

EXHIBIT A

COPY

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FILED
 SUPERIOR COURT OF CALIFORNIA
 COUNTY OF SAN BERNARDINO
 SAN BERNARDINO DISTRICT

JUL 27 2016

BY Leanne M. Landeros
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6 Attorneys for Plaintiff 5060 MONTCLAIR PLAZA LANE OWNER LLC.,
 a Delaware limited liability company

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 9 **FOR THE COUNTY OF SAN BERNARDINO**
 10 **SAN BERNARDINO DISTRICT – CIVIL DIVISION**

12 5060 MONTCLAIR PLAZA LANE OWNER
 LLC., a Delaware limited liability company,

CASE NO. CIVDS 1612258

14 Plaintiff,

COMPLAINT FOR:

15 vs.

BREACH OF LEASE

16 CMEBAR, LLC, a Texas limited liability
 company, d/b/a Elephant Bar Restaurant; and
 17 DOES 1 through 20, inclusive,

[Unlimited Jurisdiction]

18 Defendants.

20 Plaintiff 5060 MONTCLAIR PLAZA LANE OWNER LLC., a Delaware limited liability
 21 company, (hereinafter referred to as “Montclair Plaza” or “Plaintiff”) hereby complains and
 22 alleges as follows:

23 **PRELIMINARY ALLEGATIONS**

24 **A. The Parties.**

25 1. At all times mentioned herein, Plaintiff was and is now a Delaware limited liability
 26 company, lawfully doing business in the County of San Bernardino, State of California.

27 2. Plaintiff is informed and believes that, at all times mentioned herein, Defendant
 28 CM EBAR, LLC, d/b/a Elephant Bar Restaurant (hereinafter referred to as “Elephant Bar” or

1 "Defendant") was and is now a Texas limited liability company, lawfully doing business in the
2 State of California. Plaintiff is further informed and believes that Defendant regularly does
3 business in the County of San Bernardino, State of California.

4 3. The true names and capacities, whether individual, corporate, associated or
5 otherwise, of defendants named herein as DOES 1 through 20, inclusive, are unknown to Plaintiff,
6 who therefore sues such defendants by such fictitious names. (Elephant Bar and DOES 1 through
7 20 shall collectively be referred to as "Defendants"). Plaintiff alleges, on information and belief,
8 that DOES 1 through 20, inclusive, are in some manner in possession of the Premises identified
9 herein and/or in some manner responsible and/or liable for the damages and/or actions alleged
10 herein. Plaintiff will amend this Complaint to show and/or add the true names and capacities of
11 such fictitiously named defendant(s) when the identity of the same has been ascertained.

12 4. Plaintiff alleges on information and belief that at all times mentioned herein, each
13 of the Defendants was and now is the agent, servant, employee, representative and/or alter ego of
14 each of the other Defendants, and in doing the things herein mentioned, was acting within the
15 scope of his/her authority as such agent, servant, employee, representative and/or alter ego, with
16 the permission and consent of the remaining Defendants.

17 **B. The Lease, First Amendment, Second Amendment and Assignment**

18 5. On or about May 18, 2001, Montclair Plaza LLC, Plaintiff's predecessor-in-
19 interest, as landlord ("Landlord") and S.B. Restaurant Co. ("Original Tenant"), Defendant's
20 predecessor-in-interest, as tenant ("Tenant") entered into a Lease Agreement (the "Lease") (a) for
21 a twenty-year term, and (b) for that certain real property, as amended¹ by the first amendment and
22 second amendment, commonly known by the street address of 4949 S Montclair Plaza Lane,
23 Montclair, California 91763, also known and internally referenced as 5060 E. Montclair Plaza
24 Lane, Space No. 4949, Montclair, California 91763, and generally described as: "Parcel 4949

25
26 ¹ On or about February 25, 2002 (the first amendment to the lease) and on or about May
27 31, 2007 (the second amendment to the lease), the space number for the Premises was changed
28 from 4955 to 4949 and the total square footage was changed from 13,000 square feet to 7,500
square feet, respectively.

1 comprising approximately 7,500 square feet, located in or adjacent to the Montclair Plaza
2 shopping center...in the City of Montclair, County of San Bernardino, and State of California. (the
3 "Premises"). A true and correct copy of the Lease is attached hereto as Exhibit A and is fully
4 incorporated herein by this reference.

5 6. On or about February 2002, Landlord and Original Tenant entered into a first
6 amendment to the Lease (the "First Amendment"). A true and correct copy of the First
7 Amendment is attached hereto as Exhibit B and is fully incorporated herein by this reference.
8 Under the First Amendment, "the Parcel No. 4955 whenever it appears in the Lease..." was
9 deleted and "the new Parcel No. '4949' [] was substituted in lieu thereof."

10 7. On or about May 31, 2007, Landlord and Original Tenant entered into a second
11 amendment to the Lease (the "Second Amendment"). A true and correct copy of the Second
12 Amendment is attached hereto as Exhibit C and is fully incorporated herein by this reference.
13 Under the Second Amendment, "the square feet of the building size set forth in ARTICLE 1.
14 GRANT AND TERM [was] amended to state 7,500 square feet on the parcel of 13,500 square
15 feet..."

16 8. On or about June 16, 2015, Original Tenant and certain affiliates (collectively, the
17 "Debtors") commenced cases under Chapter 11 of Title 11 of the United States Bankruptcy Code
18 in the United States Bankruptcy Court for the Central District of California.

19 9. Original Tenant and Tenant entered into a certain asset purchase and sale
20 agreement dated August 6, 2014 (the "APA").

21 10. Subject to the terms and conditions contained in the APA and the Sale Order
22 entered by the Bankruptcy Court on August 26, 2015, Tenant acquired and assumed from the
23 Original Tenant, pursuant to Section 363 and 365 of the Bankruptcy Code, certain assets and
24 liabilities. On or about June 19, 2015, the Lease, including any and all addenda, was assigned to
25 and assumed by Tenant. A true and correct copy of the Assignment and Assumption of Ground
26 Lease is attached hereto as Exhibit D and is fully incorporated herein by this reference.

27 11. Pursuant to the Lease terms, Tenant is currently occupying the Premises on a
28 twenty-year term.

1 12. Plaintiff, successor-in-interest to Montclair Plaza LLC, is currently the owner of the
2 Premises and holds all the rights, title and interest of the Landlord under the Lease.

3 C. The Default In Payment of Rent

4 i. Annual Minimum Rent.

5 13. As more fully set forth in the Lease, Tenant is required during the term of the Lease
6 to pay monthly rent. Specifically, the Lease, at Section 3.01, provides that "Tenant agrees to pay
7 to Landlord without any prior demand therefor and without any deduction or setoff whatsoever,
8 fixed Minimum Guaranteed Rent..."

9 14. Pursuant to the Lease Section 3.01, subsection (iii), the Annual Rent totals
10 \$206,960, with monthly rental payments of \$17,246.67.

11 ii. Additional Rent.

12 15. Furthermore, Tenant is required during the term of the Lease to pay additional rent
13 ("Additional Rent"). Specifically, the Lease, at Section 3.03, defines Additional Rent as:

14 Any other sums of money or charges to be paid by the Tenant
15 pursuant to the provisions of any other sections of this Lease shall
16 be designated as 'Additional Rent.' Such Additional Rent shall, in
17 no manner, be considered as Minimum Guaranteed Rent.

18 16. The Common Area Maintenance Charge ("CAM Charges") as set forth in Section
19 3.05, subsection (b), provides:

20 Tenant also agrees to pay to Landlord at the office of Landlord, or at
21 such other place designated by Landlord, A Common Area
22 Maintenance Charge equal to the initial rate of \$22,800 per annum,
23 payable in equal installments, in advance at the rate of \$1,900 per
24 month as Tenant's contrition towards the maintenance and repair of
25 the 'Common Area' as defined in Article V of this Lease. The
26 Common Area Maintenance Charge payable by Tenant to Landlord
27 will be increased as of the first day of each succeeding Lease Year
28 by an amount equal to five percent (5%) of the Common Area
Maintenance Charge payable in the immediately preceding Lease
Year.

26 17. As Tenant is in the fifteenth calendar year of the Lease, Tenant's yearly CAM
27 Charges totals \$45,142.44 with monthly installments of \$3,761,87.

28 18. Marketing Assessment.

1 19. As more fully set forth in the Lease, Tenant is required during the term of the Lease
2 to contribute to the promotional charge (the "Marketing Assessment"). Specifically, the Lease, at
3 Section 3.05, subsection (a), provides:

4 Tenant agrees to pay to Landlord at the office of Landlord, or at
5 such other place designated by Landlord a Promotion Charge equal
6 to the initial rate of \$100 per annum, payable in advance at the
7 beginning of each Lease Year, as Tenant's contribution towards the
8 advertising, promotion, and public relations of the Shopping Center
9 and administrative expenses related thereto. The Promotion Charge
payable by Tenant to Landlord will be increased as of the first day
of each succeeding Lease Year by an amount equal to give percent
(5%) of the Promotion Charge payable in the immediately preceding
Lease Year."

10 20. As Tenant is in the fifteenth calendar year of the Lease, Tenant's yearly Marketing
11 Assessment totals \$198.00 with monthly installments of \$16.50.

12 21. Tenant has been delinquent on the Base Rent, Additional Rent, and Marketing
13 Assessment payments starting June 2016.

14 iii. Rent.

15 22. Tenant has been delinquent on the Rent payments starting June 2016. For the
16 month of June and July 2016, Tenant owes Rent in the total amount of \$42,050.08².

17 **D. Late Charges on Past-Due Obligations**

18 23. Pursuant to Section 3.04 of the Lease, "[a]ll past due Minimum Guaranteed Rent,
19 Additional Rental, and other sums due Landlord under this Lease shall bear interest from the due
20 date until paid by Tenant, at the rate of 2% above the Prime Rate..."

21 24. Tenant has incurred late charges for its failure to timely remit rent for March 2016
22 and April 2016 in the amounts of \$53.86 and \$26.21, respectively.

23 **E. Tenant's Tax Obligations for Demised Premises**

24 25. Pursuant to Sections 7.01(a) and (b), which states in pertinent part that
25

26 ² The Rent for the month of June and July 2016 consists of (1) \$17,246.67 (Monthly
27 Annual Minimum Rent), (2) \$3,761.87 (monthly CAM Charges), and (3) \$16.50 (Monthly
28 Marketing Assessment).

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(a) Tenant will, at Tenant's cost and expense, bear, pay and discharge, or case to be borne, paid and discharged...all taxes (including personal property taxes, if any), assessments, sewer rents, water rents and charges, duties, impositions, license and permit fees...

(b) In the event that the demised Premises shall not be assessed as a separate tax parcel or parcels, Tenant shall be responsible for Tenant's proportionate share of Impositions attributable to the larger parcel or parcels of which the Demised Premises is a part....

26. On or about February 26, 2016, the real estate tax for the Demised Premises was refunded to Tenant by the County Tax Assessor in the amount of \$9,221.07, as Landlord had tendered a duplicate payment for said tax period

27. As stated previously, "Tenant shall be responsible for Tenant's proportionate share of Impositions."

28. Therefore, any and all reimbursements by the County Tax Assessor should have been tendered to Landlord, which Tenant currently has a past-due obligation of \$9,221.07.

29. Moreover, for the 2015 Tax Year, there remains an amount owing of \$2,167.13, in addition to the aforementioned reimbursement.

30. Tenant has incurred real estate taxes in the amount of \$11,388.20.

31. The Lease, at Section 13.01, subsection (a)(i), provides that in the following event shall be deemed a default: "Tenant shall have failed to pay any installment of rent or any other charge provided herein, or any portion thereof when the same shall be due and payable, and the same shall remain unpaid for a period of ten (10) days after written notice from Landlord..."

F. The Default

32. Notwithstanding the requirements of the Lease, and despite written demand by Plaintiff, Tenant failed to deliver the Rent to Plaintiff starting June 2016, and continues to fail to pay all of the Rent due thereafter.

33. On or about June 28, 2016, Landlord served Tenant a Default Notice (the "Default Notice"), pursuant to the Lease. The Default Notice advised that Tenant had failed to remit Rent in the amount of \$32,493.31 and that if Tenant did not pay the amount due within ten (10) days of

1 the Default Notice, Tenant would be in default of the Lease. A true and correct copy of Default
2 Notice is attached hereto as Exhibit "E" and is fully incorporated herein by this reference.

3 34. Moreover, on or about July 8, 2016, Plaintiff's counsel served on Tenant a Demand
4 for Payment of Rent (the "Demand Notice") pursuant to the Lease. The Demand Notice advised
5 that Tenant had failed to: (i) pay Rent for the months of June 2016 and July 2016, (ii) pay late
6 charges on past-due obligations for March 2016 and April 2016, and (iii) failed to remit its tax
7 obligations, all in the aggregate amount of \$53,518.35 and that if Tenant did not pay the amount
8 due within three (3) days of the Demand Notice, Tenant would be in default of the Lease, and
9 Plaintiff would be entitled to proceed against Tenant for, among other things, all unpaid rent, late
10 fees, and attorneys' fees and costs incurred. A true and correct copy of Demand Notice is attached
11 hereto as Exhibit "F" and is fully incorporated herein by this reference.

