property, and the following information is applicable for the purpose of such fixture filing, to wit:

(a) Name and Address of the Debtor:

550 South Hope Street, 20th Floor
Los Angeles, California 90027
Attention: Richard Reinis

(b) Name and Address of the Secured Party:

Bank of America, N.A.
GA1-006-13-20
600 Peachtree Street, NE
Atlanta, Georgia 30308-2214
Attention: Chief Credit Officer, Franchise Financial Services

(c) This financing statement covers goods or items of personal property which are or are to become fixtures upon the Premises.

(d) Name and address of record owners:

GCFF-San Diego, LLC
d/b/a Krispy Kreme Doughnuts
550 South Hope Street, 20th Floor
Los Angeles, California 90027
Attention: Janett "J.T." Taylor, Manager-Real Estate Administration

Section 6.2 Defeasance. If all of the Obligations shall have been paid in full, and if Trustor shall have performed and observed all the covenants, obligations and conditions to be performed by Trustor pursuant to the Loan Documents, and each of the Loan Documents shall have been terminated, then this Deed of Trust shall cease, terminate and, thereafter, be of no further force or effect (except as provided in Sections 4.1, 4.2 and 5.6). Upon such termination and Trustor's request, appropriate release shall promptly be made by Beneficiary to the Person or Persons legally entitled thereto at Trustor's expense.

Section 6.3 Notices. Each notice, demand or other communication given to Trustor or Beneficiary in connection with this Deed of Trust shall be given in the manner set forth in the Loan Agreement and shall be sent to the addresses shown below or such other addresses which the parties may provide to one another in accordance with the Loan Agreement.

To Beneficiary: Bank of America, N.A.
GA1-006-13-20
600 Peachtree Street, NE

Atlanta, Georgia 30308-2214
Attention: Chief Credit Officer, Franchise Financial Services
Telecopy No.: 404/607-4075

With a copy to: Morris, Manning & Martin, L.L.P.
1600 Atlanta Financial Center
3343 Peachtree Road, N.E.
Atlanta, Georgia 30326
Attention: Frederick C. C. Boyd, III, Esq.
Telecopy No.: 404-365-9532

To Trustor: GCFF-San Diego, LLC
550 South Hope Street
20th Floor
Los Angeles, California 90071
Attention: Richard Reinis
Telecopy No.: 213/489-9963

Section 6.4 Amendments in Writing. No amendment, consent, waiver or supplement in any way affecting Trustor's obligations or Beneficiary's rights under this Deed of Trust shall in any event be effective unless contained in a writing signed by Beneficiary.

Section 6.5 Governing Law; Construction. This Deed of Trust shall be governed by the law of the state in which the Land is situated.

Section 6.6 Successors and Assigns. Subject to the provisions of Section 6.15, the covenants and agreements of Trustor hereunder, and the provisions hereof affecting Trustor, shall bind Trustor hereunder, its successors and assigns and all Persons claiming by, through or under Trustor and shall inure to the benefit of Trustor and its successors and permitted assigns. The rights and privileges of Beneficiary hereunder, and the provisions hereof affecting Beneficiary, shall inure to the benefit of Beneficiary hereunder and its successors and assigns.

Section 6.7 Waiver. Trustor waives, on behalf of itself and all Persons now or hereafter interested in the Premises or the other Mortgaged Property, to the fullest extent permitted by applicable law, (i) all rights under all appraisement, homestead, moratorium, valuation, exemption, stay, extension, redemption, single action, election of remedies and marshalling statutes, laws or equities now or hereafter existing, (ii) any benefit of any law providing for the valuation or appraisal of the Premises or the other Mortgaged Property or any part thereof prior to any sale thereof; (iii) after any such sale, claim or exercise any right to redeem the property so sold or any part thereof; (iv) all benefit or advantage of any such law and covenants not to hinder, delay or impede the execution by Beneficiary of any power or remedy herein granted or available at law or in equity, but to suffer and permit the execution of every power and remedy as though no such law existed and (v) any and all requirements that at any time any action may be taken against any other Person. Trustor hereby acknowledges and agrees that no defense based on any of the foregoing will be asserted in any action enforcing this Deed of Trust.

SECTION 6.8 WAIVER OF JURY TRIAL. TRUSTOR AND BENEFICIARY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS DEED OF TRUST, THE NOTE OR ANY OTHER LOAN DOCUMENT OR FOR ANY COUNTERCLAIM THEREIN.

Section 6.9 No Redemption. Trustor hereby waives, to the fullest extent permitted by applicable law, any and all rights of redemption from sale under any order or decree of foreclosure of this Deed of

Trust or under any power contained herein on its own behalf and on behalf of each and every Person acquiring any interest in or title to the Premises subsequent to the date of this Deed of Trust.

Section 6.10 Limitation by Law. All rights, remedies and powers provided in this Deed of Trust may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law, and all the provisions of this Deed of Trust are intended to be subject to all applicable mandatory provisions of law which may be controlling and to be limited to the extent necessary so that they will not render this Deed of Trust illegal, invalid, unenforceable, in whole or in part, or not entitled to be recorded, registered, or filed under the provisions of any applicable law.

Section 6.11 Beneficiary's Performance. If Trustor shall fail to pay or perform any of its obligations herein contained (including, without limitation, payment of expenses of foreclosure and court costs) or under the Loan Documents each with respect to the Mortgaged Property, Beneficiary upon five (5) days prior written notice to Trustor (except as otherwise expressly permitted by any Loan Document in the event of an emergency when no notice need be given) may, but need not, make (or cause to be made) any such payment or perform (or cause to be performed) any such obligation of Trustor hereunder or thereunder (provided Trustor is not contesting such payment or performance in accordance with Section 2.9 and the failure to so perform such obligation would have a Material Adverse Effect), in any form and manner deemed reasonably expedient by Beneficiary as agent or attorney-in-fact of Trustor, and any amount so paid or expended (plus reasonable compensation to Beneficiary for its out-of-pocket and other expenses (including legal expenses) for each matter for which it acts under this Deed of Trust), with interest thereon at the Default Rate, shall be added to the Obligations and shall be repaid to Beneficiary upon demand. No such action of Beneficiary shall be considered as a waiver of any right accruing to it on account of the occurrence of any default on the part of Trustor under this Deed of Trust, any default, any Event of Default, or any default or event of default under any other Loan Document.

Section 6.12 Subrogation. To the extent that Beneficiary, after the date hereof, pays pursuant to the terms of this Deed of Trust any sum due under any provision of law or any instrument or documents creating any lien prior or superior to the lien of this Deed of Trust, Beneficiary shall have and be entitled to a lien on the Mortgaged Property equal in priority to that discharged, and Beneficiary shall be subrogated to, and receive and enjoy all rights and liens possessed, held or enjoyed by, the holder of such lien, which shall remain in existence for the benefit of Beneficiary to secure the amount expended by Beneficiary on account of or in connection with such lien.

Section 6.13 Conflicting Provisions. To the extent there exists any conflict or inconsistency between the terms of this Deed of Trust and the terms of the Loan Agreement, the terms of the Loan Agreement shall govern.

Section 6.14 Counterparts. This Deed of Trust may be executed in any number of identical counterparts, any set of which signed by all the parties hereto shall be deemed to constitute a complete, executed original for all purposes.

Section 6.15 Substitute Trustee. Beneficiary shall at any time have the irrevocable right to remove the Trustee herein named without notice or cause and to appoint his successor by an instrument in writing, duly acknowledged, in such form as to entitle such written instrument to record in the State of Tennessee, and in the event of the death or resignation of the Trustee herein named, Beneficiary shall have the right to appoint his successor by such written instrument. Any Trustee so appointed shall be vested with the title to the Property, and shall possess all of the powers, duties and obligations herein conferred on the Trustee in the same manner and to the same extent as though he were named herein as Trustee.

IN WITNESS WHEREOF, Trustor has duly executed and delivered this Deed of Trust as of the date first written above.

GCFF-SAN DIEGO, LLC,
a Delaware limited liability company
Great Circle Family Foods, LLC, Managing Member
By: *[Signature]*
Name: Roger Glickman
Title: President

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

On this 19th day of September, 2002, before me personally appeared Roger Glickman to me known to be the Manager of GCFF-SAN DIEGO, LLC, the limited liability company that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said limited liability company, for the uses and purposes therein mentioned, and on oath stated that (s)he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Signature

[Signature]
Name: SILVIA BRADLEY

My Commission Expires: 8/11/2006

(NOTARIAL SEAL)



Unit:

Unit No. 998

3570 Sports Arena Boulevard
San Diego, San Diego County,
California 92110

EXHIBIT A - PART I

To Leasehold Deed of Trust

DESCRIPTION OF REAL ESTATE

Unit:

Unit No: 998

3570 Sports Arena Boulevard
San Diego, San Diego County,
California 92110

EXHIBIT A - PART II

To Leasehold Deed of Trust

DESCRIPTION OF LEASE

GROUND SUBLEASE

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

as Landlord,

and

**GCFF-SAN DIEGO, LLC,
a Delaware limited liability company**

as Tenant

SUMMARY OF BASIC GROUND SUBLEASE INFORMATION

TERMS <u>(References are to the Lease)</u>		<u>DESCRIPTION</u>
1.	Date:	June <u>24</u> , 2002
2.	Landlord:	ARENA GROUP 2000 L.P., a California limited partnership
3.	Tenant:	GCFF-SAN DIEGO, LLC, a Delaware limited liability company
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 Exhibit A-3 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 54,450 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 4,000 square feet (but not exceeding 4,200 square feet) together with appurtenant improvements including a drive-thru area 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 fifty (150) days after Tenant has approved or waived all of Tenant's Contingencies set forth in Section 29.21 hereof.
	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	\$84,000.00	\$7,000.00
61-120	\$94,080.00	\$7,840.00
121-180	\$105,369.60	\$8,780.80
181-240 (Option)	\$118,013.95	\$9,834.50
241-300 (Option)	\$132,175.62	\$11,014.64
301-360 (Option)	\$148,036.69	\$12,336.39

7.2 Percentage Rent: None.

8. Intentionally Deleted.

9. Use:

9.1 Permitted Use (Article 5): Operation of a typical Krispy Kreme Doughnuts restaurant which, to the extent permitted by law and subject to any other provision contained in this Lease, may be open 24 hours a day, 7 days a week with drive-thru capabilities specializing in the manufacture and sale of doughnuts and the incidental sale of other food and non-food items (including coffee, espresso, ice-blended drinks, and other beverages), sold in other Krispy Kreme Doughnuts restaurants in Southern California.

9.2 Trade Name (Article 5): Krispy Kreme Doughnuts.

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

10.1 Address of Tenant: GCFF-San Diego, LLC
550 South Hope Street, 20th Floor
Los Angeles, California 90071
Attention: Richard Reinis
Telephone: (213) 489-2340
Facsimile: (213) 489-9963

With a copy to:

Buchalter, Nemer, Fields and Younger
601 South Figueroa Street, Suite 2400
Los Angeles, California 90017
Attention: Bryan Mashian, Esq.
Telephone: (213) 891-5045
Facsimile: (213) 896-0400

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. Broker (Article 24):

Landlord's Broker: Flocke & Avoyer
Tenant's Broker: None

12. Guarantor (Section 29.20 and Exhibit I):

Great Circle Family Foods, LLC,
a California limited liability company

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EXHIBIT A-8	- Tenant's Control Area
EXHIBIT A-9	- Radius Restriction Boundary Area
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EXHIBIT B	- Confirmation of Lease Term Dates
EXHIBIT C	- Rules and Regulations
EXHIBIT D-1	- Form of Tenant's Estoppel Certificate
EXHIBIT D-2	- Form of Landlord's Estoppel Certificate
EXHIBIT E	- Work Letter Agreement
EXHIBIT F	- Existing Exclusives/Use Prohibitions
EXHIBIT G-1	- Master Lease Subordination, Non-Disturbance and Attornment Agreement
EXHIBIT G-2	- Landlord's Lender's Subordination, Non-Disturbance and Attornment Agreement
EXHIBIT H	- Memorandum of 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 GCFF-San Diego, LLC, a Delaware limited liability company ("**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 (including a drive-thru area) 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, (i) 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, and (ii) Tenant shall not be required to pay any costs or expenses incurred by Landlord (including, without limitation, as part of the Access Driveways Operating Expenses) that may arise in any way as a result of Landlord's expansion of the Shopping Center or the Access Driveways unless such expansion provides direct access to Tenant's Premises.