12 35. Notwithstanding the Default Notice and Demand Notice from Plaintiff's counsel to
13 Tenant, Tenant continues to fail and refuses to pay all of the Rent owed to Plaintiff for the month
14 starting June 2016 and refuses to comply with the Lease described above.

15 36. As of July 2016, the amount owed to Plaintiff, pursuant to the Lease, totals
16 \$53,518.35.

17 37. Pursuant to Section 13.01 of the Lease, Landlord has the remedy to continue this
18 Lease in effect after Tenant's breach.

19 38. At the commencement of trial, anticipated for February 2017, Plaintiff will be
20 owed an additional amount of Rent from August 2016 through February 2017 of \$156,109.13, as
21 fully detailed in the spreadsheet attached hereto as Exhibit "G" and fully incorporated herein by
22 this reference.

23 **G. Attorneys' Fees Provision**

24 39. Additionally, the Lease, at Section 13.03, provides as follows:

25 Tenant shall also pay all reasonable costs, expenses and reasonable
26 attorneys' fees that may be incurred or paid by Landlord in
27 enforcing the covenants and agreements in this Lease provided that
28 Landlord prevails in any litigation commenced by it to enforce
same..

1 40. Plaintiff has retained the law firm of Goodkin & Lynch, LLP to protect its rights
2 under the Lease, and has incurred and will continue to incur an unascertained amount of
3 reasonable attorneys' fees and costs. Plaintiff will seek those amounts at the time of trial.

4 **FIRST CAUSE OF ACTION**

5 **(For Breach of the Lease Against Defendants and Does 1-20)**

6 41. Plaintiff hereby incorporates paragraphs 1 through 40, as if set forth fully herein
7 and re-alleges each paragraph by reference.

8 42. Commencing in or around June 2016, Tenant breached the Lease by, among other
9 things, failing to deliver all of the Rent due under the Lease. Despite the fact that Plaintiff sent a
10 Default Notice and Plaintiff's counsel sent the Demand Notice to Tenant, Tenant has failed to
11 make the payments of Rent pursuant to the Lease for each month beginning in or around June
12 2016 to the present.

13 43. Plaintiff has performed all of its obligations under the Lease, except those that have
14 been prevented or excused by the acts of Defendants and/or third parties.

15 44. As of July 2016, the amount Tenant owes to Plaintiff pursuant to the Lease totals
16 \$53,518.35, plus attorneys' fees and costs incurred, interest, escalation charges and other
17 consequential damages permitted under the Lease, all according to proof at time of trial.

18 45. Pursuant to the Lease, Tenant owes Rent as they become due, by reason of the
19 foregoing, at the commencement of trial, anticipated for February 2017, Plaintiff will be owed an
20 additional amount of Rent from August 2016 through February 2017 of \$156,109.13, plus
21 attorneys' fees incurred, interest, escalation charges and other consequential damages permitted
22 under the Lease, all according to proof at time of trial.

23 46. By reason of the foregoing, Plaintiff is entitled to recover from Tenant damages
24 pursuant to the Lease in an amount in excess of \$209,627.48 (anticipating the trial commences in
25 February 2017), plus attorneys' fees incurred, interest, escalation charges and other consequential
26 damages permitted under the Lease, all according to proof at time of trial.

27 **WHEREFORE**, Plaintiff prays for judgment against Defendants as follows:

28 On the First Cause of Action:

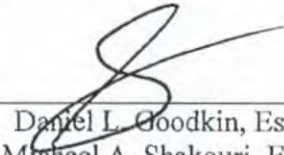
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1. For damages according to proof, but in no event less than \$209,627.48, plus all amounts due under the Lease commencing June 2016 and amounts as they become due;
2. For consequential damages, including the damages identified in the Lease;
3. For interest according to law;
4. For attorneys' fees according to proof;
5. For costs of suit; and
6. For such other and further relief as this Court deems just and proper.

DATED: July 27, 2016

GOODKIN & LYNCH, LLP

By: _____



Daniel L. Goodkin, Esq.
Michael A. Shakouri, Esq.
Attorneys for Plaintiff

5060 MONTCLAIR PLAZA LANE OWNER
LLC., a Delaware limited liability company,

Exhibit A

GROUND LEASE

DATED May 18th, 2001

BETWEEN

MONTCLAIR PLAZA L.L.C. ("LANDLORD")

AND

S. B. RESTAURANT CO. ("TENANT")

MONTCLAIR PLAZA SHOPPING CENTER

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SW

THIS LEASE ("Lease"), is made and entered into by and between MONTCLAIR PLAZA L.L.C., a Delaware limited liability company, with offices at 110 North Wacker Drive, Chicago, Illinois, 60606 ("Landlord"), and S. B. RESTAURANT CO., a California corporation with offices at 6326 A Lindmar Drive, Goleta, California 93117 ("Tenant").

WITNESSETH:

ARTICLE I. GRANT AND TERM.

Section 1.01. Demised Premises. For and in consideration of the covenants, agreements and stipulations of both parties herein contained, Landlord does hereby demise and lease unto Tenant, for the uses and purposes set forth in Section 4.01, and Tenant does lease and take from Landlord that certain piece or parcel of unimproved land (herein the "Demised Premises"), known as Parcel No. 4955, comprising approximately 13,500 square feet, located in or adjacent to the Montclair Plaza shopping center (herein the "Shopping Center"), in the City of Montclair, County of San Bernardino, and State of California. Said Demised Premises are more particularly described in Exhibit "A" attached hereto and made a part hereof.

The approximate boundaries and location of the Demised Premises are shown on the site plan of the Shopping Center ("Site Plan") attached as Exhibit "B" hereto and made a part hereof. The Site Plan is not intended as a representation to Tenant that all matters appearing on the Site Plan are exactly as shown thereon and Landlord reserves the right at any time to make alterations or additions to, subdivide, build additional stories on the buildings located within the Shopping Center or on the outparcels thereto, and to build adjoining the Shopping Center. Landlord also reserves the right at any time to construct other buildings, structures or improvements including, but not limited to, surface, elevated or double-deck parking facilities and to erect temporary scaffolds and other aids to construction.

Landlord shall cause to be maintained no less than 4.7 parking spaces per 1,000 square feet of leasable floor area of the buildings comprising the Shopping Center. Landlord shall not make any alterations or additions to, or construct or make or construct any additional improvements or structures in the area described in Exhibit B-1A and Exhibit B-1B attached hereto ("Protected Area"), except for the roadways and other proposed improvements shown on Exhibit B-1A (with respect to retail improvements) and B-1B (with respect to restaurant improvements). In the event a restaurant is constructed within the non-Protected Area shown on Exhibit B-1B, Landlord covenants and agrees that the entrance to such restaurant building shall be located on the east side of the restaurant building. In addition, in no event shall Landlord make any changes to the Demised Premises or any ducts, pipes, lines, systems or facilities serving the Demised Premises, that are not consistent with a first class retail shopping center.

Section 1.02. Term. The term of this Lease ("Term") shall commence on the date hereof. Tenant's obligation to pay rent hereunder shall commence on the earlier of (a) one hundred eighty (180) days following the earlier of (i) Tenant's satisfaction of the conditions set forth in Sections 1.05 and 1.06 hereof; or (ii) one hundred twenty (120) days from the date hereof, or (b) the date on which the Tenant shall open the Demised Premises for business to the public, whichever of said dates shall first occur, hereinafter referred to as the "Rent Commencement Date". Notwithstanding the foregoing, the one hundred eighty (180) day period specified in (a) above shall be extended one (1) day for each day of delay in the completion of the Tenant improvements described in Article II as a result of force majeure and/or Landlord delays, and Tenant shall be granted two (2) 30-day extensions due to delays caused by governmental agencies, provided that Tenant is diligently pursuing completion of the Tenant improvements described in Article II. The term of this Lease shall end at 11:59 p.m. on the last day of the calendar month in which the date of the expiration of the twenty (20) year period commencing on the Rent Commencement Date occurs ("Expiration Date").

Section 1.03. Lease Year Defined. As used herein, the term "Lease Year" shall mean the twelve (12) calendar month period beginning on the first day of February and ending on the last day of the following January except that if the first Lease Year shall be only a fractional Lease Year, then such first fractional Lease Year shall be deemed to be the first full Lease Year and shall begin on the Rent Commencement Date of the term of this Lease and shall end on the last day of the following January.

Section 1.04. Supplemental Agreement. In order to place in writing the exact dates of commencement and termination of the term of this Lease, the parties shall, within ten (10) days after the Rent Commencement Date, execute a supplemental agreement in the form attached hereto as Exhibit "D" to become a part hereof, setting forth the Rent Commencement Date and Expiration Date of this Lease as determined under the provisions of this Article I.

Section 1.05. Conditions. Tenant's obligations under this Lease shall be conditioned upon Tenant's (i) obtaining the approval of the City of Montclair and any and all other governmental agencies and authorities for the parking, and any other approvals, authorizations, licenses, permits, consents, authorizations, variances and exemptions, as are required for the construction of all improvements required to be made to the Demised Premises and the operation of a full service, sit down restaurant with a full bar comparable to the other Elephant Bar Restaurants operated by Tenant in other locations and Tenant's proposed use of the Demised Premises; (ii) obtaining a liquor license for the Demised Premises, (iii) approval of its due diligence conducted as described in Section 1.06 below, and (iv) approval of any and all covenants, conditions, restrictions, title policy, reciprocal easement agreements, easements, and other documents relating to the Shopping Center which are described in Exhibit "E" attached hereto (collectively, "Underlying Documents"). Tenant shall apply for the permits required for the construction of Tenant's improvements to the Demised Premises within thirty (30) days following the delivery to Tenant of the Demised Premises and Landlord's approval of the plans and specifications for Tenant's improvements. In the event that the permits required for Tenant's improvements have not been issued within one hundred twenty (120) days of the filing of the application, either party may terminate this Lease by written notice given to the other party at any time thereafter. Landlord shall cooperate with Tenant in obtaining all applicable permits and approvals.

Section 1.06. Due Diligence. Tenant shall have thirty (30) days after the execution of this Lease ("Contingency Period") to conduct any and all investigations, examinations, tests, studies, reports and reviews regarding the Demised Premises as Tenant may determine to be necessary or appropriate, and Tenant's approval of the Demised Premises, including, without limitation, the condition of the Demised Premises, the costs and feasibility of the development of the Demised Premises for Tenant's proposed use, including without limitation, the nature, extent and impact of any conditions that might be placed upon such development and the availability of financing therefor, and the availability of utilities, including natural gas, to the Demised Premises in a sufficient quantity for Tenant's business operations. If Tenant provides notice to Landlord of its disapproval of any item hereunder on or before the end of the Contingency Period, this Lease shall automatically terminate, Landlord shall immediately return to Tenant any and all prepaid rent and deposits paid to Landlord and neither party shall have any further rights or obligations under this Lease.

Section 1.07. Tenant's Covenant to Open. Subject to Tenant's satisfaction of the conditions set forth in Sections 1.05 and 1.06 hereof, the full satisfaction and performance of Landlord's representations, warranties, covenants, conditions and obligations hereunder and any casualties, condemnations or force majeure, Tenant covenants and agrees to open and operate an Elephant Bar restaurant and bar on the Demised Premises for a minimum of three (3) years, and thereafter to use the Demised Premises for the operation of a restaurant and bar.

Section 1.08. Landlord Representations and Warranties. Landlord represents, warrants, covenants and agrees as follows: (i) Landlord is the owner of the Demised Premises and the Shopping Center and no other person has any ownership interest in the Demised Premises or the Shopping Center (prior to or concurrently with the execution of this Lease, Landlord shall deliver to Tenant a copy of Landlord's title policy showing title to the Demised Premises and the Shopping Center vested in Landlord unencumbered by claims which may disturb Tenant's quiet enjoyment of the Demised Premises); (ii) no tax liens exist relating to the Demised Premises or the Shopping Center; (iii) Landlord has full right, power and authority to execute this Lease and lease the Demised Premises and perform the obligations of Landlord under this Lease and Landlord has obtained all approvals required from any and all third parties for the execution, delivery and performance of this Lease, (iv) except for the Underlying Documents, there are no liens, conditions, covenants, restrictions, easements or other similar documents which affect the Demised Premises or the Shopping Center; (v) Landlord shall not terminate or execute or approve any amendment to or waive any rights under any of the Underlying Documents in any manner that would adversely affect the rights or obligations of Tenant or cause Landlord to breach this Lease and Landlord shall enforce the Underlying Documents; (vi) this Lease is in compliance with, and neither this Lease nor the use of the Demised Premises contemplated hereby nor the rights of Tenant hereunder conflict with or violate, any leases, agreements, contracts, conditions, covenants, restrictions, easements or other documents affecting the Demised Premises or the Shopping Center, including, without limitation, the Underlying Documents, and Landlord shall not grant any rights (on an exclusive basis or otherwise) to any other Tenant, owner, occupant, licensee or third party that conflict with the permitted use of the Demised Premises provided for herein; and (vii) Landlord has performed all of its obligations and satisfied all conditions and requirements under the Underlying Documents that are required to be performed prior to the date hereof. In the event of any conflict or inconsistency between the provisions of this Lease and the provisions of the Underlying Documents, the provisions of this Lease shall govern.

ARTICLE II. IMPROVEMENTS TO BE CONSTRUCTED BY TENANT.

Section 2.01. Construction of Improvements. Tenant agrees that it will, at its own cost and expense, construct upon the Demised Premises or cause to be constructed thereon (i) a one-story building which shall contain, in the aggregate, not more than 7,600 square feet of floor area designated for the use set forth in Article IV hereof (for purposes of this Lease, "floor area" shall be determined by measuring the area of any buildings on the Demised Premises to the outside faces of exterior wall and shall include any deck or mezzanine, but excluding Tenant's patio space of approximately 700 square feet, architectural exterior pilasters, and Tenant's delivery and trash enclosure area). Tenant's acceptance of the Demised Premises and its construction work shall be performed in accordance with Tenant's plans and specifications which have been approved by Landlord as provided herein and the provisions of Exhibit C hereof which is incorporated herein by reference.

Section 2.02. Tenants Plans and Specifications. Tenant shall commence the work of planning and constructing the improvements as soon as reasonably feasible (taking into account weather conditions, labor disputes, material shortages and other conditions beyond the reasonable control of Tenant) after the date of the execution and delivery of this Lease and shall thereafter continue diligently to prosecute the same to completion so that the completion date shall occur by the Rent Commencement Date set forth in Section 1.02(a) hereof, subject however, to any delays caused by described in Section 21.07. The inability to obtain financing shall not be considered a condition beyond the reasonable control of Tenant. The plans and specifications for the construction of the improvements shall be subject to Landlord's prior written approval, which approval shall not be unreasonably withheld, provided that the improvements shall be of a class, design, exterior appearance and quality which are consistent and compatible with those employed by Landlord in the construction of the Shopping Center which is adjacent to the Demised Premises. Tenant shall deliver to Landlord for its review Tenant's plans and specifications for the improvements to be constructed on the Demised Premises within ten (10) days after the expiration of the Contingency Period. Landlord shall deliver to Tenant written notice of the approval or disapproval of the plans for any improvements within ten (10) days following the delivery thereof to Landlord. In the event that Landlord does not deliver to Tenant written notice of its approval or disapproval of said plans within said ten (10) day period, Landlord automatically shall be deemed to have approved said plans and improvements. In the event that Landlord delivers to Tenant written notice of its disapproval of the plans for any improvements, said notice shall specify in detail the reasons for said disapproval and Tenant shall make any necessary corrections and deliver to Landlord the revised plans with said corrections within ten (10) days following the delivery to Tenant of Landlord's disapproval notice. Landlord shall then deliver to Tenant written notice of its approval or disapproval of the revised plans within five (5) days following the delivery thereof to Landlord. In the event that Landlord does not deliver to Tenant written notice of its approval or disapproval of said plans within said five (5) day period, Landlord automatically shall be deemed to have approved said revised plans and improvements. In the event that Landlord delivers to Tenant written notice of its disapproval of the revised plans, the above approval procedure shall be repeated until Landlord approves of the plans. After obtaining Landlord's approval, the plans and specifications shall not be changed without Landlord's approval, which approval shall not be unreasonably withheld and subject to the same procedures as those applicable to Landlord's approval of the original plans and specifications, except for (i) changes required by governmental authorities having jurisdiction over the Demised Premises, and (ii) interior non-structural changes. The location of the building on the Demised Premises and the size, location and design of any exterior signs shall be subject to Landlord's approval. No free-standing pylon sign shall be located on the Demised Premises. In connection with Landlord's review and approval of Tenant's plans and specifications, Landlord acknowledges and agrees that Landlord has reviewed and approved, as noted, those certain prototype building design standards of Tenant that are attached hereto as Exhibit G and made a part hereof.

Section 2.03. REA. Landlord represents and Tenant acknowledges that the Demised Premises is subject to the terms and provisions of that certain Fourth Amendment to and Restatement of Construction, Operation and Reciprocal Easement Agreement by and among Landlord and certain other parties identified therein, dated as of October 1, 1985, and recorded on June 30, 1987, in the Official Records of San Bernardino County, California as Document No. 87-222844 (as the same has been or may hereafter be amended, restated, assigned or otherwise modified from time to time, the "REA").

Section 2.04. Performance of Tenant's Work.

(a) Upon completion, the Demised Premises shall be free and clear of all liens, charges and encumbrances of whatsoever nature incurred by Tenant in connection with the making of such improvements, with the exception of any mortgage permitted by the terms of this Lease. Tenant shall cause all construction work to be done in a first-class workmanlike manner and in compliance with the building, zoning and other applicable laws, ordinances, rules and regulations and requirements of all federal, state and municipal governments and the appropriate departments, commissions, boards and

officers thereof and in such manner that Tenant shall be able to obtain the insurance required to be carried by Tenant pursuant to Article IX and Exhibit "C" of this Lease. Tenant shall cause to be obtained all building permits, licenses and other governmental approvals and authorizations which may be required to permit the construction and occupancy of the improvements, and Landlord agrees to cooperate with Tenant (at no expense to Landlord) to the extent that Tenant may request or need such cooperation to obtain any such permit, license, compliance, approval or authorization and in all other respects to the end that the improvements may be constructed and the fixtures and equipment therein may be installed as efficiently and expeditiously as possible.

(b) Tenant agrees to maintain or cause to be maintained broad-form builders' risk insurance with extended coverage endorsement on the improvements during the course of construction, for the benefit of Landlord and Tenant as their respective interests may appear. Loss, if any thereunder, shall be adjusted with and payable in accordance with the provisions of Article IX of this lease. Said builders' risk insurance policies shall contain appropriate provision pursuant to which the insurance carriers waive all rights of subrogation against Landlord and those holding under Landlord with respect to losses payable under such policies. Tenant shall carry or cause to be carried adequate Workers' Compensation Insurance and such other insurance as may be required by law to be carried in connection with such construction. Such insurance shall be in addition to, but not a duplication of, the insurance coverage required to be carried pursuant to the provisions of Article IX hereof.

(c) Omitted

Section 2.05. Tenant Construction Allowance. Landlord agrees to pay to Tenant, if Tenant is not then in default, a construction allowance for the cost of Tenant's work in the amount of Seven Hundred Thousand Dollars (\$700,000.00) (the "Construction Allowance"), payable in two equal installments as follows:

(a) One-half (1/2) of the Construction Allowance shall be payable within thirty (30) days after receipt by Landlord of Tenant's written request for payment, which request shall be accompanied by copies of invoices for work performed totaling a minimum of Three Hundred Fifty Thousand Dollars (\$350,000.00) together with unconditional lien releases for the payment thereof.

(b) One-half (1/2) of the Construction Allowance shall be payable within thirty (30) days after the fulfillment of all of the following requirements:

(i) Completion of Tenant's work in accordance with the approved plans and specifications;

(ii) Presentation to Landlord, in form and detail reasonably satisfactory to Landlord, of:

(A) a Contractor's Sworn Statement showing that the amount requested by Tenant has been spent by Tenant on the Demised Premises and listing all subcontractors, sub-subcontractors and material suppliers and amounts which they were to be paid and were paid for work performed for or on the Demised Premises or for materials supplied for Tenant's work;

(B) Tenant's Architect shall provide an Original and Notarized Affidavit or Final Waiver of Lien indicating that the Architect has been paid in full;

(C) Contractor's Original and Notarized Final Waiver of Lien; and

(D) Final Waivers of Lien from all architects, subcontractors, sub-subcontractors and material suppliers providing material or services in excess of \$2,000.

(iii) Presentation to Landlord of copies of unconditional Certificates of Occupancy from all applicable governmental authorities; and

(iv) Tenant shall have opened its restaurant in the Demised Premises for business with the public.

(c) In the event that Landlord fails to pay to Tenant any amount of the Allowance within the time period specified herein, in addition to any and all other remedies of Tenant, Landlord shall pay to Tenant

a late charge equal to six percent (6%) of the unpaid amount. The parties agree that a default by Landlord in making the payments of the Allowance as provided herein as and when due will result in Tenant's incurring damages, including additional expenses in connection with its contractors and subcontractors, but that it is extremely difficult and impractical to ascertain the extent of such damages. Accordingly, the parties agree that said late charge is a reasonable estimate of the damages to Tenant, which sum shall be immediately due and payable.

(d) In addition to the late charge provided for in Section 2.05(D), any and all amounts of the Allowance that are not paid on or before the due date thereof shall bear interest at the rate specified in Section 3.04 from the due date thereof until paid in full.

(e) Notwithstanding anything to the contrary contained in this Lease, should Landlord not pay to Tenant any payment of the Allowance on or before the due date thereof and said payment and/or the amount of any late charge or interest thereon remains unpaid at the Rent Commencement Date, then, in addition to any and all other remedies of Tenant, Tenant shall be entitled to deduct and offset said amounts against the next payments of rent and other amounts owing by Tenant under the terms of this Lease.

ARTICLE III. RENT.

Section 3.01. Minimum Guaranteed Rent. Tenant agrees to pay to Landlord without any prior demand therefor and without any deduction or setoff whatsoever, fixed Minimum Guaranteed Rent as follows:

	<u>Period</u>	<u>Annual Rent</u>	<u>Monthly Rent</u>	<u>Sales Base</u>
(i)	From the Rent Commencement Date through 60 months, inclusive;	\$165,040	\$13,753.33	\$3,667,556
(ii)	Next 60 months, inclusive;	\$184,800	\$15,400.00	\$4,106,667
(iii)	Next 60 months, inclusive;	\$206,960	\$17,246.67	\$4,599,111
(iv)	Final 60 months, inclusive;	\$231,760	\$19,313.33	\$5,150,222
(v)	During the first renewal period, inclusive;	\$264,240	\$22,020.00	\$5,872,000
(vi)	During the second renewal period, inclusive;	\$303,880	\$25,323.33	\$6,752,889

Section 3.02. Percentage Rent.

(a) In addition to the Minimum Guaranteed Rent or any other additional rent reserved under this Lease and as part of the total rent to be paid, Tenant agrees to pay to Landlord, as additional rent (hereinafter referred to as "Percentage Rent") for each Lease Year or partial Lease Year, a sum equal four and one-half percent (4.5%) of Tenant's Gross Sales for the applicable Lease Year in excess of the Sales Base as set forth above. Tenant's obligation shall survive the expiration of the Term. Each Lease Year shall be considered as an independent accounting period for the purpose of computing the Percentage Rent due, if any. The amount of Gross Sales of any Lease Year shall not be carried over into any other Lease Year. Percentage Rent shall be payable as provided in subsection (b) of this Section 3.05.

(b) Percentage Rent shall be determined and paid, without any prior demand therefor, within thirty (30) days after the last day of each month during the Term, starting with the month during each Lease Year during which Tenant's Gross Sales first exceed the Sales Base. The Sales Base shall be prorated for any partial Lease Year upon the basis of one-twelfth (1/12th) for each full month of such partial Lease Year, plus an amount equal to one three hundred sixtieths (1/360ths) for each day if the Rent Commencement Date of this Lease is other than the first day of the month. Each Lease Year shall be considered as an independent accounting period for the purpose of computing the amount of

Percentage Rent due, if any. The amount of Gross Sales of any Lease Year shall not be carried over into any other Lease Year.