1.1.4 Common Areas. Tenant shall have the non-exclusive right to use in common with other Permitted Users (as defined below) of 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 Permitted Users of the Shopping Center, whether or not those areas are open to the general public including, but not limited to, parking areas and circulation elements on each of the Pad Parcels (such areas, together with such other portions of the Shopping Center reasonably designated by Landlord are collectively referred to herein as the "**Common Areas**"). The Common Areas shall only be available for the use of the Permitted Users with the exception of the Access Driveways which may be used, on a non-exclusive basis, by the owners, tenants, subtenants and occupants of the balance of the Development and their respective employees, customers, invitees, shippers, suppliers, contractors, subcontractors and agents. Tenant acknowledges that a portion of the Common Areas will be located on the Premises (but outside of the Building and appurtenant improvements including the drive-thru area and Tenant's Patio Area described in Section 5.7 below), and to the extent located thereon, Tenant's use of such portion of the Premises shall be on a non-exclusive basis with Master Landlord (as defined below), Landlord and the other tenants, subtenants and occupants of the Shopping Center and their respective employees, customers, invitees, shippers, suppliers, contractors, licensees, permittees and agents (collectively, "**Permitted Users**"). 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. Except for the Tenant's Control Area or those portions of the Common Area that are located on Tenant's Premises (for which areas, Tenant's consent shall be required, which consent shall not be unreasonably withheld, conditioned, or delayed), Landlord reserves the right from time to time, upon five (5) days written notice to Tenant (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.

Notwithstanding the foregoing, Landlord agrees not to, without Tenant's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed (i) materially interfere with the conduct of Tenant's business from the Premises or ingress or egress to and from the Premises, (ii) materially change the primary access points to and from the Premises, or (iii) make any other changes to the Common Areas within "Tenant's Control Area" as shown on Exhibit A-8), which would have a materially adverse effect on Tenant's use of, or access and visibility to and from, the Premises, including, without limitation, Tenant's parking and signage rights.

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 Tenant's Control Area; provided, however, Landlord shall be permitted to locate within Tenant's Control 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's Parties access to, or use of, the Shopping Center or the Premises, nor Tenant's parking and signage rights granted under this Lease.

1.1.6 Master Lease. Landlord is the lessee of the Development under a Ground Lease dated April, 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), and provided that Tenant shall not be subject to any amendments or modification to the Master Lease without Tenant's prior written consent to the extent any such amendment or modification may materially increase Tenant's obligations or materially decrease Tenant's rights in which event Tenant's consent shall be required, which consent shall not be unreasonably withheld, delayed or conditioned. Tenant's failure to deliver written notice of Tenant's reasonable disapproval of any proposed amendment or modification to Landlord within fifteen (15) days after Landlord's delivery to Tenant of any such proposed amendment or modification shall be deemed to constitute Tenant's approval of such amendment or modification. Landlord shall provide Tenant, from time to time upon request by Tenant (but not more than once a year, unless there is a particular and specific reason for Tenant's request which reason Tenant shall put in writing to Landlord), a certification stating that the Master Lease is in full force and effect and any other information reasonably requested by Tenant (such as the remaining term of the Master Lease), within 30 days of Tenant's request.

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 Sublease will 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

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. 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 upon the satisfaction or waiver by Tenant of Tenant's Contingencies. 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.

ARTICLE 4

ADDITIONAL RENT

4.1 General Terms; "Net" Lease

As set forth in this Article 4, in addition to paying the Base 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 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, subject to the list of exclusions listed in Section 4.2.3 below. 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 (provided Tenant first receives sufficient proof of payment by Landlord), 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 Access Driveways, or any portions thereof. In addition, the expenses in connection with said Access Driveways shall include a fee payable to Landlord equal to ten percent (10%) of the total of the aforementioned Access Driveway Operating Expenses for each Expense Year. 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 Notwithstanding the foregoing, for purposes of this Lease, Access Driveway Operating Expenses shall not include (i) the cost of any capital improvements, except those that relate to the Access Driveways and (A) are required by laws, ordinances or regulations enacted after the date hereof, (B) are installed with a reasonable and good faith expectation by Landlord that the same will reduce Access Driveway Operating Expenses or (C) includable in Access Driveway Operating Expenses pursuant to an application of sound real estate management principals (including, but not limited to, Access Driveway repair, resurfacing and replacement); provided, however, any such capital improvements shall be amortized (with commercially reasonable interest) over their useful life; (ii) expenditures including, without limitation, capital expenditures, relating to the removal, treatment, disposal, remediation, clean-up or encapsulation of Hazardous Materials (as defined below) in or about the Premises or the Development and costs arising from compliance with Environmental Laws (as defined below) which affect the Premises or the Development and (iii) earthquake or flood insurance unless such coverage is either required by Landlord's lender or the Master Landlord or is customarily carried in Comparable Centers.

In no event shall Landlord bill tenants of the Development in the aggregate for more than 100% of the cost actually incurred by Landlord for any item of Access Driveway Operating Expense (exclusive of any permitted management or administrative fee). Each time Landlord provides to Tenant an actual and/or estimated statement of Access Driveway Operating Expenses, such statement shall be

itemized on a line by line item basis, showing the applicable expense for the applicable Lease Year and the prior Lease Year.

4.2.4 **"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 (v) Landlord's general income, profits, corporation, franchise, inheritance, estate, capital gains, succession or gift taxes, (w) documentary transfer taxes or other taxes imposed in connection with the sale, transfer or financing of the Development or any interest therein, (x) the amount of any real property taxes which may be paid in subsequent installments at the option of the tax payer (if Landlord elects not to pay the same in installments, the amount of which could have been so paid shall be included in Taxes only as of the last date of the installment(s) thereof would otherwise have been payable without penalty or interest), (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, or any increase in Taxes attributable to any reassessment of the Premises or any portion thereof which occurs during the Lease Term to the extent that such reassessment arises or results from (a) any "Change in Ownership" triggered by the actions of Landlord during the first five (5) years of the Lease Term, and (b) following expiration of such initial five (5) year period, the second (2nd) or subsequent Change in Ownership triggered by actions of Landlord during each subsequent five (5) year period during the Lease Term. For purposes hereof **"Change of Ownership"** shall be deemed to have the same meaning as in California Revenue and Taxation Code Section 60 *et. seq.* or any amendments or successor statutes thereto. The foregoing limitation is not in any way intended to limit the pass through to Tenant of (i) the statutory two percent (2%) annual increase in Taxes (as such statutory increase may be modified by subsequent legislation), (ii) the initial assessment of the Premises upon which the Improvements and all Common Area improvements are constructed, (iii) the initial assessment of the Improvements and all Common Area improvements upon the Premises, (iv) any increase in Taxes resulting from any Alterations or reconstruction of the Improvements and Common Area improvements on the Premises.

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 three and 32/10^{ths} percent (3.32%). 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. 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 five percent (5%), 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 or any other lawful first-class retail use or purpose or under any other trade name, subject to the limitations set forth hereinbelow. Landlord acknowledges and agrees that Tenant and Tenant Parties may also use portions of the Common Areas located on the Premises in connection with queuing lines of vehicles for Tenant's drive-thru area. Notwithstanding anything to the contrary contained in the Summary, Tenant agrees that the Premises shall not be used (i) in any manner which violates any of the exclusives or use prohibitions specifically set forth in Exhibit F attached hereto ("Existing Exclusives/Use Prohibitions"); (ii) for a use inconsistent with the character of the Shopping Center as a high quality Shopping Center; (iii) for a use in conflict with the primary use of any other then tenant or occupant of the Shopping Center or a use not permitted by the REA described below or which would cause a violation of another then-existing lease for space within the Shopping Center or would give an occupant of the Shopping Center a right to cancel its lease or likely prevail in an action against Landlord; 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 use described in Section 9.1 of the Summary; or (iv) for a use not permitted under the Master Lease. 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 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. Landlord acknowledges and agrees that Tenant shall be permitted to place and/or keep tables, merchandise or other items and shall use a patio area outside of Tenant's Building as part of Tenant's business operations. 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 Development is free from any Hazardous Materials and any improvement already constructed and to be constructed on the Development by Landlord or Landlord's contractor have been or will be constructed in a high quality manner, free of all asbestos containing materials ("ACM") and in full compliance with all Laws existing at the later of the time of construction or the execution of the Lease, including, but not limited to, laws pertaining to disabled access and laws pertaining to Hazardous Substances, in order to make the Premises and the Development suitable for Tenant's business

5.2.3 Signs; Merchandising and Advertising. Subject to any required governmental approvals, Tenant shall be permitted the following signage rights and signs (collectively, "Signage Rights" or "Signs" as applicable):

(a) **Building Signage.** To the fullest extent permitted by Applicable Laws, but subject to compliance with the Master Lease and any REA approved by Tenant as provided hereinabove, Tenant shall be entitled to (i) install its prototypical signage on all four elevations of its Building, (ii) highlight the architectural elements of its Building with neon lights, and (iii) install its prototypical "hot lights" similar to such lights as are used by Tenant in its other Southern California locations, and (iv) all other Building identification signage with respect to the Premises similar to Tenant's other Krispy Kreme stores in Southern California, all of which signs shall be designed and installed, at Tenant's sole cost and expense ("**Building Signage**").

(b) **Marquee Sign.** Tenant shall have the rights set forth herein with respect to the existing marquee sign serving the Development ("**Existing Marquee Sign**"), which Existing Marquee Sign contains (i) sign panels, including a sign panel currently displaying DerWeinerschnitzel's name ("**DerWeinerschnitzel Panel Location**"), and (ii) an electronic signage display area ("**Electronic Display Area**"). Subject to any required governmental approvals, Tenant shall be permitted, at Tenant's sole cost and expense, to install Tenant's sign panel in the DerWeinerschnitzel Panel Location on the Existing Marquee Sign. In addition, Tenant shall have the right to approximately twenty five percent (25%) of the exposure time in the Electronic Display Area on the Existing Marquee Sign with approximately fifty percent (50%) of such electronic exposure to be allocated during the morning hours. It is currently contemplated that Landlord may, at a later date, rehabilitate or reconstruct the Existing Marquee Sign ("**Modified Marquee Sign**"). In the event Landlord elects to move forward with the Modified Marquee Sign, Tenant shall reimburse Landlord for the lesser of (i) twenty five percent (25%) of the total cost of rehabilitating and/or reconstructing the Modified Marquee Sign or (ii) One Hundred Twenty Five Thousand Dollars (\$125,000), which reimbursement shall be made by Tenant promptly to Landlord upon Landlord's substantial completion of the Modified Marquee Sign, in which case, Tenant shall retain all of its signage rights under this Lease, including, without limitation, Tenant's right to use the Electronic Display Area and the DerWeinerschnitzel Panel Location (except that Tenant's panel sign may be in either the same or similar location that it was on the Existing Marquee Sign, but in no event in a size that is less than the size of the previously existing panel sign) on the Modified Marquee Sign. Tenant shall be responsible, at Tenant's sole cost and expense, for providing Landlord with the content of Tenant's electronic signage (which shall be subject to Landlord's reasonable approval) and Landlord and Tenant agree to work together in good faith in connection with the implementation of such electronic signage exposure and content thereof. In addition to Tenant's reimbursement of its share of the costs of rehabilitating and/or reconstructing the Modified Marquee Sign, Tenant shall be responsible for twenty five percent (25%) of all reasonable costs associated with the operation, maintenance and repair of the Modified Marquee Sign. Landlord acknowledges and agrees, that Tenant shall not be required, under any circumstances, to pay for any costs associated with the operation, maintenance and repair of the Electronic Display Area on the Existing Marquee Sign (with the exception of the cost of design, installation, maintenance and repair of Tenant's sign panel on the DerWeinerschnitzel Panel Location which shall be paid by Tenant). Tenant further understands and acknowledges that Landlord shall have no obligation to rehabilitate or reconstruct the Existing Marquee Sign and that, because of the age of the Existing Marquee Sign and the unavailability of certain parts, Landlord makes no representation of warranty as to the reliability nor quality of the signage within the Electronic Display Area.