(c) The phrase "Gross Sales" as used in this Lease shall mean the dollar aggregate of (i) the entire amount of the price charged for all goods, wares and merchandise sold, leased, licensed or delivered, excluding the sale of gasoline, and all charges for all services sold or performed by Tenant from all business conducted at, upon or from the Demised Premises by Tenant, whether made for cash, by check, on credit, charge accounts or otherwise, without reserve or deduction for inability or failure to collect the same, including, but not limited to, transactions (A) where the orders originate at or are accepted by Tenant in the Demised Premises, but delivery or performance thereof is made from or at any other place; all sales made and orders received in or at the Demised Premises shall be deemed as made and completed therein, even though the payment of account may be transferred to another office for collection; (B) pursuant to mail, telephone, telegraph or other similar orders received or billed at or from the Demised Premises (including, but not limited to, orders which are accepted or transmitted by means of electronic, telephonic, video, computer or other electronic or technology based system, regardless of whether the orders are accepted or filled at the Demised Premises or accepted or filled by Tenant or its parent, subsidiary or affiliate at any other location); (C) by means of mechanical or other vending devices; and (D) originating from whatever source, and which Tenant in the normal and customary course of Tenant's operations would credit or attribute to Tenant's business conducted in the Demised Premises, and (ii) all monies or other things of value received by Tenant from Tenant's operations at, upon or from the Demised Premises which are neither included in nor excluded from Gross Sales by the other provisions of this definition, but without any duplication, including, without limitation, finance charges, cost of gift or merchandise certificates and all deposits not refunded to customers. Each charge or sale upon installment or credit shall be treated as a sale for the full price in the month during which such charge or sale is made, irrespective of the time when Tenant shall receive payment (whether full or partial) therefor. No deduction shall be allowed from Gross Sales for uncollectible credit accounts. Each lease or rental of merchandise shall be treated as a sale in the month during which such lease or rental is made, for a price equal to the total rent payable. For the purpose of ascertaining the amount of Gross Sales upon which the payment of Percentage Rent is to be computed hereunder, the following may be deducted from Gross Sales: (i) the exchange of merchandise between stores of Tenant or its subsidiaries where such exchanges are made solely for the convenient operation of Tenant's business and not for the purpose of consummating a sale which has been made at, upon or from the Demised Premises; (ii) returns to shippers or manufacturers; (iii) sales of trade fixtures after use thereof, which are not part of Tenant's stock in trade and not sold in the regular course of Tenant's business; (iv) cash or credit refunds made upon transactions included within Gross Sales but not exceeding the selling price of the merchandise returned by the purchaser and accepted by Tenant; or (v) the amount of any local, county, state or federal sales, luxury or excise tax on such sales provided such tax is both added to the selling price (or absorbed therein) and paid to the taxing authority by Tenant (but not by any vendor of Tenant) provided, however, no franchise or capital stock tax and no income or similar tax based upon income, profits or gross sales as such, shall be deducted from Gross Sales in any event whatsoever. For the purposes of determining Tenant's Gross Sales, the term "Tenant" shall include any of Tenant's subtenants, concessionaires or licensees.

Notwithstanding any other provisions of this Lease, Gross Sales shall not include any of the following:

- (i) Charges paid to credit card companies;
- (ii) Insurance proceeds;
- (iii) Rents and fees paid by subtenants, licensees or concessionaires;
- (iv) Penalties or charges for returned checks;
- (v) Rebates, discounts, the sale of gift certificates, but excluding the redemption of gift certificates at the Premises, complimentary letters;
- (vi) Employees meals, provided that the total amount of said meals does not exceed 2% of the total Gross Sales for any year, and employee tips;
- (vii) Interest, service or sales carrying charges or other charges, however denominated, paid by customers for extension of credit sales;
- (viii) Products, goods or merchandise returned to sources or transferred to another restaurant or warehouse of Tenant or any of its affiliates;

- (ix) Sales of non food/beverage products or merchandise, provided that the total amount of said sales does not exceed 3% of the total Gross Sales for any year;
- (x) Revenue from pay telephones.

(d) Tenant shall prepare and keep for a period of not less than twenty-four (24) months following the end of each Lease Year, true and accurate books of account and records, conforming to generally sound and accepted accounting principles consistently applied, including, but not limited to, sales tax and other reports filed with governmental agencies, all purchases and receipts of merchandise, inventories and all sales and other transactions by Tenant from which Gross Sales can be determined. Tenant agrees to record all sales, at the time each sale is made, whether for cash or credit, in a cash register or registers containing locked-in cumulative tapes with cumulation capacity.

(e) Tenant agrees to submit to Landlord on or before the thirtieth (30th) day following the end of each calendar month during the Term (including the thirtieth (30th) day of the month following the end of the Term, as to which Tenant's obligation shall survive the expiration of the Term) a written statement, signed by Tenant (or by an authorized officer, if Tenant is a corporation) and verified to be true and correct showing the amount of Gross Sales derived from the business conducted at, upon or from the Demised Premises by Tenant (and all subtenants, concessionaires or licensees of Tenant) during the preceding calendar month, and an itemization of all permissible deductions therefrom. Tenant further agrees to submit to Landlord on or before the thirtieth (30th) day following the end of each Lease Year or partial Lease Year (including the last Lease Year hereof, as to which Tenant's obligation shall survive the expiration of the Term) a written statement, signed and certified by Tenant to be true and correct, showing the amount of such Gross Sales during the preceding Lease Year or partial Lease Year and an itemization of all permissible deductions therefrom. Said annual statement shall also be duly certified to be true and correct in compliance with the definition of Gross Sales set forth herein by Tenant or an Officer of Tenant in accordance with sound and accepted accounting practice consistently applied. The acceptance by Landlord of payments of Percentage Rent or reports thereof shall be without prejudice and shall in no event constitute a waiver of Landlord's right to claim a deficiency in the payment of Percentage Rent or to audit Tenant's books and records, as hereafter set forth. The Gross Sales for any portion of a calendar month prior to the commencement of the first full calendar month, shall be included in the monthly report, next succeeding any such partial month.

(f) Landlord shall have the right, at its expense except as provided below, upon ten (10) days' notice to Tenant to cause a complete audit of all statements of Gross Sales and in connection with such audit, to examine Tenant's books of account and records (including all supporting data and any other records from which Gross Sales may be tested or determined) of Gross Sales disclosed in any statement given to Landlord by Tenant; and Tenant shall make all such records available for such examination at the office where such records are regularly maintained. Landlord shall have the right to copy and duplicate such information as Landlord may require. If any such audit discloses that the actual Gross Sales transacted by Tenant exceed those reported, then Tenant shall pay Landlord such additional Percentage Rent as may be so shown to be payable and if the excess so disclosed shall be more than three percent (3%), Tenant shall also then pay the reasonable out-of-pocket cost of such audit and examination. The furnishing by Tenant of any fraudulent statement shall constitute a breach of this Lease. If any audit shall be commenced by Landlord or if there shall arise a difference or dispute concerning Gross Sales, then and in any such event, Tenant's books of account and records, (including all supporting data and any other records from which Gross Sales may be tested or determined shall be preserved and retained by Tenant until a final resolution or final determination of such dispute or difference. Any information obtained by Landlord as a result of such audit shall be treated as confidential, except in any litigation or proceeding between the parties and, except further, that Landlord may disclose such information to prospective purchasers, to prospective or existing lenders, to prospective or existing ground lessors, provided that each prospective lender or ground lessor consents to and agrees to be bound by the confidentiality provisions hereof, and in any statement filed with the Securities and Exchange Commission, Internal Revenue Service, or other similar governmental agency or pursuant to any subpoena or judicial process. If Landlord shall fail to audit any such reports within twenty-four (24) months after the same had been received by Landlord, then any such report shall be deemed conclusively true and correct, except as to any fraudulent report.

(g) Tenant's accounting year represents a 52-week or 53-week period, ending on the last Sunday in December. Each quarter consists of a 13-week period, with two 4-week and one 5-week periods (or months). Period 12 (the December month) of a 53-week year consists of a 6-week period. Tenant shall furnish its accounting calendar upon written request by Landlord.

Section 3.03. Additional Rent. Any other sums of money or charges to be paid by the Tenant pursuant to the provisions of any other sections of this Lease shall be designated as "Additional Rent". Such Additional Rent shall, in no manner, be considered as Minimum Guaranteed Rent.

Section 3.04. Past Due Minimum Guaranteed Rent and Additional Rent. All past due Minimum Guaranteed Rent, Additional Rental, and other sums due Landlord under this Lease shall bear interest from the due date until paid by Tenant, at the rate of 2% above the Prime Rate (as defined below), not to exceed the maximum rate of interest allowed by law in the state where the Shopping Center is located (the "Interest Rate"). The interest shall be deemed to be Additional Rental. "Prime Rate" wherever it appears in the Lease means the prime rate (or base rate) reported in the Money Rates column or section of The Wall Street Journal as being the base rate on corporate loans at large U.S. money center commercial banks (whether or not that rate has been charged by any bank). If The Wall Street Journal ceases publication of the prime rate, Prime Rate shall mean the highest rate charged by BancOne (or its successor) on short term unsecured loans to its most creditworthy large corporate borrowers. If The Wall Street Journal (i) publishes more than one prime rate or base rate, the higher or highest of the rates shall apply, or (ii) publishes a retraction or correction of that rate, the rate reported in that retraction or correction shall apply.

Section 3.05. Promotional Charge and Common Area Maintenance Charge.

(a) Tenant agrees to pay to Landlord at the office of Landlord, or at such other place designated by Landlord a Promotional Charge equal to the initial rate of \$100 per annum, payable in advance at the beginning of each Lease Year, as Tenant's contribution towards the advertising, promotion, and public relations of the Shopping Center and administrative expenses related thereto. The Promotion Charge payable by Tenant to Landlord will be increased as of the first day of each succeeding Lease Year by an amount equal to five percent (5%) of the Promotion Charge payable in the immediately preceding Lease Year.

(b) Tenant also agrees to pay to Landlord at the office of Landlord, or at such other place designated by Landlord, a Common Area Maintenance Charge equal to the initial rate of \$22,800 per annum, payable in equal installments, in advance, at the rate of \$1,900 per month as Tenant's contribution towards the maintenance and repair of the "Common Areas" as defined in Article V of this Lease. The Common Area Maintenance Charge payable by Tenant to Landlord will be increased as of the first day of each succeeding Lease Year by an amount equal to five percent (5%) of the Common Area Maintenance Charge payable in the immediately preceding Lease Year.

ARTICLE IV. CONDUCT OF BUSINESS BY TENANT.

Section 4.01. Use of Premises.

(a) Tenant shall use the Demised Premises during the full term of this Lease solely for the purpose of a restaurant and bar ("Permitted Use"), and for no other reason whatsoever without Landlord's prior consent, which consent may not be unreasonably withheld. Notwithstanding any other provisions of this Lease, Tenant may change the use of the Demised Premises and/or its trade name to any other restaurant concept operated by Tenant or any other trade name used by Tenant without obtaining Landlord's consent, provided that (i) Tenant makes a similar change in use or trade name in a majority of its other "Elephant Bar Restaurants" located in Southern California, (ii) such change in use does not violate any exclusive right granted to any other Tenant or occupant of the Shopping Center prior to the execution of this Lease, and (iii) such use is consistent with the standards of a first class shopping center.

(b) Tenant covenants that during the entire Term of this Lease it shall operate continuously in the Demised Premises in accordance with the Permitted Use above stated, and will not use or permit, or suffer the use of the Demised Premises for any other business purpose. All uses not specifically granted herein are reserved to Landlord and other tenants in the Shopping Center. Tenant acknowledges that the Permitted Use is not a use granted exclusively to Tenant, and that Landlord reserves the right to lease premises in the Shopping Center to other tenants for a similar Permitted Use (but not the same trade name). Notwithstanding any other provisions of this Lease, Tenant shall not be required to open for business (i) prior to 11:00 a.m. or after 10:00 p.m. Sunday through Thursday or 11:00 p.m. Friday or Saturday, (ii) during any nationally recognized holidays, (iii) at any times prohibited by law, statute, ordinance, rule, regulation or governmental requirement, or (iv) in the event of any casualty, condemnation or force majeure event or occurrence. In addition, notwithstanding any other provisions of this Lease, Tenant shall have the right to close the Demised Premises for reasonable periods for cleaning, repairing, decorating, remodeling, renovations, construction of improvements or a concept change or assignment.

(c) In the event Tenant defaults in its obligation to continuously and uninterruptedly operate and conduct the aforesaid use in the Demised Premises, Landlord, in addition to its other remedies, may elect at any time thereafter to terminate this Lease by delivery of written notice to Tenant ("Termination Notice"), which termination shall be effective on the date that is sixty (60) days after Landlord's delivery of the Termination notice to Tenant. In the event that this Lease is so terminated, the parties hereto shall be released from all obligations which would first accrue after the effective date of termination. Any discontinuance occasioned by an event of force majeure (as defined in Section 21.07 of this Lease) or closures for the remodeling of the Demised Premises, concept change or permitted assignments shall be deemed exempted discontinuance of business operations at the Demised Premises and shall not trigger Landlord's termination right provided for in this Section 4.01(c). In the event this Lease is so terminated, Tenant may remove from the Demised Premises such trade fixtures and equipment as it desires and shall repair any damage to the building caused by such removal.

Section 4.02. Compliance with Laws and Regulations. Tenant shall comply with all laws, ordinances, codes and regulations affecting the construction, use, occupancy, alteration, cleanliness, safety and operation of the Leased Premises, which are in force now or later. Tenant shall comply with the reasonable regulations, requirements and recommendations of any insurance underwriter, inspection bureau or similar agency, provided that Tenant has prior written notice thereof and sufficient time to comply. Tenant shall notify Landlord if Tenant has received notice of any violation of any laws, ordinances, codes, orders or regulations. Notwithstanding any other provisions of this Lease, Tenant shall not be obligated to make any improvements to the Demised Premises required by any requirement of any insurance carrier or underwriter providing coverage on the Shopping Center, except to the extent that the same is required as a result of Tenant's particular use of the Demised Premises, nor shall Tenant be liable for any violations of any requirement of any insurance carrier or underwriter providing coverage on the Shopping Center caused by Landlord or its employees, agents or contractors, and Landlord shall defend, indemnify and hold harmless Tenant from and against the same. Tenant's compliance with the requirements or restrictions of any insurance carrier or underwriter is conditioned upon the delivery by Landlord to Tenant of prior written notice thereof in sufficient time for Tenant to comply.

Section 4.03. Standard of Operation and Business Hours. Tenant agrees that, subject to and except as provided for in Section 4.01(b), Tenant shall, at all times, during the term of this Lease, operate and maintain the Demised Premises with due diligence and efficiency. Tenant agrees to keep the Demised Premises open for business to the public during the regular and customary hours that such businesses are customarily open for business.

Nothing contained herein, however, shall require Tenant to remain open on legal holidays, nor prevent Tenant from maintaining more business hours than herein set forth.

Section 4.04. Prohibited Uses. Without in any way qualifying, broadening or otherwise affecting the aforesaid provisions hereof, Tenant specifically agrees that, in no event, shall any portion of the Demised Premises be used for any of the following purposes: (a) the sale and/or installation of automobile tires, batteries and gasoline; (b) the sale of liquor, wine or beer for off-premises consumption; (c) the conducting of catalog sales in or from the Demised Premises, except that merchandise which Tenant is permitted to sell "over the counter"; (d) the operation of a drug store or prescription pharmacy or any other purpose requiring a qualified pharmacist; (e) the operation of a grocery store; (f) the operation of a movie theater; (g) the operation of a financial institution; or (h) any other use which is prohibited by the REA.

Section 4.05. Additional Provisions. The Tenant further agrees to conform to the following provisions during the entire term of this lease:

(a) That Tenant shall not sell or display merchandise outside the building on the Demised Premises, except in the patio area.

(b) That Tenant shall keep the display windows, if any, and the area in and adjacent to the building on the Demised Premises electrically lighted from dusk until 10:00 p.m. every day, except on Sundays and holidays when the facility is closed.

(c) That Tenant shall conduct no auction, fire, bankruptcy, liquidation or similar sale without the written consent of Landlord first had and obtained.

(d) That Tenant shall keep the building on the Demised Premises and exterior and interior portion of all windows, doors and all other glass or plate glass fixtures in a neat and clean condition.

(e) That Tenant shall not permit any unlawful or immoral practice to be carried on in the Demised Premises; make any use of or allow the Demised Premises to be used for any purpose that might invalidate or increase the rate of insurance thereon; create any nuisance or injure the reputation of the Shopping Center; deface or injure the building; overload the floors; commit or suffer waste; permit any use prohibited by a zoning or building restriction or use, or permit the use of radios, loudspeakers or other devices that can be heard outside the building on the Demised Premises, except reasonably amplified music in the patio area; or disturb the quiet enjoyment of any other tenant in the Shopping Center.

(f) That the delivery or shipping of merchandise, supplies and fixtures to and from the Demised Premises shall be subject to such reasonable and non-discriminatory rules and regulations as in the reasonable judgment of Landlord are necessary for the proper operation of the Shopping Center. Notwithstanding the forgoing, Tenant shall restrict its deliveries to the hours of 8:00 am to 11:30 am and between the hours of 1:30 pm and 5:00 pm, each day.

(g) That Tenant shall store all trash and garbage within the building on the Demised Premises or at such other locations outside the building as approved by Landlord, arranging for the regular pick up of such trash and garbage at Tenant's expense. Removal of garbage and trash shall be made only by reputable service contractors in accordance with reasonable and non-discriminatory rules and regulations of Landlord and applicable to all trash and garbage removal in the Shopping Center. Tenant shall not operate an incinerator or burn trash or garbage within the Demised Premises.

(h) That Tenant shall keep the building on the Demised Premises at a temperature sufficiently high to prevent freezing of water pipes and fixtures.

(i) That Tenant shall provide for pest extermination services at reasonable intervals, if necessary.

(j) That the plumbing facilities shall not be used for any other purpose than that for which they are constructed, and no foreign substance of any kind shall be thrown therein other than those intended for use therein, and the expense of any breakage, stoppage, or damage resulting from a violation of this provision shall be borne by Tenant.

(k) That Tenant shall not keep, use or permit in the Demised Premises flammable fluids or explosives without the prior written permission of Landlord, or engage in hazardous activities.

(l) That Tenant and its agents, employees, and contractors shall not in the common areas of the Shopping Center:

- (i) vend, peddle or solicit orders for sale or distribution of any merchandise, device, service, periodical, book, pamphlet or other matter;
- (ii) exhibit any sign, placard, banner, notice or other written material;
- (iii) distribute any circular, booklet, handbill, placard or other material;
- (iv) solicit membership in any organization, group or association or contribution;
- (v) parade, patrol, picket, demonstrate or engage in conduct that might interfere with or impede the use of the common areas by any customer, invitee or employee, create a disturbance, attract attention or harass, annoy, or disparage any of the other tenants; or
- (vi) panhandle, beg or solicit funds.

The express prohibitions in this section shall in no event be deemed as the grant of an easement to Tenant and those parties taken under Tenant to use the common areas of the Shopping Center and, absent an express grant to so use such common areas, no such easement shall be deemed to exist.

ARTICLE V. EASEMENTS.

Landlord grants to Tenant and its employees, agents, suppliers, shippers, customers and invitees the non-exclusive right to use, in common with other tenants of the Shopping Center and their respective employees, agents, suppliers, shippers, customers and invitees, the common areas and facilities included in the Shopping Center ("Common Areas"), including, without limitation, parking areas, access roads,

roadways, driveways, entrances and exits, sidewalks, walkways, lighting facilities, surface drainage facilities, common utilities and related utility lines and meters, together with such easements for ingress and egress as are necessary for Tenant's use and occupancy of the Demised Premises. Landlord grants to Tenant and to Tenant's licensees, employees, agents, customers and invitees, for the benefit of each grantee for the term of this Lease, the non-exclusive right, privilege and easement to use the ring road and access roads in the Shopping Center as shown on Exhibit B hereof for pedestrian and vehicular ingress and egress to and from the Demised Premises to the public streets to which such ring road and access roads connect in common with the grantor and the other tenants, concessionaires and licensees of the Demised Premises and the Shopping Center and the respective officers, employees, agents and invitees of each, without payment of any fee or other charge being made therefor except as may be specifically set forth in this Lease. The parties agree that no barricade, fence, or other divider other than shrubs, trees, plantings, curbs, medians or driveways shall be constructed between the Demised Premises and the adjacent Shopping Center, and the parties agree that they will do nothing to prohibit or discourage the free and uninterrupted flow of pedestrian and vehicular traffic, provided, that Landlord shall have the right, at least once in each calendar year to erect barriers or chains for the purpose of blocking off access to the common facilities on its site in order to avoid the possibility of dedicating the same for public use or creating prescriptive rights therein. Such barriers or chains shall be erected for such purposes, if possible, at a time or upon a day, when the parties' respective premises are not open for business with respect to the use of such common areas and facilities. Landlord retains such easements over and across the non-building portions of the Demised Premises as will permit pedestrian and vehicular ingress and egress, parking and such easements as will enable Landlord to maintain utilities which serve both the Demised Premises and adjoining premises. Landlord may include the parking areas on the Demised Premises for satisfying any parking ratio requirements incident to the development of the main Shopping Center, provided said inclusion does not adversely affect Tenant's ability to obtain the necessary building permits and agency approvals to construct and operate in the Demised Premises as contemplated in this Lease.

ARTICLE VI. UTILITIES.

Section 6.01. Utility Charges. Tenant shall be solely responsible for and promptly pay all charges for heat, water (including sewerage charges and/or taxes or other charges based on water consumption), gas, electricity or any other utility used or consumed in the Demised Premises.

Notwithstanding any other provisions of this Lease, Landlord (or its employees, agents or contractors) shall not take any action or fail to take any action that would cause or contribute to an interruption in utilities to the Demised Premises or the Shopping Center, and, in addition to any and all other rights and remedies of Tenant, Landlord shall defend, indemnify and hold harmless Tenant from and against any and all losses, claims, damages, fines, penalties, liabilities, costs and expenses, including, without limitation, attorneys' fees, arising out of any interruption resulting from the negligence or failure to act of Landlord.

ARTICLE VII. TAXES.

Section 7.01. Taxes.

(a) Tenant will, at Tenant's cost and expense, bear, pay and discharge, or cause to be borne, paid and discharged, thirty (30) days prior to delinquency, all taxes (including personal property taxes, if any), assessments, sewer rents, water rents and charges, duties, impositions, license and permit fees, charges for public utilities of any kind, and payments and other charges of every kind and nature whatsoever, ordinary or extraordinary, foreseen or unforeseen, general or special (all of which are hereinafter sometimes collectively referred to as "Impositions") which shall, pursuant to present or future law or otherwise, during the term hereby granted have been or be levied, charged, assessed or imposed upon, or grow or become due and payable out of or for, or become or have become a lien on, the Demised Premises or any part thereof, or any buildings or improvements now or hereafter located thereon, or the appurtenances thereto, or the sidewalks or streets adjacent thereto, or any franchises as may be appurtenant to the use and occupation of the Demised Premises; it being the intention of the parties hereto that the rents reserved herein shall be received and enjoyed by Landlord as a net sum free of all of such Impositions (except income taxes assessed against Landlord, franchise, estate, succession, inheritance or transfer taxes of Landlord), or any tax or charge in replacement or substitution of the foregoing or of a similar character; provided, however, that if at any time during the term of this Lease the then prevailing method of taxation or assessment shall be changed so that the whole or any part of the Impositions theretofore payable by Tenant as above provided shall instead be levied, charged, assessed or imposed wholly or partially on the rents received by Landlord from the Demised Premises, or shall

otherwise be imposed against Landlord in the form of a franchise tax or otherwise, then Tenant shall pay all such levies, charges, assessments, impositions, taxes and other substituted charges thirty (30) days prior to delinquency. If, by law, any such Imposition is payable, or may at the option of the taxpayer be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), the Tenant may pay the same, together with any accrued interest on the unpaid balance of such Imposition, in installments as the same, respectively, become delinquent and before any fine, penalty, interest or cost may be added thereto for the nonpayment of any such installment and interest. Notwithstanding any other provisions of this Lease, Tenant shall not be responsible for any of the following: (i) any increases in taxes arising out of any changes in ownership of the Demised Premises or the Shopping Center in excess of one (1) during each consecutive five (5) year period during the term of this Lease (including the option terms); (ii) any real property taxes that are paid separately by any other tenants, owners, occupants, users or third parties; (iii) any amount of taxes included in Common Area Expenses; (iv) taxes on any equipment, furniture, fixtures and other personal property of any other tenants, occupants, licensees or users of the Shopping Center; or (v) increases in taxes relating to any additional non-cosmetic capital improvements made to the Shopping Center after the execution and delivery of this Lease. Landlord shall deliver to Tenant copies of the applicable invoices for any taxes payable hereunder at least fifteen (15) days prior to the date Tenant is obligated to pay the same and the due date for Tenant's payment of said taxes shall be extended one (1) day for each day of delay in the delivery of said invoice. In the event that Tenant is obligated to pay a proportionate share of the taxes of a larger parcel as provided herein, Landlord shall deliver to Tenant, together with said invoice, a written statement setting forth the amount of Tenant's proportionate share and Landlord's calculation thereof, together with copies of the applicable tax invoices.

(b) In the event that the Demised Premises shall not be assessed as a separate tax parcel or parcels, Tenant shall be responsible for Tenant's proportionate share of impositions attributable to the larger parcel or parcels of which the Demised Premises is a part. Tenant's proportionate share shall be the product which results by multiplying the Impositions (less any payment made by anchors) by a fraction, the numerator of which shall be the number of square feet of floor area of the building on the Demised Premises and the denominator of which shall be the total number of square feet of gross leasable floor area on the larger tax parcel or parcels of which the Demised Premises is a part determined as of August 1 of each year (exclusive of the building areas utilized for non-retail exhibits; recreational purposes; museum space operated by a not-for-profit entity; the building areas occupied by anchor buildings whether the anchors are occupied or vacant and whether or not the taxes are separately billed or assessed) which are occupied or producing rent, including the Demised Premises. Tenant's share of real property taxes and assessments shall not, however, be calculated on the basis of less than 80% of the gross leasable area determined as of August 1 of each year (exclusive of the building areas utilized for non-retail exhibits; recreational purposes; museum space operated by a not-for-profit entity; the building areas occupied by anchor buildings whether the anchors are occupied or vacant and whether or not the taxes are separately billed or assessed).

(c) Omitted.

(d) Tenant shall pay all interest and penalties imposed upon the late payment of any Impositions which Tenant is obligated to pay or to cause to be paid hereunder.