(c) **Additional Signage Rights and Restrictions.** Tenant shall submit to Landlord plans and specifications with respect to Tenant's Signs and all other permitted signage concurrently with Tenant's submittal to Landlord of the Preliminary Plans described in the Work Letter. All such Signs 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 Signs 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 or subtenant of Tenant permitted under Article 14 below. Except as expressly permitted by this Section 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.

(d) **Advertising.** Tenant shall not use any advertising media 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 unreasonably seen or heard outside of the Premises or unreasonably disturbing to tenants or other occupants of the Shopping Center or the 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 Trade Name required under Section 8.2 of the Summary no later than the date which is one hundred eighty (180) days after Tenant's waiver or approval of the Tenant Contingencies described below; provided, however, (i) such date shall be extended by any delays in construction caused by unforeseeable site conditions encountered by Tenant (including, but not limited to, existence of Hazardous Materials) and (ii) Tenant shall not be required to continuously operate, and provided further that Tenant 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 continuously 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 twelve (12) consecutive months, 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 but subject to the Leasehold Mortgagee rights contained in Section 14.5 below), 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 value 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 nor shall any such furniture, equipment or trade fixtures be included in the property acquired by Landlord pursuant to this Section 5.3. 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**"). Any such Recapture Notice shall be of no force and effect if Landlord does not deliver or otherwise make the Recapture Payment to Tenant within thirty (30) days of Tenant's submission to Landlord of a bill therefor with reasonable underlying data or documents to support the Recapture Price.

(d) Notwithstanding anything to the contrary in this Section, in the event Landlord elects not to exercise Landlord's Termination Option and Tenant fails to operate its business for the Permitted Use from the Premises for more than eighteen (18) consecutive months (except while the Premises are untenable by reason of Force Majeure or during temporary closures for remodeling or alterations provided that such temporary closure should not exceed ninety (90) days and subject to the Leasehold Mortgagee rights contained in Section 14.5 below), Landlord shall have the additional right (but not the obligation) to terminate this Lease by delivering a Recapture Notice and, in connection therewith acquire, at no cost, all Improvements on the Premises excluding Tenant's furniture, movable fixtures, equipment, personal property and any trade fixtures. 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.

(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 (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 any type of restaurant business similar to the type of business permitted to be operated by Tenant hereunder 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 and, in addition to Landlord's other rights or remedies available at law or in equity, (in addition to Tenant's other Additional Rent obligations), the then existing Base Rent payable hereunder shall, from and after the date the restaurant violating this restriction opens for business, be increased to equal one hundred fifty percent (150%) of the Base Rent then payable hereunder. Notwithstanding the foregoing, the retail sale of Tenant's products in other locations (including, but not limited to, supermarkets, convenience stores and the Sports Arena) shall not be deemed to be a violation of the foregoing restriction.

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 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**" 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. Notwithstanding the foregoing, Landlord and Tenant agree that the foregoing Exclusive Use restriction shall only encumber the portions of the Development during the time when the Development is owned or controlled by Landlord (*i.e.* Arena Group 2000 and its successors and assigns) but shall always, subject to the limitations contained in this Section 5.6, encumber the entire Shopping Center, regardless of whether or not Landlord or its successors and assigns own or control the Shopping Center. For purposes of illustration only, at such time as Landlord is no longer leasing the balance of the Development pursuant to Landlord's separate ground lease and operating agreements with Master Landlord, such restrictions shall no longer be effective with respect to such portions of the Development no longer leased by Landlord. 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 for the Exclusive Use. 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 Patio

During the Lease Term, Tenant shall have the right to use (at no additional charge), and the Premises shall include, the unenclosed patio area adjacent to Tenant's Building and more particularly shown on Exhibit A-10 attached hereto ("**Patio Area**") solely for use as a patio for the sole purpose of providing additional seating for Tenant's customers. Tenant shall not make any material alterations, additions or improvements to the Patio Area except in accordance with Exhibit E or Article 8. In addition, Tenant shall be solely responsible for and shall obtain all necessary governmental permits and approvals with respect to Tenant's use of the Patio Area (and Landlord agrees to reasonably cooperate with Tenant therewith, at Tenant's expense). Tenant's use of the Patio Area shall be subject to all of the applicable terms, conditions and provisions of this Lease, including the indemnity and insurance provisions, it being understood that Tenant shall be solely responsible for maintaining and repairing the Patio Area in accordance with Article 7 of the Lease; provided, however, Tenant shall have absolutely no right to assign its rights to use or sublet the Patio Area to any other person or entity, except in connection with any Transfer of the entire Lease approved by Landlord or permitted under Article 14 of the Lease.

5.8 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:

5.8.1 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;

5.8.2 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;

5.8.3 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;

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

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

5.8.6 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);

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

5.8.8 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;

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

5.8.10 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;

5.8.11 any catering hall;

5.8.12 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);

5.8.13 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;

5.8.14 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;

5.8.15 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;

5.8.16 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;

5.8.17 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;

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

5.8.19 any apartment, home or other residential use.

Notwithstanding the provisions of this Section 5.8 (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 5.8.

Notwithstanding the foregoing, the restrictions set forth in Section 5.8.14, 5.8.15 and 5.8.16 shall only be applicable with respect to the Pad Parcels. Further notwithstanding the provisions of this Section 5.8, 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.

5.9 Building Height Limitations

Landlord and Tenant shall not cause or permit any building or other structure (excluding any light poles) on the Pad Parcels to exceed the lesser of (i) the maximum height permitted by Law or (ii) twenty eight (28) feet, 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.

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.

6.4 After Hours Lighting

Landlord acknowledges that Tenant may (but shall not be required), subject to applicable laws and the limitations contained herein, operate 24-hours daily. Landlord shall provide Common Area lighting at all times, except some holidays; provided, however, Tenant shall be solely responsible for the actual costs (without a profit, overhead, administration or depreciation charge by Landlord) of lighting those portions of the Access Driveways (and the immediately surrounding areas) necessary to serve the exclusive needs of Tenant at its Premises during non-operating hours in the Shopping Center. Landlord shall equitably determine the costs of such Tenant exclusive lighting, and Tenant shall reimburse Landlord, as Additional Rent, within twenty (20) days after being billed for same.

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, Tenant's drive-thru area 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 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 the 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 twenty (20) 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 "as built" 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, Tenant shall provide Landlord with evidence that Tenant or Tenant's contractor carries "Builder's All Risk" 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.

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 gross 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, in the event Tenant serves or sells alcohol in or from the Premises.

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 and provide that any insurance carried by Landlord is not excess and is non-contributing with any insurance requirement of Tenant; (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. In the event Tenant shall fail to procure such insurance, or to deliver such certificates, Landlord may, at its option, after five (5) 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 five (5) 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.

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.

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.

11.2 Destruction During Last Two Years of Lease Term

Notwithstanding the foregoing, if such damage or destruction (i) shall occur within the last two (2) 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. If Tenant elects to terminate the Lease as provided in this section, then any insurance proceeds from the fire and extended coverage insurance policies maintained by Tenant (excluding proceeds for Tenant's merchandise, inventory and personal property and after deduction of all reasonable costs of demolition and removal of the improvements) shall be assigned by Tenant to Landlord (or any party designated by Landlord), subject to the terms of Section 14.5.

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, Patio Area 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, Landlord shall be entitled to the entire condemnation award except for the following amounts, all of which amounts shall belong to Tenant: (i) any and all allowable relocation costs or loss, including loss of business and costs associated with moving Tenant's merchandise, furniture, moveable fixtures, leasehold improvements and equipment to a new location (subject to the limitations contained in Section 13.3.2 below), (ii) the fair market value of the tenant improvements constructed by Tenant on the Premises including any and all buildings, fixtures, drive-thru improvements (collectively, "**Tenant Improvements**"), (iii) any loss of goodwill (subject to the limitations contained in Section 13.3.2 below), (iv) fifty percent (50%) of the value of Tenant's leasehold estate or so-called "bonus value" under this Lease based on the contract rental rates in comparison with the market rental rates for the Premises for the unexpired term of this Lease, and (v) any additional amounts to which Tenant would be entitled to under Applicable Law (the amounts under subsections (i), (ii), (iii), (iv) and (v) herein are collectively referred to as the "**Minimum Termination Costs**").

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 the date which is (i) twenty one (21) years after commencement of the term of the Master Lease or (ii) twenty (20) years after the commencement date for the third Pad Parcel sublease (with the understanding that Landlord represents and warrants that this Sublease is the first 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 be entitled to the portion of such award equal to the Minimum Termination Costs minus 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 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 the Lease, from liability under this Lease.

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 ownership or voting interest 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, 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 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 satisfactory to Landlord and executed by Tenant and such assignee, sublessee, or transferee, as the case may be. Tenant shall also have the right, without Landlord's consent, but upon at least ten (10) days prior written notice to Landlord, to transfer its interest in the Lease to a franchisor or a bona fide franchisee ("Franchisor/Franchisee") of Krispy Kreme Doughnuts, provided (i) the current net worth of the proposed Franchisor/Franchisee is sufficient, in Landlord's reasonable business judgment, to perform the obligations of Tenant under this Lease; and (ii) in Landlord's reasonable business judgment such Franchisor/Franchisee has sufficient business experience to operate a successful Krispy Kreme Doughnuts franchise of the type and quality required under this Lease. Notwithstanding anything to the contrary in this Lease, upon a Transfer by Tenant to a Permitted Transferee or Franchisor/Franchisee, such succeeding entity shall have all of the rights afforded to Tenant under this Lease, including all personal rights for signage rights, exclusivity rights and any other personal right provided to Tenant under this Lease; provided, however, Tenant's Marquee Signage Rights shall only be available to a Transferee during the initial fifteen (15) year Lease Term.

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) 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 Mortgagee Insurance. Each Leasehold Mortgagee shall be added to the loss payable endorsement of any and all fire and other casualty insurance policies to be carried by Tenant in respect of the Premises and Improvements, and all such policies shall state that the insurance proceeds are to be held by such Leasehold Mortgagee for the benefit of the parties hereto and applied in the manner specified in the Lease.

If there is a condemnation or eminent domain in respect of the Premises and/or Improvements, any award or payment therein attributable to the Improvements or personality of Tenant (but not the Premises) shall be paid to the Leasehold Mortgagee for the benefit of the parties hereto and applied in the manner specified in this Lease; and if the same results in a termination of the Lease, Tenant's portion of the award or payment (if any) shall be paid to such Leasehold Mortgagee for the benefit of Tenant and such Leasehold Mortgagee.

No fire or casualty loss claims shall be settled and no agreement will be made in respect of any award or payment in condemnation or eminent domain without in each case the prior written consent of the applicable Leasehold Mortgagee, if any.

14.5.4 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 14.5.4 shall not limit or restrict Landlord's remedies against Tenant.

14.5.5 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.

14.5.6 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.

14.5.7 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.

14.5.8 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.

14.5.9 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 an Estoppel Certificate substantially in the form attached hereto as Exhibit D-2 (or any other commercially reasonable form) 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.

14.5.10 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.

14.5.11 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 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.

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.

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 twenty five percent (125%) 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 14.5.9 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 twenty (20) days of request, 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 SNDA"); provided further, that the SNDA to be entered into for the benefit of Tenant and Tenant's Leasehold Mortgagee, 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 may take such required action upon Landlord's failure to do so within the specified five day period. If such action or payment was required under the terms of this Lease to be taken by Landlord or otherwise authorized herein, then Landlord shall reimburse Tenant for all of Tenant's reasonable and documented costs and expenses incurred in taking such action or making such payment ("Cure Cost") within thirty (30) days following receipt of a billing thereof. If Landlord fails to so reimburse Tenant, Tenant shall have the right to deduct the Cure Cost from Base Rent next coming due until Tenant has recovered the full amount of such Cure Cost, but in no event shall such deduction during any month exceed 20% of the Base Rent due for such month; provided, however, to the extent any Cure Cost is carried over to subsequent months, such carry-over cure cost shall accrue interest at the Interest Rate payable by Landlord to Tenant. Notwithstanding the foregoing, except as hereinafter provided, Tenant shall have no right to offset such Cure Cost in the event Landlord, within thirty (30) days following receipt of Tenant's notice of its intent to offset, commences a reference proceeding for the sole purpose of determining whether Landlord was in default, and, if Landlord was in default, whether the Cure Cost is reasonable as set forth below. If in such reference proceeding, it is determined that Landlord was not in default then Tenant shall be responsible for paying the Cure Cost plus the cost of such reference and the reasonable attorneys' fees of Landlord as determined by the reference proceeding. If in such reference proceeding, it is determined that Landlord was in default, then Landlord shall be responsible for paying the Cure Cost plus the cost of such reference and the reasonable attorneys' fees of Tenant as determined by the reference proceedings. If the Cure Cost (or so much thereof as is determined in such a reference proceeding to be reasonable) and cost of such reference and attorneys' fees are not paid by Landlord within thirty (30) days following the rendering of a decision or judgment through or in the reference proceeding, Tenant shall be entitled to deduct such Cure Cost and the cost of reference and Tenant's reasonable attorneys' fees from Base Rent next coming due hereunder, subject, however, to the twenty percent (20%) limitation hereinabove stated. Further notwithstanding the foregoing, in the event Tenant is owed any Cure Costs pursuant to this Section 19.5 and there does not then exist sufficient remaining Lease Term to allow Tenant to fully recover such Cure Costs then, in such event, Tenant shall be entitled to offset such Cure Costs on a prorated basis over the then remaining Lease Term to the extent necessary to recover any such Cure Costs. 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.

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, 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. Notwithstanding the foregoing, Landlord agrees that during any such subdivision, construction, and/or redevelopment, use of, and access to and from the Access Driveways and Tenant's Premises shall not be materially and adversely affected.

ARTICLE 24

BROKER

Landlord and Tenant hereby warrant to each other that, except for the broker listed in Section 11 of the Summary (to which broker 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 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 written notice after due, then Tenant shall pay to Landlord a late charge equal to five percent (5%) 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.

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) 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) 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 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 the Permitted Users of the Shopping Center and their occupants, licensees, invitees and permittees. 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, provided, however, that such system shall not adversely affect Tenant's use of, access and visibility to and from the Premises and the Access Driveways, and that Tenant shall not be responsible for any of the costs incurred therewith, which costs shall not be included under any circumstances as part of the Access Driveway Operating Expense hereunder. Tenant shall 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 two (2) violations 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 third (3rd) 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 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 Landlord's 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 financial condition. Such financial statements shall be prepared in accordance with generally accepted accounting principles and, if such is the normal practice of Tenant, shall be audited by an independent certified public accountant.

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 (excluding financial inability) beyond the reasonable control of the party obligated to perform (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

Following expiration of any contingencies to 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 immediately 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.

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 Great Circle Family Foods, LLC, a California limited liability company 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**" and individually, "**Tenant Contingency**"):

29.21.1 Title Report. Tenant's review and approval within thirty (30) days after the date hereof of any matters of title affecting the Premises and Access Driveways.

29.21.2 Environmental Condition and Insurance Contingency. Tenant's written approval, no later than sixty (60) days after the date hereof of (i) the environmental condition of the

Premises and the areas surrounding the Premises, and (ii) environmental insurance reasonably satisfactory to Tenant. Tenant may not perform any soil samples, ground water tests or samples or any other intrusive testing of the Premises for purpose of determining whether or not Hazardous Substances exist on, under or adjacent to the Premises or the Shopping Center without the prior written consent of Landlord, and to the extent necessary, Master Landlord.

29.21.3 Soil Contingency. Tenant's written approval, no later than sixty (60) days after the date hereof, of the condition of the Premises' soil. Tenant may perform any soil samples or any other intrusive testing of the Premises or the Shopping Center for purpose of determining the weight-bearing capacity of the Premises' soil and whether or not the soil on, under or adjacent to the Premises is acceptable to Tenant ("**Soil Test(s)**"), provided Tenant obtains Landlord's (and to the extent necessary, Master Landlord's) prior consent.

29.21.4 SNDA's. Tenant's written approval, no later than sixty (60) days after the date hereof, of an SNDA (as defined in Article 18) from all holders of superior interests in the Premises and Access Driveways, including, but not limited to, Master Landlord and Southern California Bank (*i.e.* Landlord's existing lender with respect to the Development). 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.

29.21.5 Permits. Tenant's receipt of, or satisfaction that Tenant will be able to receive, no later than sixty (60) days after the date hereof, all permits Tenant reasonably deems necessary ("**Permits**") to construct, use and operate the Improvements (including, but not limited to, all Permits for signage, Tenant's drive-thru, and satellite dish and Tenant's operation 24-hours a day of Tenant's doughnut shop). Landlord shall reasonably cooperate with Tenant in Tenant's pursuit of such Permits. Subject to the foregoing Tenant Contingencies, Tenant agrees to diligently pursue all necessary Permits until receipt thereof.

Tenant's commencement of construction of the Improvements and/or Tenant's failure to notify Landlord on or before the outside dates set forth above that Tenant has disapproved of any of the foregoing Tenant Contingencies shall constitute a waiver of all such Tenant Contingencies.

ARTICLE 30

ARBITRATION

30.1 Arbitration.

Unless specifically provided otherwise in this Lease, the provisions of this Section 30.1 contain the sole and exclusive method, means and procedure to resolve any and all disputes or disagreements, including whether any particular matter constitutes, or with the passage of time would constitute, an event of default ("**Event of Default**"), except for (i) all claims by either party which (A) seek anything other than enforcement of rights under this Lease or (B) are primarily founded upon matters of fraud, willful misconduct, bad faith or any other allegations of tortious action, and seek the award of punitive or exemplary damages, and (ii) claims relating to Landlord's exercise of any unlawful detainer rights pursuant to California law or rights or remedies used by Landlord to gain possession of the Premises or terminate Tenant's right of possession of the Premises. The parties hereby irrevocably waive any and all rights to the contrary and shall at all times conduct themselves in strict, full, complete and timely accordance with the provisions of this Section 30.1. Any and all attempts to circumvent the provisions of this Section 30.1 shall be absolutely null and void and of no force or effect whatsoever. As to any matter submitted to arbitration to determine whether it would, with the passage of time, constitute an Event of Default, such passage of time shall not commence to run until any such affirmative determination, so long as it is simultaneously determined that the challenge of such matter as a potential Event of Default was made in good faith, except with respect to the payment of money. With respect to the payment of money, such passage of time shall not commence to run only if the party which is obligated to make the payment does in fact make the payment to the other party. Such payment can be made "under protest," which shall occur when such payment is accompanied by a good-faith notice stating why the party has elected to make a payment under protest. Such protest will be deemed waived unless the subject matter identified in the protest is submitted to arbitration as set forth in the following:

30.1.1 Arbitration Panel. Within ninety (90) days after delivery of written notice ("**Notice of Dispute**") of the existence and nature of any dispute given by any party to the other party, and unless otherwise provided herein in any specific instance, the parties shall each: (i) appoint one (1) lawyer actively engaged in the licensed and full-time practice of law, specializing in real estate, in the County of San Diego for a continuous period immediately preceding the date of delivery ("**Dispute Date**") of the Notice of Dispute of not less than ten (10) years, but who has at no time ever represented or acted on

behalf of any of the parties, and (ii) deliver written notice of the identity of such lawyer and a copy of his or her written acceptance of such appointment and acknowledgment of and agreement to be bound by the time constraints and other provisions of this Section 30.1 ("Acceptance") to the other parties hereto. The party who selects the lawyer may not consult with such lawyer, directly or indirectly, to determine the lawyer's position on the issue which is the subject of the dispute. In the event that any party fails to so act, such arbitrator shall be appointed pursuant to the same procedure that is followed when agreement cannot be reached as to the third arbitrator. Within ten (10) days after such appointment and notice, such lawyers shall appoint a third lawyer (together with the first two (2) lawyers, "Arbitration Panel") of the same qualification and background and shall deliver written notice of the identity of such lawyer and a copy of his or her written Acceptance of such appointment to each of the parties. In the event that agreement cannot be reached on the appointment of a third lawyer within such period, such appointment and notification shall be made as quickly as possible by any court of competent jurisdiction, by any licensing authority, agency or organization having jurisdiction over such lawyers, by any professional association of lawyers in existence for not less than ten (10) years at the time of such dispute or disagreement and the geographical membership boundaries of which extend to the County of San Diego or by any arbitration association or organization in existence for not less than ten (10) years at the time of such dispute or disagreement and the geographical boundaries of which extend to the County of San Diego, as determined by the party giving such Notice of Dispute and simultaneously confirmed in writing delivered by such party to the other party. Any such court, authority, agency, association or organization shall be entitled either to directly select such third lawyer or to designate in writing, delivered to each of the parties, an individual who shall do so. In the event of any subsequent vacancies or inabilities to perform among the Arbitration Panel, the lawyer or lawyers involved shall be replaced in accordance with the provisions of this Section 30.1 as if such replacement was an initial appointment to be made under this Section 30.1 within the time constraints set forth in this Section 30.1, measured from the date of notice of such vacancy or inability, to the person or persons required to make such appointment, with all the attendant consequences of failure to act timely if such appointed person is a party hereto.

30.1.2 Duty. Consistent with the provisions of this Section 30.1, the members of the Arbitration Panel shall utilize their utmost skill and shall apply themselves diligently so as to hear and decide, by majority vote, the outcome and resolution of any dispute or disagreement submitted to the Arbitration Panel as promptly as possible, but in any event on or before the expiration of thirty (30) days after the appointment of the members of the Arbitration Panel. None of the members of the Arbitration Panel shall have any liability whatsoever for any acts or omissions performed or omitted in good faith pursuant to the provisions of this Section 30.1.

30.1.3 Authority. The Arbitration Panel shall (i) enforce and interpret the rights and obligations set forth in the Lease to the extent not prohibited by law, (ii) fix and establish any and all rules as it shall consider appropriate in its sole and absolute discretion to govern the proceedings before it, including any and all rules of discovery, procedure and/or evidence, and (iii) make and issue any and all orders, final or otherwise, and any and all awards, as a court of competent jurisdiction sitting at law or in equity could make and issue, and as it shall consider appropriate in its sole and absolute discretion, including the awarding of monetary damages (but shall not award consequential damages to either party and shall not award punitive damages), the awarding of reasonable attorneys' fees and costs to the prevailing party as determined by the Arbitration Panel and the issuance of injunctive relief. If the party against whom the award is issued complies with the award, within the time period established by the Arbitration Panel, then no Event of Default will be deemed to have occurred, unless the Event of Default pertained to the non-payment of money by Tenant or Landlord, and Tenant or Landlord failed to make such payment under protest.

30.1.4 Appeal. The decision of the Arbitration Panel shall be final and binding, may be confirmed and entered by any court of competent jurisdiction at the request of any party and may not be appealed to any court of competent jurisdiction or otherwise except upon a claim of fraud on the part of the Arbitration Panel, or on the basis of a mistake as to the applicable law. The Arbitration Panel shall retain jurisdiction over any dispute until its award has been implemented, and judgment on any such award may be entered in any court having appropriate jurisdiction.

30.1.5 Compensation. Each member of the Arbitration Panel (i) shall be compensated for any and all services rendered under this Section 30.1 at a rate of compensation equal to the sum of (a) Two Hundred Fifty Dollars (\$250.00) per hour and (b) the sum of Ten Dollars (\$10.00) per hour multiplied by the number of full years of the expired Term under the Lease, plus reimbursement for any and all expenses incurred in connection with the rendering of such services, payable in full promptly upon conclusion of the proceedings before the Arbitration Panel. Such compensation and reimbursement shall be borne by the nonprevailing party as determined by the Arbitration Panel in its sole and absolute discretion.