(e) If the Demised Premises is separately assessed and Landlord declines to contest the validity or amount of any Imposition after receipt of written request from Tenant, then Tenant, at Tenant's cost and expense may, in good faith, contest the validity or amount of any Imposition, in which event Tenant may defer the payment thereof for such period so long as such contest shall be continuously and diligently prosecuted to conclusion upon the conditions, however, that in the event of each such deferment of payment by Tenant:

- (i) prior to the date on which the Imposition being contested shall become delinquent, and from time to time thereafter until payment thereof shall be determined not to be payable by the appropriate body having jurisdiction, Tenant shall deposit and thereafter maintain with Landlord satisfactory indemnity or other security reasonably satisfactory to Landlord sufficient to pay the item or items so contested or intended to be contested together with the interest and penalties thereon which shall accrue during the period of such contest; and
- (ii) no provision of this Lease shall be construed so as to require Landlord to allow any such items so contested or intended to be contested to remain unpaid for such length of time as shall permit the Demised Premises, or the lien thereon created by such item to be contested, to be sold by federal, state, county or municipal authority for the non-payment thereof.

(f) An official certificate or statement issued or given by any sovereign or municipal authority, or any agency thereof, or any public utility, showing the existence of any Imposition, or interest or penalties thereon, the payment of which is the obligation of Tenant as herein provided, shall be conclusive evidence for all purposes of this Lease of the existence and amount of such Imposition, interest and penalties.

(g) Any Imposition relating to a fiscal period of the taxing authority, a part of which period is included within the Term of this Lease, and a part of which is included within a period of time either prior to the commencement or after the termination of the Term of this Lease (whether or not, during the Term of this Lease, such Imposition shall be laid, assessed, levied, confirmed or imposed upon or become due or payable or a lien upon the Demised Premises or improvements or any part thereof), shall be adjusted as between the Landlord and the Tenant as of the date of commencement or the termination of the Term of this Lease, so that the Landlord shall pay that proportion of such Imposition which that part of such fiscal period included in the period of time both prior to the commencement or after the termination of this Lease bears to such fiscal period, and the Tenant shall pay the remainder thereof. Landlord will cooperate with Tenant in having the Demised Premises separately assessed for tax purposes. In the event the Demised Premises are not separately assessed for tax purposes, then Tenant shall pay its proportionate share of such Impositions.

ARTICLE VIII. MAINTENANCE AND REPAIR OF THE DEMISED PREMISES.

Section 8.01. Maintenance by Landlord. Landlord shall have no responsibility for any repairs or maintenance relating to the Demised Premises, except as provided for herein.

Section 8.02. Maintenance by Tenant. Tenant agrees that, from and after the date hereof and until the end of the term hereof, it will be responsible for all repairs and maintenance to the Demised Premises. Tenant shall keep the Demised Premises in good order and repair, ordinary wear and tear and damage due to casualty, condemnation, force majeure and the acts or omissions of Landlord or its employees, agents, representatives or contractors excepted, clean, sanitary and safe. Tenant shall be solely responsible for maintenance and repair costs related to the Demised Premises and any buildings or other improvements constructed thereon. Tenant agrees to keep the interior of the building on the Demised Premises in a clean and slightly appearance. If Tenant refuses or neglects to make repairs or maintain the Demised Premises and improvements located thereon, in a the condition required hereunder, Landlord shall have the right, after giving Tenant written notice thereof and Tenant's failure to make the repair or perform the maintenance within thirty (30) days following the delivery to Tenant of said written notice, or if more time is required for said repair or maintenance Tenant fails to commence the repair or perform the maintenance within said thirty (30) day period or thereafter fails diligently to complete said repair or maintenance, to make the repairs or perform the maintenance on behalf of Tenant. Tenant shall reimburse Landlord for Landlord's reasonable expenses incurred to perform said maintenance or repair within fifteen (15) days following receipt of a bill. The performance of that work by Landlord shall not constitute a waiver of Tenant's default. The exterior of any buildings located on the Demised Premises shall be painted, redecorated and refurbished by Tenant as necessary to conform to the standards and appearance of the Shopping Center. Landlord has no obligation to do work which Landlord is not expressly required to perform under this Lease or which, under this Lease, Tenant is required to perform.

Section 8.03. Alterations by Tenant. Tenant may, from time to time, during the term make, at its own cost and expense, any reasonable non-structural alterations or changes in the building on the Demised Premises in a good and workmanlike manner in compliance with all applicable requirements of law, it being understood that "nonstructural" shall include, but not limited to, moving of stud partitions, minor plumbing and electrical work and modification and rearrangement of fixtures. Landlord agrees to cooperate with Tenant for the purpose of securing necessary permits for any changes, alterations or additions permitted under this paragraph without expense to Landlord. Tenant shall have no right, however, to make any change, alteration or addition to the building on the Demised Premises which would impair the structural soundness or diminish or increase the size thereof, without the prior written consent of Landlord, which consent shall not be unreasonably withheld. All costs of such work shall be paid promptly by Tenant so as to prevent the assertion of any liens for labor or materials relating to said work.

Section 8.04. Condition of Premises at Termination. At the expiration of this Lease, by lapse of time or otherwise, Tenant will quit and surrender the Demised Premises and the building located thereon in good order and repair and in a clean condition, sanitary and safe condition, reasonable use and wear thereof, damage by fire and other casualty, condemnation, force majeure and the acts or omissions of

Landlord or its employees, agents, representatives or contractors, and changes, alterations or additions permitted under preceding Section 8.03, excepted. All alterations, additions, erections or improvements on or in the Demised Premises at the expiration of this Lease, except furniture or moveable fixtures paid for by Tenant shall be and become a part of the Demised Premises, and shall remain upon and be surrendered with said Premises as a part thereof at the termination of this Lease. Should Tenant fail to remove any of said furniture or moveable fixtures within thirty (30) days after the end of the Term, then same shall be considered as abandoned and become the property of Landlord, subject to the rights of Tenant's lenders.

ARTICLE IX. INSURANCE AND INDEMNITY.

Section 9.01. Tenant's Insurance.

(a) At all times during the term of this Lease, Tenant shall:

(i) carry, or cause to be carried in the name of Landlord and Tenant as their interest may appear, in insurance companies satisfying the requirements listed below Special Form Insurance, insuring the building and other improvements located on Demised Premises and its appurtenances (including Tenant's merchandise, signs, Tenant's Work, wall covering, floor covering, draperies, goods, trade fixtures, furnishings, equipment, furniture and other personal property) for the full replacement value, which coverage shall include but not limited to the perils of fire, windstorm, hail, explosion, riot, civil commotion, smoke, tornado and damage from aircraft and vehicles, and such other risks as are customarily insured against under standard Special Form policies. Such policy shall name Landlord and Landlord's lender as loss payee and shall include coverage for full replacement cost. Landlord agrees to make any and all proceeds from said policy available to Tenant to enable Tenant to repair any damage or destruction to the Premises which Tenant is obligated to repair pursuant to Article X. The term "full replacement value" shall mean the actual replacement cost (excluding foundation and excavation cost and cost of underground flues, pipes and drains and the cost of any upgrades or additional improvements required by changes in the building code);

(ii) effect and maintain in insurance companies satisfactory to Landlord, adequate boiler, machinery, and air conditioning insurance if the same shall be appropriate, in the amount of Two Hundred Fifty Thousand Dollars (\$250,000.00);

(iii) effect and maintain Commercial General Liability insurance, on an occurrence basis, for the benefit of Landlord and Tenant for limits of not less than \$1,000,000 per occurrence and \$3,000,000 aggregate for Personal Injury including Bodily Injury and Death or Property Damage Liability and shall contain a Contractual Liability endorsement (these limits shall be increased to \$3,000,000 per occurrence and \$5,000,000-aggregate for Personal Injury including Bodily Injury and Death or Property Damage Liability if the Shopping Center is located in California or New York). Such policy shall provide coverage for premises and operations, products and completed operations, personal injury, advertising liability and fire damage liability (\$1,000,000 limit). Tenant shall name Landlord and its lender (if Tenant has prior written notice thereof) as an Additional Insured on Tenant's Commercial General Liability Insurance;

(iv) if Tenant is permitted to engage in the sale of beer, wine or other alcoholic beverages for on-premises consumption, Tenant shall also secure and keep in force, commencing as of the date Tenant sells such products to the public, Liquor Liability (dram shop) Insurance with a minimum limit of liability in an amount of One Million Dollars (\$1,000,000.00) on an occurrence basis, covering bodily injury, death and property damage;

(v) effect and maintain Workers' Compensation in statutory amounts, Employer's Liability in the following amounts: \$100,000 each accident, \$100,000 per person for disease and \$500,000 policy limit for disease;

(vi) Omitted;

(vii) effect and maintain business interruption insurance;

(viii) In the event of restoration, permitted alterations or changes in the Demised Premises that may be made by the Tenant in excess of \$50,000.00 per job, provide and keep in force (or cause Tenant's contractors to provide and keep in force) for the benefit of the Landlord contingent liability and broad form builder's risk insurance in insurance companies satisfactory to the Landlord as to the amount of each policy and the identity of the respective insurers.

(b) Evidence of insurance must be on file with Landlord before Tenant receives the Demised Premises and must be kept current at all times. If Tenant shall fail to effect or maintain such insurance and provide Landlord with certificates evidencing the same prior to the date that Tenant is required to have any such insurance in effect, then, upon ten (10) days prior written notice to Tenant and if Tenant fails to deliver to Landlord evidence that Tenant has obtained said insurance within said ten (10) day period, Landlord may effect the same and Tenant agrees to pay, within thirty (30) days after demand, any reasonable amount properly paid by Landlord for such purpose, together with interest thereon, and, in case of its failure to so pay, the same shall be added to and become part of the installment of rent next due under the terms of this Lease. Landlord shall not be limited in the proof of any damages which Landlord may claim against Tenant arising out of or by reason of Tenant's failure to provide and keep in force insurance policies as aforesaid, to the amount of the insurance premium or premiums not paid or incurred by Tenant which would have been payable upon such insurance but also shall be entitled to recover as damages for such breach, the uninsured amount of any loss, liability, damages, claims, costs and expenses of suit, judgments and interest, suffered, or incurred by Landlord by reason of any casualty or accident or disaster occurring on the Demised Premises which should have been insured hereunder. Tenant shall not violate any condition of any of said policies, and Tenant shall so perform and satisfy the requirements of the companies writing such policies so that at all times companies of good standing shall be willing to write such insurance.

(c) All policies of insurance procured by Tenant shall be insured by insurance companies with general policyholder's rating of not less than B+ and a financial rating of Class VII as rated in the most current available "Best's Insurance Reports", and licensed to do business in the state where the Demised Premises is located and authorized to issue such policy or policies. Tenant's policies shall contain a provision that the coverage shall be primary and non-contributing with respect to any policy carried by Landlord, and that any policy carried by Landlord shall be excess insurance. All commercial general liability insurance procured by Tenant shall contain an endorsement that Landlord, although named as an additional insured, nevertheless shall be entitled to recover under said policies for any loss or damage occasioned to it, its servants, agents and employees by reason of the negligence of Tenant. All policies of insurance procured by Tenant shall contain an endorsement providing as follows: that such insurance may not be canceled with respect to Landlord except after thirty (30) days' prior written notice from the insurance company to Landlord and Landlord's mortgagee, sent by certified mail, return receipt requested. All policies procured by Tenant and Landlord shall contain an endorsement containing an express waiver of any right of subrogation by the insurance company against the other party (whether named as an insured or not). All Tenant's policies shall contain cross-liability endorsements and name Landlord and Landlord's mortgagees (provided Tenant has prior written notice thereof) as "Additional Insureds".

(d) Landlord shall maintain in effect a Commercial Liability Insurance policy that satisfies all of the requirements set forth in Section 9.01 (a)(iii) and (c), except that the amount and coverages of said insurance shall be the same as required by the REA.

Section 9.02. Indemnification of Landlord. Excluding the negligence, willful misconduct or breach of this Lease by the indemnitee, Tenant shall indemnify, defend and save harmless Landlord, its parents, partners, subsidiaries, affiliates and any anchor, owner or operator which is or may be in the Shopping Center, their agents, officers and employees from and against liability, claims, demands, expenses, fees, fines, penalties, suits, proceedings, actions, and causes of action arising out of or connected with Tenant's use, occupancy, management or control of the Demised Premises or any Tenant's operations or activities at the Shopping Center (whether or not occurring or resulting in damage or injury within the Demised Premises or any common areas). This obligation to indemnify shall include reasonable legal and investigation costs and all other reasonable costs, expense and liabilities from the 1st notice that any claim or demand is or may be made. Tenant's obligation shall become effective beginning on the date Tenant is delivered the Demised Premises. Tenant's indemnification obligation shall survive the expiration of the Term or the earlier termination of this Lease. Notwithstanding any other provisions of this Lease, Tenant shall not be obligated to defend, indemnify or hold harmless Landlord or any other indemnitee from or against any liability, claims, demands, expenses, fees, fines, penalties, suits, proceedings, actions or causes of action arising out of, resulting from or connected to, directly or indirectly, any neglect, omission, willful misconduct, or breach, non-performance or default under this Lease by Landlord or its employees, agents or contractors, and Landlord shall defend, indemnify and

hold harmless Tenant from and against any and all liability, claims, demands, expenses, fees, fines, penalties, suits, proceedings, actions or causes of action arising out of any of the foregoing.