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

“TENANT”

GCOFF-SAN DIEGO, LLC
a Delaware limited liability company

By: Great Circle Family Foods, LLC,
a California limited liability company,
its sole member

By: Richard G. Reinis
Name: Richard G. Reinis
Its: CEO

“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: Ronald Harty
Name: RONALD HARTY
Title: G.P.

By: Ronald Harty
Name: RONALD HARTY
Title: PICCOLI

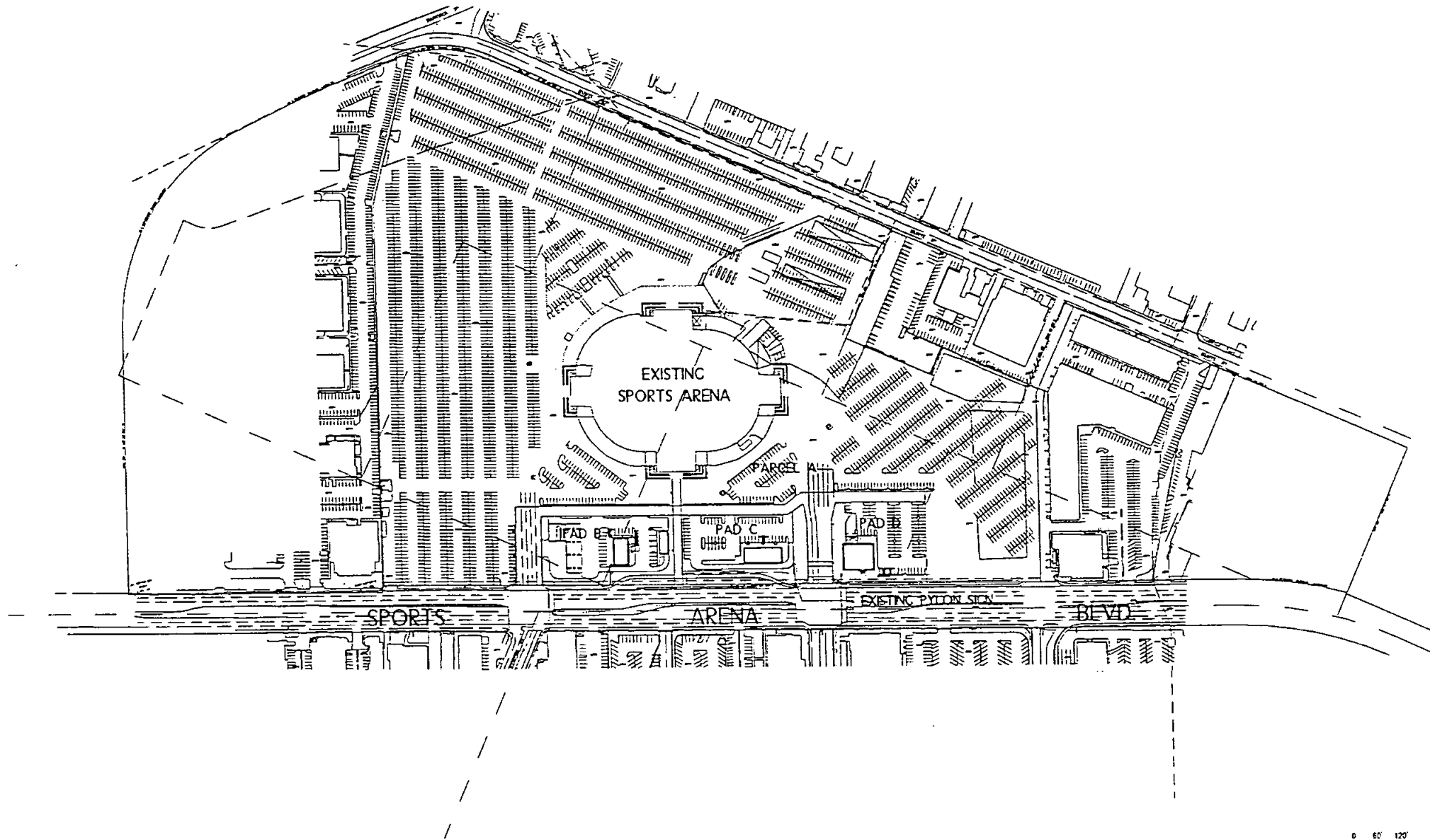
EXHIBIT LIST

EXHIBIT A-1	-	Shopping Center Plan.....	Summary Section 4
EXHIBIT A-2	-	Shopping Center Legal Description.....	Summary Section 4
EXHIBIT A-3	-	Development Legal Description.....	Summary Section 4
EXHIBIT A-4	-	Premises	Summary Section 5
EXHIBIT A-5	-	Premises Legal Description.....	Summary Section 5
EXHIBIT A-6	-	Tenant Work Limit Line	Section 1.1.2 of Lease
EXHIBIT A-7	-	Access Driveways	1.1.3 of Lease
EXHIBIT A-8	-	Tenant's Control Area.....	1.1.5 of Lease
EXHIBIT A-9	-	Radius Restriction Boundary Area.....	Section 5.4 of Lease
EXHIBIT A-10	-	Patio Area.....	Section 5.7 of Lease
EXHIBIT B	-	Confirmation of Lease Term Dates.....	Section 2.1 of Lease
EXHIBIT C	-	Rules and Regulations.....	Section 5.2.1 of Lease
EXHIBIT D-1	-	Form of Tenant's Estoppel Certificate	Article 17 of Lease
EXHIBIT D-2	-	Form of Landlord's Estoppel Certificate	Section 14.5.9 of Lease
EXHIBIT E	-	Work Letter Agreement	Section 1.1.2 of Lease
EXHIBIT F	-	Existing Exclusives/Use Prohibitions	Section 5.1 of Lease
EXHIBIT G-1	-	Master Lease Subordination, Non-Disturbance and Attornment Agreement.....	Article 18 of Lease
EXHIBIT G-2	-	Landlord's Lender's Subordination, Non-Disturbance and Attornment Agreement.....	Article 18 of Lease
EXHIBIT H	-	Memorandum of Sublease.....	Section 29.19 of Lease
EXHIBIT I	-	Guaranty of Lease	Section 29.20 of Lease

EXHIBIT A-1
SHOPPING CENTER PLAN

[ATTACHED]

EXHIBIT A-1



LEASE EXHIBIT A

ARENA 2000

SPORTS ARENA MASTERSITE

SAN DIEGO, CALIFORNIA

0 60' 120' 240'



1 OF 1

SGPA ARCHITECTURE+PLANNING
SAN DIEGO SAN FRANCISCO

Project No. 98019-P-03 Date: 4-18-02
File Name: C:\1998\98019-P\02\02.dwg Plot Date: April 09, 2002 www.sgpa.com



EXHIBIT A-2

SHOPPING CENTER LEGAL DESCRIPTION

[ATTACHED]

J-13575B

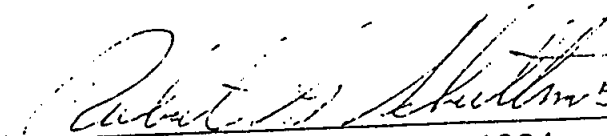
CITY LEASE PARCEL

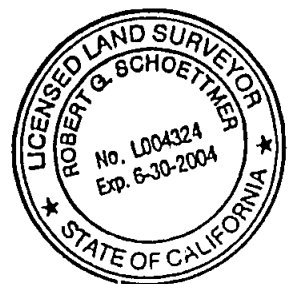
Parcel "A"

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

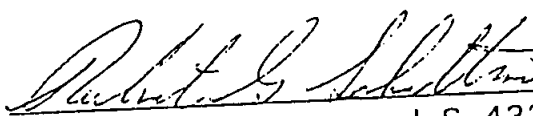
CITY LEASE PARCEL

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

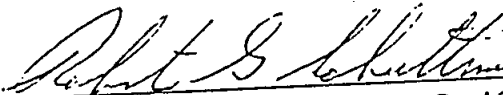
CITY LEASE PARCEL

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

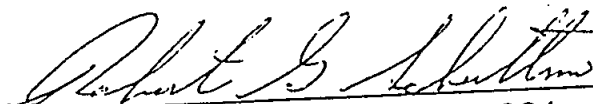
CITY LEASE PARCEL

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.

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



jb/13575.003

EXHIBIT A-3

DEVELOPMENT LEGAL DESCRIPTION

[ATTACHED]

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:

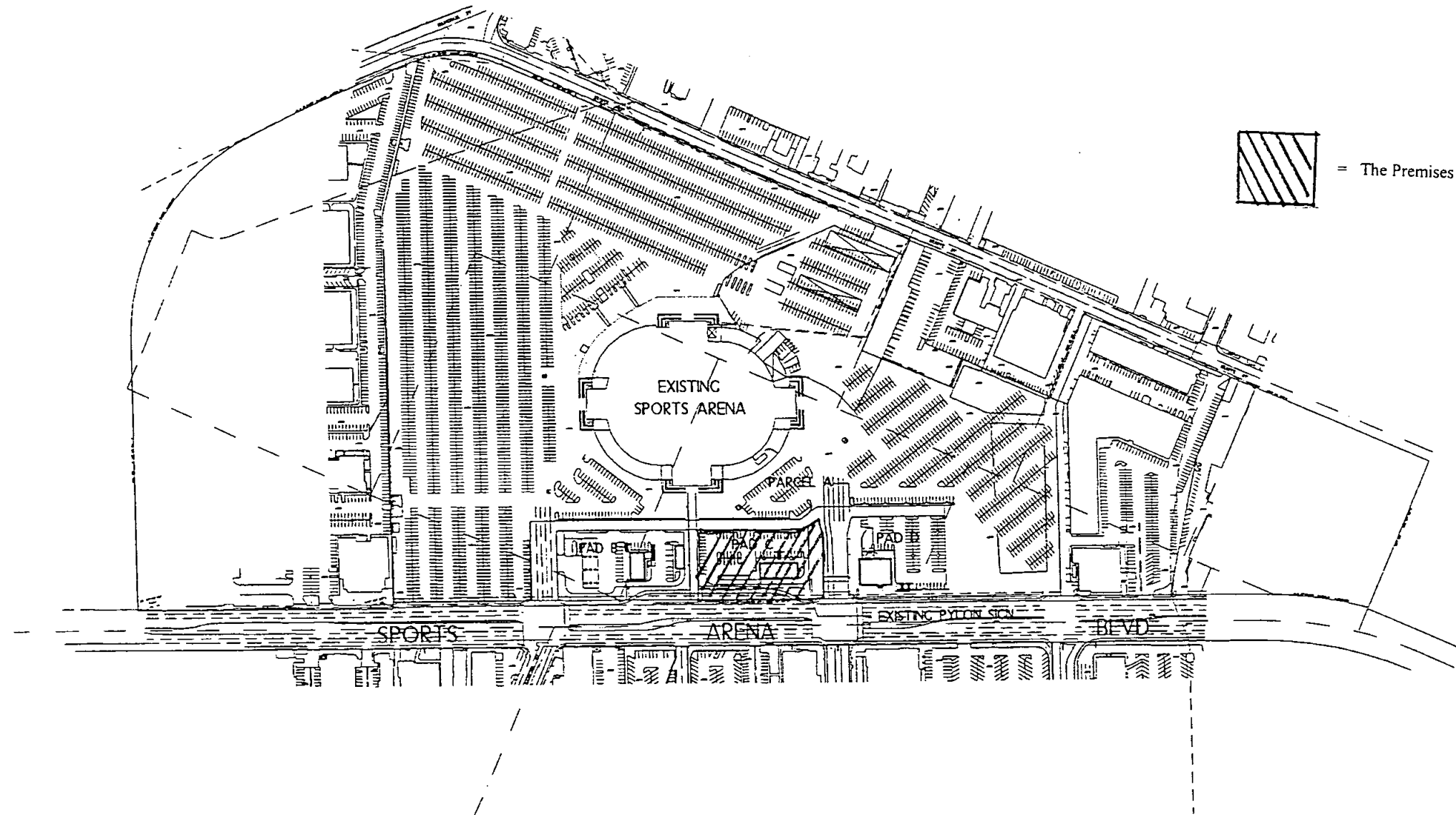
SOUTH 36° 32' 31" WEST, A DISTANCE OF 5.00 FEET; NORTH 53° 26' 49" WEST, A DISTANCE OF 307.00 FEET TO THE BEGINNING OF A 300.00 FOOT RADIUS CURVE, CONCAVE SOUTHWESTERLY; AND WESTERLY ALONG THE ARC OF SAID CURVE TO AND ALONG THE SOUTHERLY LINE OF HANCOCK STREET DEDICATED BY SAID RESOLUTION, THROUGH A 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° 23' 46" WEST, A DISTANCE OF 725.59 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 12° 36' 14" EAST, A DISTANCE OF 150.00 FEET; THENCE NORTH 77° 23' 46" WEST, 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 150.00 FEET TO THE TRUE POINT OF BEGINNING.



LEASE EXHIBIT A

ARENA 2000

SPORTS ARENA MASTERSITE

SAN DIEGO, CALIFORNIA

SGPA ARCHITECTURE • PLANNING
SAN DIEGO SAN FRANCISCO

Project No. 98019-P-03
File Name: E:\198019-P\98019-P.dwg plot date: April 09, 2002 Date: 4-18-02
copyright 2002



EXHIBIT A-5

PREMISES LEGAL DESCRIPTION

[ATTACHED]

EXHIBIT A-5

PARCEL 2: (ASSESSOR'S PARCEL NO. 760-245-10)

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 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) 367.25 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 LINE NORTH 12°36'23" EAST 174.00 FEET; THENCE SOUTH 77°23'37" EAST 262.25 FEET; THENCE NORTH 67°37'56" EAST 48.56 FEET; SOUTH 03°09'24" WEST 42.41 FEET; THENCE SOUTH 12°36'23" WEST 160.00 FEET TO SAID NORTHERLY RIGHT-OF-WAY LINE; THENCE WESTERLY ALONG SAID NORTHERLY RIGHT-OF-WAY LINE NORTH 77°23'37" WEST 309.00 FEET TO THE TRUE POINT OF BEGINNING.

EXHIBIT A-6

TENANT WORK LIMIT LINE

[INTENTIONALLY DELETED]

EXHIBIT A-7

ACCESS DRIVEWAYS

[ATTACHED]

EXHIBIT A-7



EXHIBIT A-8

TENANT'S CONTROL AREA

[ATTACHED]

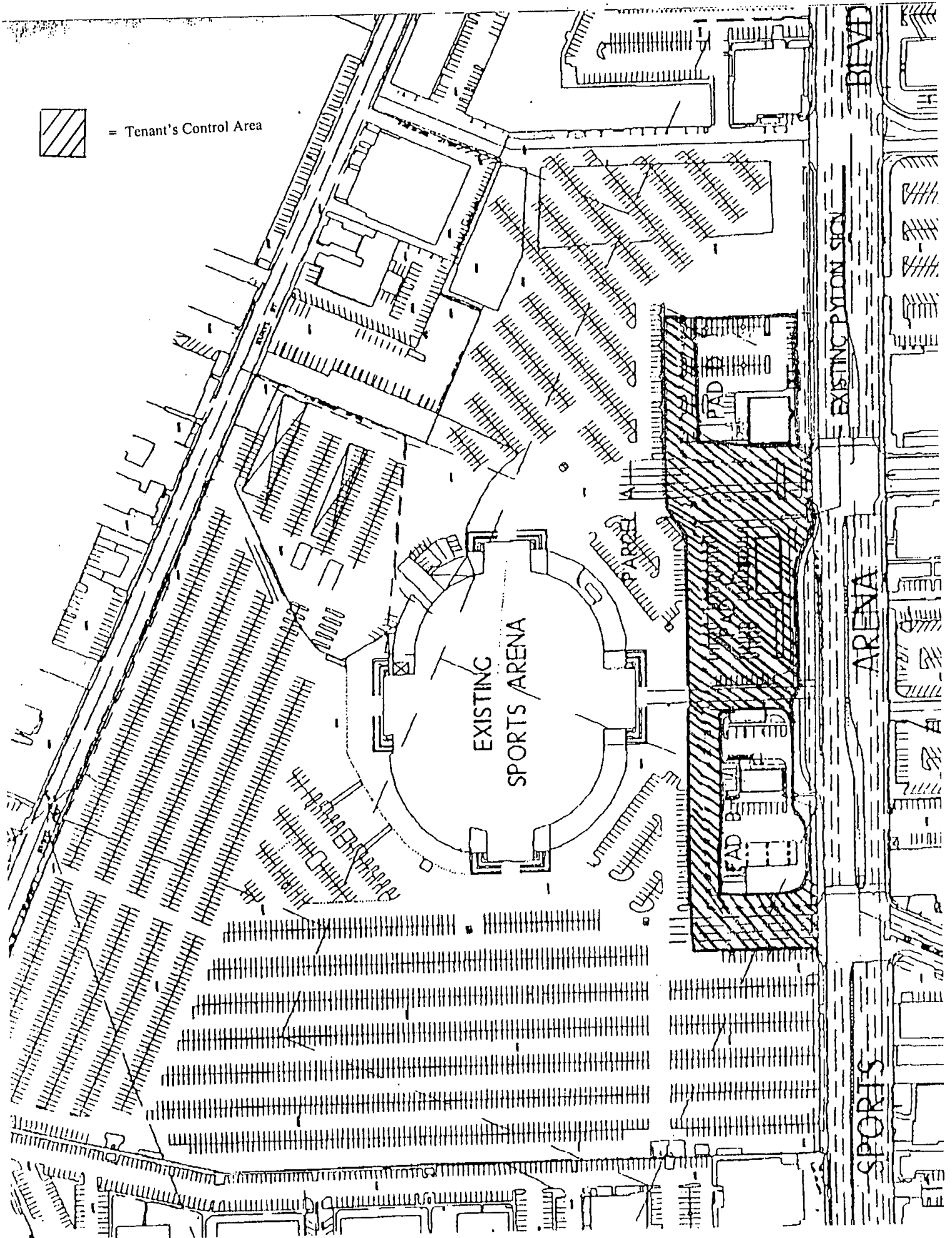
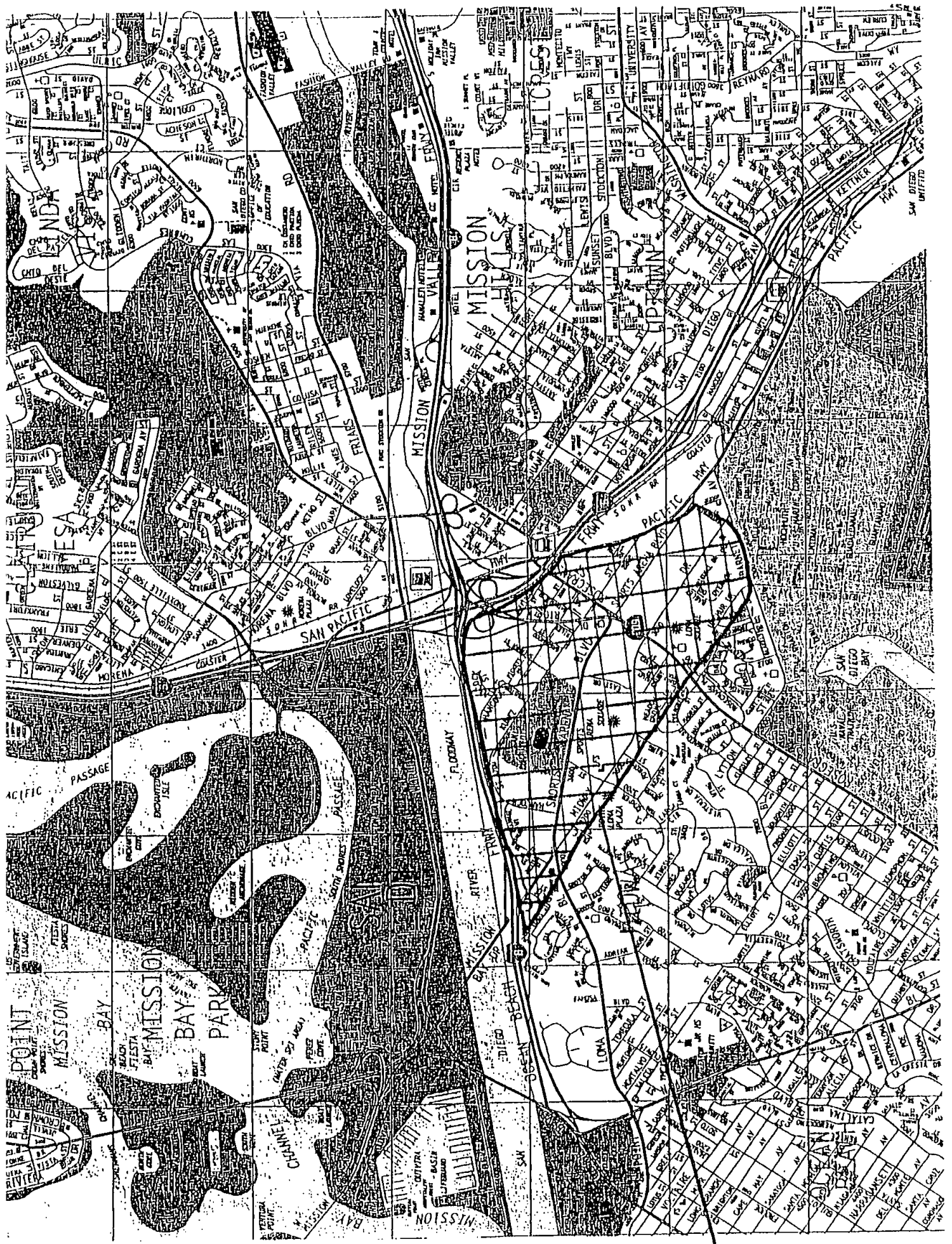


EXHIBIT A-9

RADIUS RESTRICTION BOUNDARY AREA

[ATTACHED]

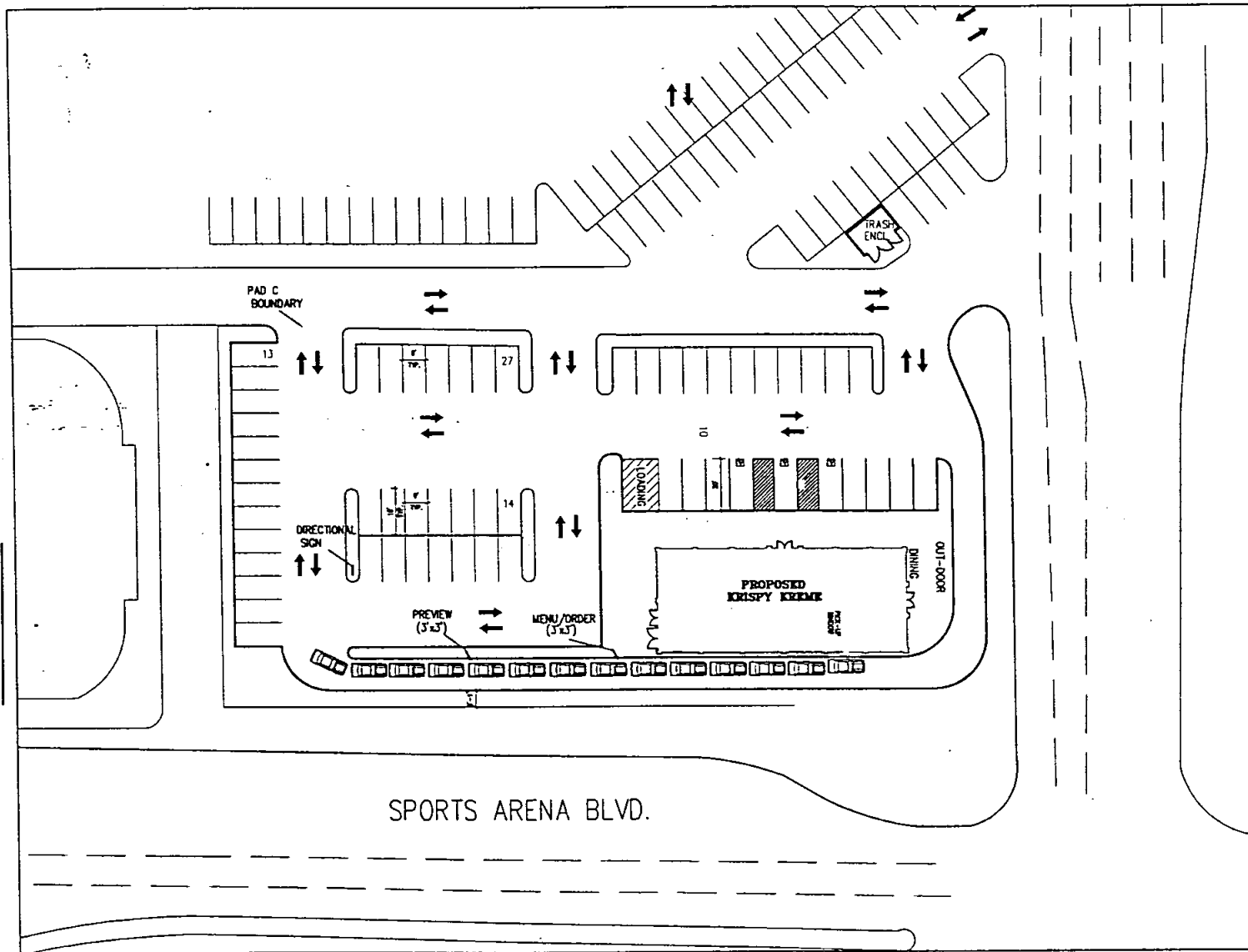


ARTIFICIAL RADIUS

EXHIBIT A-10

PATIO AREA

[ATTACHED]



PROJECT DATA

SITE AREA:
PAD C SITE 44,163 SQ. FT.