Section 9.03. Indemnification of Tenant. Landlord shall defend, indemnify and hold harmless Tenant and its parents, partners, subsidiaries and affiliates and their agents, officers and employees from and against any and all liability, claims, demands, expenses, fees, fines, penalties, suits, proceedings, actions or causes of action arising out of, resulting from or connected to, directly or indirectly, the neglect, omission, willful misconduct or misrepresentation, breach, default or non-performance of this Lease by Landlord or its employees, agents or contractors. This obligation to indemnify shall include reasonable legal and investigation fees costs and all other reasonable costs, expenses and liabilities from the first notice that any claim is or may be made. Landlord's indemnification obligation shall survive the expiration of the Term or the earlier termination of this Lease.

ARTICLE X. DAMAGE BY CASUALTY.

Section 10.01. Destruction Due to Risk Covered by Insurance. If, during the Lease Term, the Demised Premises are totally or partially damaged or destroyed from a risk covered by the insurance described in Section 9.01 (a)(i), Tenant shall restore the Demised Premises to substantially the same condition as they were in immediately before said damage or destruction and this Lease shall continue in effect, provided, however, if any upgrades or additional improvements are required in connection with said restoration due to changes in the applicable law, Tenant shall have the right to terminate this Lease or restore the Demised Premises to substantially the same condition as they were in immediately before said damage or destruction with the required upgrades or additional improvements and in such event this Lease shall continue in effect. In either case, Tenant shall notify Landlord of its election within sixty (60) days following the date of said damage or destruction. If the existing laws do not permit the restoration, either party can terminate this Lease by giving notice to the other party within sixty (60) days following the date of said damage or destruction.

Section 10.02. Destruction Due to Risk Not Covered by Insurance. If, during the Lease Term, the Demised Premises are totally or partially damaged or destroyed for a risk not covered by the insurance described in Section 9.01 (a) (i), Tenant shall have the right to terminate this Lease or restore the Demised Premises to substantially the same condition as they were in immediately before said damage or destruction and in such event this Lease shall continue in effect. In either case, Tenant shall notify Landlord of its election within sixty (60) days following the date of said damage or destruction.

Section 10.03. Damage Near End of Term. If the Demised Premises are partially or totally damaged or destroyed during the last twelve (12) months of the Lease Term, as extended, either party may, at such party's option, cancel and terminate this Lease as of the date of occurrence of such damage or destruction by giving written notice to the other party of such party's election to do so within sixty (60) days after the date of occurrence of such damage or destruction.

Section 10.04. Abatement of Rent; Tenant's Remedies. If the Demised Premises are partially or totally damaged or destroyed applicable to Section to 10.02 above, and Tenant elects to repair or restore them pursuant to the provisions of this Section, the Minimum Guaranteed Rent for the period during which such damage, repair or restoration continues, shall be abated in proportion to the degree to which Tenant's use of the Demised Premises is impaired.

Section 10.05. Termination; Advance Payments. Upon termination of this Lease, pursuant to this Section 9, this Lease shall terminate as of the date of the damage or destruction and an equitable adjustment shall be made concerning advance rent and any advance payments made by Tenant to Landlord.

ARTICLE XI. CONDEMNATION.

Section 11.01. Taking. In the event that all or substantially all of the Demised Premises are temporarily or permanently taken by power of eminent domain by the State of California or by any authority or corporation having the power of eminent domain, Landlord shall notify Tenant and this Lease shall terminate as of the date of the taking and the period subsequent to that date. In the event of a partial taking of the Demised Premises which would prevent Tenant from continuing its business on a reasonable and economic basis, Tenant may, at any time within ninety (90) days after such taking, terminate this Lease as of the date of delivery of a sixty (60)-day written notice to Landlord of its election to terminate. If after a partial taking Tenant does not terminate this Lease, the Minimum

Guaranteed Rent shall be abated in proportion to the degree to which Tenant's use of the Demised Premises is impaired.

Section 11.02. Award. Any award for the taking of all or any part of the Demised Premises under the power of eminent domain or any payment made under threat of the exercise of such power shall be the property of Landlord, whether such award shall be made as compensation for diminution in value of the leasehold or for the taking of the reversion or the fee, or as severance damages; provided, however, that Tenant shall be entitled to any award from the condemning authority but not from Landlord for such compensation as may be separately awarded or recoverable by Tenant in its own right on account of any damage to Tenant's business by reason of the condemnation and for any damage to Tenant's trade fixtures and removable personal property, together with all improvements constructed by Tenant, and for any relocation costs of Tenant. In the event that this Lease is not terminated by reason of such condemnation, Landlord shall, to the extent of severance damages received by Landlord in connection with such condemnation, repair any damage to the Demised Premises caused by such condemnation, except to the extent that Tenant has been reimbursed therefor by the condemning authority.

ARTICLE XII. ASSIGNMENT AND SUBLETTING.

Section 12.01. Consent Required.

(a) Tenant acknowledges that its agreement to operate in the Demised Premises for the Permitted Use for the Term was a primary inducement and precondition to Landlord's agreement to lease the Leased Premises to Tenant. Accordingly, Tenant shall not, directly or indirectly, transfer, assign, sublet, enter into license or concession agreements, change ownership or hypothecate this Lease or Tenant's interest in and to the Demised Premises in whole or in part, or otherwise permit occupancy of all or any part of the Demised Premises by anyone with, through or under it, without first procuring the written consent of Landlord, which consent shall not be unreasonably withheld. Any attempt at a transfer without Landlord's written consent shall be null and void and confer no rights upon a third person. The general prohibition contained herein against assigning or subletting shall be construed to include a prohibition against any assignment or subletting by operation of law. Without limiting the foregoing, Landlord may withhold its consent to any proposed assignment or sublease which would result in a change of use, including any proposed assignment or sublease to any tenant whose proposed use would be in violation of any restrictive or exclusive agreements theretofore entered into by Landlord with respect to the Shopping Center.

(b) Notwithstanding anything to the contrary contained herein, after the commencement of the Term of this Lease, Tenant may, upon thirty (30) days prior written notice to Landlord, but without Landlord's permission, assign this Lease and/or sublet the Demised Premises, or any part thereof, to an affiliated, subsidiary, or reorganized corporation of Tenant, including a corporation resulting through merger, to any purchaser of a majority of the Elephant Bar restaurants of Tenant in Southern California, or to a dealer or franchisee of Tenant with a reasonably satisfactory reputation and standing, for the purpose of continued operation hereunder for the Permitted Use or any changed use made in connection with any concept change by Tenant. For purposes hereof, an "affiliated entity" shall be an entity controlled by, or controlling, or under common control with, Tenant ("control" for this purpose means the legal or beneficial ownership of in excess of fifty percent (50%) of the voting securities or of the legal and equitable interest of the entity controlled). Notwithstanding any of the other provisions of this Lease, transfers of shares of Tenant among existing shareholders and/or their family members and/or the affiliates of the existing shareholders or their family members shall be not be considered for purposes of determining whether there has been a transfer of control.

Section 12.02. Procedure for Consent and Transfer.

(a) Tenant shall submit as request for a transfer, in writing, with sufficient time and information for Landlord to make an informed decision regarding the qualifications of the proposed transferee. In any event, Landlord may upon receipt of a request to transfer, instead of consenting to or denying the proposed transfer, terminate Tenant's obligations under the Lease and regain possession of the Demised Premises. Tenant may, within fifteen (15) days of receipt of the notice of termination, withdraw its request for the transfer by written notice to Landlord, and continue in possession under the terms of the Lease. If Landlord exercises its termination right and Tenant does not withdrawal its request for transfer, Tenant shall surrender possession of the Demised Premises within sixty (60) days of receipt of the notice of termination in accordance with the provisions of this Lease.

(b) Landlord shall deliver to Tenant written notice of its approval or disapproval of any request for transfer within fifteen (15) days following the delivery to Landlord of the request for transfer.

Landlord's consent to a transfer shall not constitute a waiver of Landlord's right to consent to a subsequent transfer. If this Lease be assigned, or if the Demised Premises or any part thereof be sublet or occupied by anybody other than Tenant, Landlord may collect rent from the assignee, subtenant or occupant, and apply the net amount collected to the rent herein reserved, but no such assignment, subletting, occupancy or collection shall be deemed a waiver of prohibition against assigning, subletting or otherwise transferring the Lease or Demised Premises, or the acceptance of the assignee, subtenant or occupant as tenant, or a release of Tenant from the further performance by Tenant of covenants on the part of Tenant herein contained. Notwithstanding any assignment or sublease, Tenant shall remain fully liable on this Lease and shall not be released from performing any of the terms, covenants and conditions of this Lease. No assignee or sublessee shall be permitted to use the Demised Premises for any purpose other than the Permitted Use.



(c) Each transfer to which Landlord has consented shall be in writing, in a form reasonably satisfactory to Landlord and executed by the transferor and transferee. The transferee shall agree, in writing, to assume, be bound by and perform the covenants and conditions of this Lease. Notwithstanding any other provisions of this Lease, Tenant shall be released from all of its covenants and obligations under this Lease if the net worth of the assignee is equal to or greater than the net worth of Tenant.

(d) Tenant agrees to pay Landlord \$1,000 to reimburse Landlord for attorneys' fees and administrative expense for the review, processing or preparation of any document in connection with a transfer, whether or not Landlord's consent to the transfer is required or obtained.

ARTICLE XIII. TENANT'S DEFAULT.

Section 13.01. Events of Default.

(a) The following events shall be deemed to be "Events of Default by" Tenant under this Lease:

- (i) Tenant shall have failed to pay any installment of rent or any other charge provided herein, or any portion thereof when the same shall be due and payable, and the same shall remain unpaid for a period of ten (10) days after written notice from Landlord; or
- (ii) Tenant shall have failed to comply with any other provisions of this Lease, if the failure continues for thirty (30) days after written notice to Tenant; provided, however, that in the case of a default which cannot, with due diligence, be cured within a period of thirty (30) days, Tenant shall have such additional time to cure such default as may reasonably be necessary, provided Tenant commences said cure within said thirty (30) day period and thereafter with due diligence proceed to cure such default; or
- (iii) Tenant shall, for reasons other than those specifically permitted in this Lease, cease to conduct its normal business operations for the Permitted Use in the Demised Premises or shall vacate or abandon the Demised Premises and leave same vacated or abandoned for a period of ten (10) consecutive days; or
- (iv) Tenant shall do or permit to be done anything which creates a non-permitted lien upon the Demised Premises, provided, however, that Tenant may contest the validity of such lien without being in default hereunder by posting a bond equal to one and one-half (1-1/2) the amount of said lien in a form and with a company reasonably satisfactory to Landlord; or
- (v) The making by Tenant of a general assignment for the benefit of creditors; the filing by or against Tenant of a petition to have Tenant adjudged a bankrupt, or of a petition for reorganization or arrangement under any law relating to bankruptcy (unless a petition filed against Tenant is dismissed within 60 days); the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Demised Premises or of Tenant's interest in this Lease if possession is not restored to Tenant within sixty (60) days; or the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Demised Premises, or of Tenant's interest in this Lease, if the seizure is not discharged within sixty (60) days; and/or
- (vi) The failure more than twice within a 12 month period to make any payment of rental, provided Landlord has given Tenant the required written notices in each case. The third failure shall be a non-curable default.

(b) In the event that there shall be an Event of Default hereunder on the part of Tenant, then Landlord may elect either (i) to cancel and terminate this Lease, or (ii) to terminate Tenant's right to possession only without terminating the Lease. Additionally, Landlord shall be entitled, without limitation, to pursue any other remedy available at law or in equity.