BUILDING AREA:
4,125 SQ. FT.

PARKING PROVIDED
52 STANDARD SPACES
3 HANDICAPPED SPACES
VAN ACCESSIBLE
55 SPACES TOTAL

CAR STACKING
14 CARS

SPORTS ARENA BLVD.

THIS INFORMATION IS CONCEPTUAL AND IS SUBJECT TO ADJUSTMENTS PENDING FURTHER VERIFICATION AND CLIENT, TENANT AND GOVERNMENTAL AGENCY APPROVALS. NO WARRANTIES OR GUARANTEES OF ANY KIND ARE GIVEN OR IMPLIED BY THE ARCHITECT.



SCHEME 4

DRAWN BY: tg
DRAWING FILE: SCHEME 4
SCALE: 1"=60'-0"
JOB NO.: 00.434.01
DATE: 11.21.00

KRISPY KREME
SPORTS ARENA, SAN DIEGO
SAN DIEGO, CALIFORNIA

A PROJECT FOR:
Great Circle Family Foods, LLC
550 South Hope Street, 20 floor
Los Angeles, California 90071



mgs architecture
220 SOUTH LOS ROYALES AVE. # 300
PASADENA, California 91101
(626) 793.9119 (626) 796.9295

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 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 C

EXHIBIT D-1

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 \$ _____.

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.

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 D-2

FORM OF LANDLORD'S ESTOPPEL CERTIFICATE

Loan No.:

ESTOPPEL CERTIFICATE AND WAIVER

To: _____

1. The undersigned _____ ("Lessor"), is the present owner and lessor of certain land and premises (the "Leased Premises") described on Exhibit A attached hereto and incorporated by reference located in the City of San Diego, County of San Diego, State of California, pursuant to a Lease dated _____ (hereinafter referred to as the "Ground Lease"), by and between the undersigned and _____ ("Lessee"). Lessor understands that you are about to make a loan (the "Loan") in the amount of \$_____ to be secured by a deed of trust (the "Deed of Trust") encumbering Lessee's interest in the Ground Lease and the leasehold estate created thereby. Lessor further understands that it is a condition to the making of the Loan that this certification be furnished to you. Accordingly, and with the knowledge that you will be relying upon the statements herein made, Lessor hereby certifies as follows:

(a) The Ground Lease is in full force and effect and has not been assigned, modified, supplemented or amended in any way, except for _____. Lessor will not enter into any agreement with Lessee for the voluntary cancellation, surrender or modification of the Ground Lease without your prior written consent.

(b) There is no currently existing matured default under the Ground Lease in the payment of rent or in the observance or performance of any other covenant or condition to be observed or performed by Lessee, and Lessor has no knowledge of any state of facts which, with the giving of notice, passage of time or both, would constitute a default by Lessee under the Ground Lease.

(c) The term of the Ground Lease commenced on _____, and as extended expires on _____.

(d) Lessor consents to the Deed of Trust and assignment of Lessee's interest in the Ground Lease to you and to the recording of the Deed of Trust with the recorder of the county in which the Leased Premises is located. Lessee shall, however, remain liable to Lessor for full performance of all obligations under the Ground Lease.

(e) Upon serving Lessee with notice of any default, Lessor shall simultaneously serve a copy thereof upon you. Upon receipt of written notice of any default of Lessee, after service of such notice upon you, you shall have the same period plus ten (10) business days or such longer period as may be provided in the Ground Lease, to remedy or cause to be remedied the defaults complained of, and Lessor shall accept such performance as if the same had been done by lessee. Lessor agrees not to invoke any of its remedies with respect to the Ground Lease (except in the case of emergency repairs) during any time period not to exceed sixty (60) days from delivery of notice to you, that you are proceeding with due diligence to cure any default reasonably susceptible of cure by you, so long as the conditions of the Ground Lease are met.

(f) If the Ground Lease terminates for any reason not reasonably susceptible of cure by you (e.g., the rejection of the Ground Lease in a bankruptcy proceeding), Lessor agrees to enter into a new Ground Lease for the remainder of the term, effective as of the date of such termination at the rent and additional rental and upon the terms, conditions, covenants and agreements as contained in the Ground Lease and equal in priority thereto, provided that:

(i) you deliver a written request to Lessor for such new lease within thirty (30) days after the notice of termination has been served upon you together with all sums then due to Lessor under the Ground Lease;

(ii) you agree to perform and observe all covenants contained therein on Lessee's part to be performed; and

(iii) you remedy any and all other defaults of Lessee then in existence susceptible of performance by you.

If the Ground Lease terminates because of the insolvency or bankruptcy of Lessee or some other default not reasonably susceptible of cure by you, then you shall not be requested to cure such default prior to the execution of a new lease.

(g) The restrictions on sublease, assignment or other disposition of the Ground Lease which require the consent of Lessor, shall not be binding upon or applicable to a transfer to you in the context of a foreclosure, deed in lieu of foreclosure, or your sale of the Lessee's interest under the Ground Lease following foreclosure or the taking of a deed in lieu of foreclosure; provided, however, that such provisions shall continue to apply to other transfers of the Lease thereafter.

(h) You shall not be responsible for obligations under the Ground Lease unless and until you become the owner of Lessee's leasehold estate, you shall remain responsible only so long as you are the owner, and you will not be liable under the Ground Lease following your assignment to a third party or your other disposition of Lessee's leasehold estate.

(i) Lessee has timely complied with all of the requirements regarding construction and completion of Lessee improvements under Exhibit 'D' to the Ground Lease, the Work Letter.]

(j) Intentionally deleted.

(k) You shall be named as your interest shall appear on any standard mortgage endorsement on any and all insurance covering the Leased Premises, the improvements or any part thereof and the provisions in the Deed of Trust governing application of the insurance proceeds and any condemnation award shall supersede any contrary provisions in the Ground Lease.

2. Subject to the terms hereof, Lessor by this agreement does hereby waive and relinquish to you, your successors and assigns, all rights, claims and demands of every kind against all restaurant equipment, machinery, furniture, replacements, substitutions, additions, parts and accessories now owned and hereafter acquired by Lessee, including but not limited to fryers, grills, ovens, warmers, refrigerators, freezers, waste disposal units, dishwashers, beverage dispensers, ice cream makers, racks, display cases, light fixtures, decor, counters, cash registers, salad equipment, tables, seating, signs and similar property of Lessee useful in its operation of the Krispy Kreme restaurant (the "Equipment") now located or to be located on the above Premises, including but not limited to the right of foreclosure, levy, execution, sale and distraint for unpaid rent or other rights arising under real property law or by contract which Lessor now has or may hereafter acquire on any of the Equipment presently or hereafter financed or leased by you.

Lessor agrees that the Equipment shall at all times be considered to be personal property and shall not constitute a fixture or become part of the Leased Premises. Lessor agrees that you may remove the Equipment from the Leased Premises at all reasonable times, and Lessor will give you not less than sixty (60) days written notice if you shall be required to remove the Equipment; provided however, that you will either repair any damage caused by such removal or reimburse Lessor for the reasonable cost thereof.

The statements herein made shall be binding upon the undersigned, our successors and assigns, and inures to your benefit and the benefit of your successors and assigns.

IN WITNESS WHEREOF, this Estoppel Certificate has been duly executed and delivered as of

LESSOR:

By: _____

Title: _____

Loan No.:

EXHIBIT A TO LANDLORD'S ESTOPPEL CERTIFICATE

Legal Description:

EXHIBIT E

WORK LETTER AGREEMENT

THIS WORK LETTER AGREEMENT ("**Work Letter**") is entered into as of this 24th day of June, 2002, by and between ARENA GROUP 2000 L.P., a California limited partnership ("**Landlord**"), and GCFF-San Diego, LLC, a Delaware limited liability company ("**Tenant**").

R E C I T A L S:

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. Completion Schedule. As soon as reasonably possible following satisfaction or waiver of the Tenant Contingencies set forth in Section 29.21 of the Lease, Landlord and Tenant shall reasonably agree upon a schedule (the "**Work Schedule**") which will set forth an estimated time table for the planning and completion of the "Landlord's Work" (to the extent not previously completed by Landlord) and the "Improvements", as defined below, and for the installation of all furniture, trade fixtures and equipment ("Tenant's FF&E") to be installed by Tenant within the Improvements and to be used in connection therewith.

2. 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-eight feet (28') 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.

3. Landlord's Work. Landlord, at its sole cost and expense except as provided hereinbelow, previously rough graded a building pad 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 the plans and specifications described in Schedule E-1 attached hereto ("**Landlord Work Plans**"), which Landlord Work Plans Tenant hereby approves. 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. Landlord shall, at Landlord's sole cost and expense (but subject to Tenant's Contribution described in Section 8 below), deliver possession of the Premises with all of the discretionary approvals in place, including, without limitation, the Conditional Use Permit permitting Tenant's use of the Premises. Notwithstanding the foregoing, Tenant acknowledges that Landlord has previously obtained such discretionary approvals and that Landlord shall not be subject to any further costs associated therewith including, without limitation, any costs associated with renewing any of the approvals to the extent they lapse due to the passage of time; provided, however, Landlord shall reasonably cooperate with Tenant in the pursuit of such approvals. All of the work required 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 fees related to utilities serving the Premises.

4. Improvement Plans.

(a) Preliminary Plans. Within thirty (30) days after the satisfaction or waiver of the last of Tenant's Contingencies, 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. In accordance with the Work Schedule, 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. In accordance with the Work Schedule, 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. In accordance with the Work Schedule, 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, including, without limitation, the Building Permits (as defined in the Lease); (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, Landlord or 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.

5. Construction of Tenant's Work. In accordance with the Work Schedule, 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. 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.

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

7. Payment of the Construction Costs of the Improvements. Tenant shall be responsible for all costs associated with Tenant's Work.

8. Tenant Contribution. Notwithstanding anything to the contrary contained in this Lease, Tenant covenants and agrees to reimburse Landlord for One Hundred Thousand Dollars (\$100,000) 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 29.19 above. Notwithstanding the foregoing, Landlord reserves the right to perform Landlord's Work in phases and, in the event thereof, Landlord shall only be required to complete, prior to Tenant's payment to Landlord of the Tenant's Contribution, the portion of Landlord's Work necessary for Tenant to obtain Tenant's building permit and construct the Tenant's Work. Notwithstanding the foregoing, Landlord shall, at a minimum, prior to Tenant opening for business, complete the portion of Landlord's Work identified on Exhibit A-1 as the minimum Landlord's Work Area. Notwithstanding the foregoing, the cost of the grading and compacting of Tenant's pad will not be included in the cost of Landlord's Work for which Tenant will be required to pay Tenant's Contribution.

9. 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, the Work Schedule 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 following information:

(i) The names and addresses of the general, mechanical and electrical contractors Tenant intends to engage in the performance of Tenant's Work;

(ii) 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; and

(iii) A copy of the fully executed Construction Contract.

(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.

10. 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, directly or indirectly caused by Landlord Delay or Force Majeure Delay.

[Remainder of page intentionally blank]

IN WITNESS WHEREOF, this Work Letter is executed as of the date first written above.

“TENANT”

GCFF-SAN DIEGO, LLC,
a Delaware limited liability company

By: Great Circle Family Foods, LLC,
a California limited liability company,
its sole member

By: Richard O. Reins
Name: Richard O. Reins
Its: CGF

“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: Ronald Hawn
Name: Ronald Hawn
Title: G.P.

By: Ronald Hawn
Name: Ronald Hawn
Title: President

SCHEDULE E-1

LANDLORD'S WORK PLANS

[ATTACHED]

LAST DATE →

DATE	REASON
12/22/00	BLDG DEPT.
01/31/01	RESUBMIT
02/16/01	BID SET
3/20/01	ADDITIONAL
DRAWN	BS, BSM
CHECKED	RT

RY

SHEET INDEX

ER
ERING COMPANY
Road
A 92110-2546
291-0707
11-4165

ENGINEER
SOCIATES
Trade Drive, Suite E
A 92128
676-9776
76-9744

ARCHITECT
adros Ave
h, CA 92075
481-2828
481-3066

SUME

- TS1 TITLE SHEET
- TS2 ACCESSIBILITY NOTES
- ARCHITECTURAL**
 - AS1.1 OVERALL SITE PLAN
 - AS2.1 ENLARGED SITE PLAN
 - AS3.1 DETAILS
- CIVIL**
 - C.1 TITLE AND DETAIL SHEET
 - C.2 GRADING AND UTILITY SHEET
- LANDSCAPE**
 - LI-1 IRRIGATION PLAN
 - LI-2 IRRIGATION LEGEND, NOTES & DETAILS
 - LI-3 IRRIGATION DETAILS
 - LI-4 IRRIGATION DETAILS
 - LP-1 PLANTING PLAN
 - LP-2 PLANTING LEGEND, NOTES & DETAILS
- ELECTRICAL**
 - E-1 SITE PLAN - ELECTRICAL
 - E-2 PAD C - ELECTRICAL
 - E-3 DETAILS
 - E-4 SINGLE LINE DIAGRAM, PANEL SCHEDULE & SYMBOL LIST

VICINITY MAP

ARCHITECTURE AND PLANNING

A. Allard, Chairman • Members of the American Institute of Architects
1545 Howard Circle South, Suite 200, San Diego, California 92108 (619) 297-0151
200 Pine Street, Studio 500, San Francisco, California 94105 (415) 983-0131
13 Townsend, Laguna Niguel, California 92657 (714) 496-0637

SCPA

PAD C - KRISPY KREME

EXHIBIT F

EXISTING EXCLUSIVES/USE PROHIBITIONS

Arena Fuels, LLC. Landlord's lease with Arena Fuels, LLC provides: "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."

Chili's Grill & Bar. Landlord's lease with Chili's Grill & Bar provides: "Provided Tenant is not in material default under any other material terms and conditions of the Lease (after expiration of applicable notice and cure periods), Landlord agrees it shall not lease or permit any occupant to use space, any Pad Parcel or other space within the Shopping Center for the operation of an Applebee's, TGI Friday's, Bennigans, and/or Red Robin restaurant."

EXHIBIT G-1

MASTER LEASE SUBORDINATION, NON-DISTURBANCE AND
ATTORNMENMENT AGREEMENT

[TO BE ATTACHED]

EXHIBIT G-1

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Buchalter, Nemer, Fields, & Younger
601 South Figueroa Street, Suite 2400
Los Angeles, California 90017-5704
Attn: Bryan Mashian, Esq.

(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 GCFF—San Diego, L.L.C., a Delaware limited liability company ("SUBTENANT"), in, or of, its possession or its rights to possession of the subleased premises ("Subleased Premises") or any part thereof under the Sublease dated June 24, 2002 ("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. City's Condemnation Rights; Right to Terminate.

a. If CITY exercises any rights of eminent domain, condemnation or taking with respect to the premises subject to the Master Lease, the Sublease interest and/or the Subleased Premises (or any portion thereof), LESSEE shall be entitled to the entire condemnation award except for the following amounts, all of which amounts shall be provided to Subtenant: (i) any and all allowable relocation costs under applicable law at the time of condemnation (subject to the limitations contained in Section 3(b) below), (ii) the fair market value of the tenant improvements constructed by Subtenant on the Subleased Premises including any and all buildings, fixtures, drive-thru improvements (collectively, "Tenant Improvements"), (iii) any loss of goodwill (subject to the limitations contained in Section 3(b) below), (iv) fifty percent (50%) of the value of Subtenant's leasehold estate or so-called "bonus value" under the Sublease based on the contract rental rates in comparison with the market rental rates for the Subleased Premises for the unexpired term of the Sublease, and (v) any additional amounts to which Subtenant would be entitled to under State and Federal Law.

b. The parties acknowledge and agree that if, after the earlier to occur(i) the date which is twenty one (21) years after the commencement date of the term of the Master

Lease or (ii) twenty (20) years after the commencement date of the third sublease in the existing Shopping Center (with the understanding that Subtenant's Sublease is the first sublease in the existing Shopping Center), and if CITY or other entity terminates the Master Lease by exercising eminent domain, condemnation or taking rights or if CITY or CITY's designee exercises its early termination right under Section 3.9 of the Master Lease, then Subtenant shall not be entitled to any relocation expense or goodwill payment whatsoever arising out of eminent domain, condemnation or taking of the Subleased Premises (or any portion thereof) or CITY's early termination right under Section 3.9 of the Master Lease.

4. 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.

5. 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.

6. 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.

7. 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.

8. 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 8, "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. Permitted Use. Notwithstanding anything to the contrary in the Sublease, LESSEE shall use the premises for the operation of a typical Krispy Kreme Doughnuts restaurant which, may be open 24 hours a day, 7 days a week with drive-thru capabilities specializing in the manufacture and sale of doughnuts and incidental sale of other food and non-food items (including coffee, espresso, ice-blended drinks, and other beverages), sold in other Krispy Kreme

Doughnuts restaurants in Southern California or other first-class restaurant use ("Permitted Use"). Any change to the Permitted Use will require prior written consent and approval of the CITY.

d. Exclusive Use. The provisions of Section 5.6 Exclusive Use of the Sublease shall be limited to the three pads only.

e. 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.

f. 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.

g. 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.

h. 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.

i. Arbitration. Article 30 Arbitration of the Sublease is deleted in its entirety and shall not apply to CITY as Landlord.

j. Prohibited Uses. Article 5.8 Prohibited Uses of the Sublease is deleted in its entirety and shall not apply to CITY as Landlord.

k. Nondiscrimination. 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.

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

(1) Equal Opportunity Contracting. 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. 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. 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. 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.

9. 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.

10. 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.

11. 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 ____ day of _____, 2002.

LESSOR:

THE CITY OF SAN DIEGO,
a municipal corporation,

By: _____

Name: _____

For the City Manager

Title: _____

Date: _____

LESSEE:

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: _____

Date: _____

SUBTENANT:

GCFF-SAN DIEGO, L.L.C.,
A Delaware limited liability company

By: Great Circle Family Foods, LLC,
a California limited liability company,
its sole member

By: _____

Name: _____

Title: _____

Date: _____

APPROVED AS TO FORM AND LEGALITY

CASEY G. GWINN, City Attorney

Dated _____

By: _____

Deputy City Attorney

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO)

WITNESS my hand and official seal.

Notary Public

[illegible]

WITNESS my hand and official seal.

Notary Public

[illegible]

WITNESS my hand and official seal.

Notary Public

EXHIBIT G-2

LANDLORD'S LENDERS' 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 _____, by and between U.S. BANK NATIONAL ASSOCIATION (herein referred to as "Lender") and _____ (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 Lease dated _____ (herein referred to as "Lease"), recorded by Memorandum of Lease of even date, on _____, as Series Number _____, in the Official Records of _____ County, California, Landlord, as landlord, leased to Tenant, as tenant, the property described on Exhibit "A" (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 lien of said 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 under the Lease 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:

LENDER:

U.S. BANK NATIONAL ASSOCIATION

By:
Its:

By:
Its: Corporate Officer

ACKNOWLEDGED BY:

LANDLORD:

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 H

MEMORANDUM OF SUBLEASE

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

BUCHALTER, NEMER, FIELDS & YOUNGER
601 South Figueroa Street, Suite 2400
Los Angeles, California 90017-5704
Attention: Bryan Mashian, Esq.

MEMORANDUM OF GROUND SUBLEASE

This Memorandum of Ground Sublease ("Memorandum"), dated _____, 2002 by and between Arena Group 2000 LP, a California limited partnership ("Landlord") and GCFF-San Diego, LLC, a Delaware limited liability company ("Tenant"), is based upon the following facts and circumstances:

5. Landlord and Tenant are parties to that certain Ground Sublease dated _____, 2002 ("Sublease") pursuant to which Landlord leased to Tenant and Tenant leased from Landlord that certain real property described on Exhibit A attached hereto ("Premises") together with rights and interest to that certain real property described on Exhibit B attached hereto ("Access Driveways"), that certain real property described as Exhibit C attached hereto ("Shopping Center"), and the Common Areas (as such term is defined in Section 1.1.4 in the Sublease). The capitalized terms used in this Memorandum shall have the meaning given to such terms in the Sublease, unless specifically provided otherwise herein.

Landlord and Tenant hereby agree as follows:

Pursuant to the Sublease, Tenant has certain rights and interests in and to the Premises, the Access Driveways, the Shopping Center, and the Common Areas as set forth in the Sublease, including, without limitation, the following: (i) signage rights, (ii) exclusive use rights, (iii) right to prohibit certain uses in Shopping Center, (iv) right to enforce building height limitations over certain parts of the Shopping Center, (v) right to after-hours lighting in Common Areas, and (vi) parking rights in the Shopping Center.

This Memorandum is for the purpose of recordation and in no way modifies, amends or changes the Sublease. The Sublease is incorporated herein by reference. In the event of a conflict between this Memorandum and the provisions of the Sublease, the Sublease shall prevail.

Landlord and Tenant have each executed this Memorandum as of the date set forth above.

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: _____

By: _____
Name: _____
Title: _____

Tenant:

GCFF-San Diego, LLC,
a Delaware limited liability company

By: _____
Name Printed: _____
Title: _____

By: _____
Name Printed: _____
Title: _____

EXHIBIT A TO MEMORANDUM OF SUBLEASE

PREMISES

EXHIBIT H

EXHIBIT B TO MEMORANDUM OF SUBLEASE

ACCESS DRIVEWAYS

EXHIBIT H

EXHIBIT C TO MEMORANDUM OF SUBLEASE
SHOPPING CENTER

EXHIBIT H

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: GCFF-SAN DIEGO, LLC, a Delaware limited liability company
- c. Effective Date: May ___, 2002
- d. Premises Location: Pad C 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 existing and future obligations of Tenant to Guarantor, or any person owned in whole or in part by Guarantor, and the right of Guarantor to cause or permit itself or such person to withdraw any capital invested in Tenant are hereby subordinated to all obligations hereby guaranteed, and, without the prior written consent of Landlord, such obligations to Guarantor shall not be performed, and such capital shall not be withdrawn, in whole or in part, while Tenant is in default under the Lease.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

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

Address: 550 South Hope Street
20th Floor
Los Angeles, CA 90071

GUARANTOR:

GREAT CIRCLE FAMILY FOODS, LLC,
a California limited liability company

Telephone: (213) 312-1437

By: _____
Name: _____
Its: _____