In the event of election under (ii) above to terminate Tenant's right to possession only, Landlord may, at Landlord's option, enter into the Demised Premises and take and hold possession thereof, without such entry into possession terminating this Lease or releasing Tenant in whole or in part from Tenant's obligation to pay the rent and other amounts payable hereunder for the full stated term. Upon such re-entry, Landlord may remove all persons and property from the Demised Premises, and such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Tenant, all without service of notice or resort to legal process and without being deemed guilty of trespass, or becoming liable for any loss or damage which may be occasioned thereby, except if said loss or damage arises out of the negligence or willful misconduct of Landlord or its employees, agents or contractors. Upon and after entry into possession without termination of the Lease, Landlord shall use commercially reasonable efforts to relet the premises, or any part thereof, for the account of Tenant, to any person, firm or corporation, other than Tenant, for such rent, for such time, and upon such terms as Landlord, in Landlord's sole discretion, shall determine, but Landlord shall not be required to accept any tenant offered by Tenant or to observe any instruction given by Tenant about such reletting. In any such case, Landlord may make repairs to the premises to the extent necessary to make any repairs that Tenant was obligated to but failed to make as required hereunder, and Tenant shall, upon demand, pay the reasonable costs thereof, together with Landlord's expense of reletting. If the consideration collected by Landlord upon any such reletting for Tenant's account, and after deducting all expenses incident thereto, including reasonable brokerage fees and legal expenses, is not sufficient to pay monthly the full amount of the rent provided in this Lease, Tenant shall pay to Landlord the amount of each monthly deficiency within ten (10) days following the receipt of a written demand. In the event that Landlord shall have terminated Tenant's right to possession only, Landlord shall have the right to cancel and terminate this Lease by serving five (5) days' written notice on Tenant of such further election and to pursue any remedy at law or in equity that may be available to Landlord.

If Landlord elects to terminate this Lease, Landlord shall have the right to recover from Tenant:

- (i) The worth at the time of the award of any unpaid rental which has been earned at the time of termination; and
- (ii) The worth at the time of the award of the amount by which the unpaid rental which would have been earned after termination until the time of award exceeds the amount of rental loss Tenant proves could have been reasonably avoided; and
- (iii) The worth at the time of award of the amount by which the unpaid rental for the balance of the Term after the time of award exceeds the amount of rental loss Tenant proves could be reasonably avoided; and
- (iv) Any other reasonable amount necessary to compensate Landlord for the detriment proximately caused by Tenant's failure to perform its obligations (including the costs and expenses of recovering the Demised Premises and reasonable attorneys' fees) or which would be likely to result from Tenant's failure; and
- (v) At Landlord's election, other amounts permitted by applicable law.

To the extent permitted by applicable law, Tenant waives notice of reentry (or institution of legal proceedings), including the right to receive notice pursuant to any statute or judicial decision of law. Notwithstanding anything to the contrary contained herein, any written notice, other than as specifically set forth in this Article 13, required by a statute or law enacted now or later is waived by Tenant, to the extent permitted under that statute or law. Tenant expressly waives any right or defense it may have to claim a merger, and neither the commencement of an action or proceeding nor the settlement of, or entering of judgment for any action or proceeding shall bar Landlord from bringing subsequent actions or proceedings, based upon other or subsequently accruing claims, or based upon claims or events which have previously accrued and not been resolved in any prior action, proceeding or settlement, except to the extent barred by res judicata, collateral estoppel, laches, waivers, estoppel or any other legal or equitable rights or remedies.

Section 13.02. Computation of Rent. In the event Tenant ceases to conduct its business operations in the Demised Premises or, if Landlord shall at any time be entitled to rent under this Lease pursuant to

any of the covenants, conditions or agreements of this Lease after termination of Tenant's right to possession without termination of this Lease, Landlord shall recover and Tenant agrees to pay the Minimum Guaranteed Rent and any Additional Rent as provided in Article III of this Lease.

Section 13.03. Costs, Expenses and Attorneys' Fees. In case Landlord shall, without fault on its part, be made a party to any litigation commenced by or against Tenant, then Tenant shall pay all reasonable costs, expenses and reasonable attorneys' fees incurred or paid by Landlord in connection with such litigation. Tenant shall also pay all reasonable costs, expenses and reasonable attorneys' fees that may be incurred or paid by Landlord in enforcing the covenants and agreements in this Lease provided that Landlord prevails in any litigation commenced by it to enforce same.

ARTICLE XIV. HOLDING OVER.

Section 14.01. Holding Over. In the event Tenant, with Landlord's consent, remains in possession of the Demised Premises after the expiration of this Lease and without the execution of a new lease, it shall be deemed to be occupying said Premises as a Tenant from month to month at a rental equal to the rental (including any Additional Rent) herein provided for the period immediately prior to the fixed expiration date of the Lease and otherwise subject to all the conditions, provisions and obligations of this Lease insofar as the same are applicable to a month-to-month tenancy. If Tenant fails to surrender the Demised Premises on the termination of this Lease without Landlord's consent, the monthly rental shall be computed based on one hundred twenty-five percent (125%) of the rental payable to Landlord during the last month of the Term and Tenant shall, in addition to other liabilities to Landlord, indemnify, defend and hold Landlord harmless from loss and liability resulting from that failure including, but not limited to, claims made by a succeeding tenant. The exercise of Landlord's rights shall not be interpreted to allow Tenant to continue in possession, nor shall it be deemed an election to extend the Term beyond a month-to-month basis. If Landlord, in its sole discretion, determines to permit Tenant to remain in the Leased Premises on a month-to-month basis, the month-to-month tenancy shall be terminable on thirty (30) days prior written notice given by either party to the other party.

ARTICLE XV. ACCESS BY OWNER.

Section 15.01. Right of Entry. Provided that Tenant's business operations are not unreasonably interfered with, Landlord or Landlord's agents shall have the right to enter the Demised Premises upon not less than 48 hours prior notice and at all reasonable times to examine the same, and during the last six (6) months of the Lease Term to show them to prospective purchasers or lessees of the building. During the six (6) months prior to the expiration of the Lease Term, Landlord may place upon the Demised Premises the usual notice "To Let" or "For Sale", which notices Tenant shall permit to remain thereon without molestation. If Tenant shall not be personally present to open and permit an entry into said Premises at any time when for any reason an entry therein shall be necessary to protect the Demised Premises from damage, Landlord or Landlord's agents may forcibly enter the same, without rendering Landlord or such agents liable therefor and without, in any manner, affecting the obligations and covenants of this Lease, provided, however, Landlord shall be liable for, and shall defend, indemnify and hold harmless Tenant from and against, any and all claims, actions, causes of action, damages, losses, liabilities, costs and expenses arising out of the negligence or willful misconduct of or breach of this Lease by Landlord or any of its employees, agents or contractors. In connection with any entry on the Demised Premises pursuant to this Section, Landlord shall not interfere with, nor shall Landlord permit any interference with, Tenant's access to or use, occupancy or quiet enjoyment of the Demised Premises or its business operations in the Demised Premises. Landlord shall repair any damage caused by its forcible entry. Nothing herein contained, however, shall be deemed or construed to impose upon Landlord any additional obligation, responsibility or liability whatsoever, for the care, maintenance or repair of the building or any part thereof, except as otherwise herein specifically provided.

ARTICLE XVI. LANDLORD'S DEFAULT.

Section 16.01. Notice to Landlord. Landlord shall, in no event, be charged with default in the performance of any of its obligations hereunder unless and until Landlord shall have failed to perform such obligations within thirty (30) days after written notice by Tenant to Landlord properly specifying wherein Landlord has failed to perform any such obligation, provided, however, in the case of a default which cannot, with due diligence be cured within a period of thirty (30) days, Landlord shall have such additional time to cure such default as may be reasonably necessary, provided Landlord commences said cure within said thirty (30) day period and thereafter with due diligence proceeds to cure such default.

ARTICLE XVII. REMEDIES CUMULATIVE.

Section 17.01. No Waiver. No Waiver by Landlord or Tenant of a breach of any covenants, agreements, obligations or conditions of this Lease shall be construed to be a waiver of any future breach of the same or other covenant, agreement, obligation or condition hereof. No receipt of money by Landlord from Tenant after notice of default, or after termination of this Lease, or after the commencement of any suit or after final judgment of possession of the Premises, shall reinstate, continue or extend the term of this Lease or affect any notice, demand or suit. Unless otherwise qualified, the rights and remedies hereby created are cumulative, and the use of one remedy shall not be taken to exclude or waive the right to the use of another, or exclude any other right or remedy allowed by law.

ARTICLE XVIII. NO ENCUMBRANCES.

Tenant covenants and agrees that it will not, at any time during the term of this Lease, encumber, mortgage or pledge the leasehold estate hereunder as security for any indebtedness without the express written consent of Landlord, which consent shall not be unreasonably withheld. Under no circumstances shall the Landlord's ownership interest in the Demised Premises be adversely affected or encumbered by Tenant. Notwithstanding the foregoing, Tenant may encumber its trade fixtures, furnishings, equipment and other personal property at anytime during the Lease Term. Landlord further agrees to execute a standard form landlord waiver as reasonably required of Tenant's lender.

ARTICLE XIX. LANDLORD'S TITLE.

Section 19.01. Quiet Possession. Landlord covenants that it has full right and power to execute and perform this Lease, and that it will put Tenant into complete and exclusive possession of the Demised Premises free from all orders and notices of violations of any public or quasi-public authority. Landlord further covenants that Tenant, on paying the rents reserved herein and performing the covenants and agreements hereof, shall peaceably and quietly have, hold and enjoy the Demised Premises and all rights, easements, appurtenances and privileges thereunto belonging or in any ways appertaining, during the term hereof. Anything herein to the contrary notwithstanding, Landlord shall not be liable for any breach of the covenant of quiet enjoyment or any other breaches occurring after Landlord shall have transferred ownership of the Demised Premises, provided that Landlord's grantee shall affirmatively assume in writing Landlord's obligations under said covenant of quiet enjoyment, as well as all other covenants to be performed by Landlord pursuant to the provisions of this Lease. The Demised Premises is situated on one or more outparcels which, together with the adjoining Shopping Center, comprise the development known as Montclair Plaza Mall; Landlord holds good and valid title to the Shopping Center, including the outparcel on which the Demised Premises is located. The outparcels, including the Demised Premises, may be subject to the provisions contained in the REA as the same may be from time to time amended. Tenant further agrees that this Lease and the estate of Tenant hereunder shall be subject and subordinate to any ground lease, deed of trust, mortgage lien or charge, which now encumbers or which at any time hereafter may encumber the Demised Premises (such ground lease, deed of trust, mortgage lien or charge and any replacement, renewal, modification, consolidation or extension thereof being hereinafter referred to as an "Encumbrance"). Any Encumbrance shall be prior and paramount to this Lease and to the rights of Tenant hereunder and all persons claiming through or under Tenant, or otherwise, in the Demised Premises. The foregoing subordination agreement of Tenant is subject to the delivery by Landlord to Tenant, prior to or concurrently with the execution of this Lease, of Subordination, Non-Disturbance and Attornment Agreements, in the form attached hereto as Exhibit "F" ("SNDA"), executed by any ground lessor or the holders of any and all encumbrances that exist upon the Demised Premises and the delivery to Tenant of an SNDA executed by any and all ground lessors and holders of all other encumbrances that may be placed upon the Demised Premises after the execution and delivery of this Lease.

ARTICLE XX. BANKRUPTCY-INSOLVENCY.

The parties acknowledge that the Demised Premises occupied by Tenant consists of an outparcel located within an integrated shopping center development owned and operated by Landlord, and, in the event Tenant becomes subject to voluntary or involuntary proceedings under the Bankruptcy Reform Act of 1978 (the "Act"), the specific provisions of the Act as the same may be amended from time to time relating to shopping centers shall be applicable to such proceedings. The parties further acknowledge that in order to protect the mix of tenants within the Shopping Center and to provide the sales volume anticipated from Tenant's business operations within the Demised Premises, the purpose for which the

Tenant may use the Demised Premises have been specifically limited by the provisions of Article IV hereof, and that the economics of this Lease, particularly with respect to the agreed upon Minimum Guaranteed Rent, Percentage Rent, and Additional Rent, were established on the basis of Tenant's expected business operations as an Elephant Bar restaurant and bar facility. Notwithstanding anything in this Lease to the contrary, in the event Tenant becomes subject to voluntary or involuntary proceedings under the Act and Tenant or any trustee, receiver or other custodian of Tenant or of its assets or properties shall assign this Lease, any and all amounts paid or to be paid by or for the account of the assignee in consideration of such assignment shall be and remain the property of the Landlord, and any and all such amounts received by Tenant or such trustee, receiver or custodian shall be held in trust for the Landlord and remitted to the Landlord promptly after receipt thereof. If Landlord is not permitted to terminate this Lease because of the provisions of Bankruptcy Code, Tenant agrees, as a debtor in possession or any trustee for Tenant, within fifteen (15) days after Landlord's request to the Bankruptcy Court, to assume or reject this Lease. Tenant, on behalf of itself and any trustee, agrees not to seek or request an extension or adjournment of the application to assume or reject this Lease. In no event after the assumption of this Lease shall an existing default remain uncured for a period more than the earlier of 10 days or the time period specified in this Lease. If a filing of a petition under the Bankruptcy Code occurs, Landlord shall not have an obligation to provide Tenant with services or utilities unless Tenant has paid and is current in all payments of rental and additional rental.

ARTICLE XXI. MISCELLANEOUS PROVISIONS.

Section 21.01. Relationship of Parties. Nothing herein contained shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between the parties hereto, it being understood and agreed that neither the method of computation of rent, nor any other provision contained herein, nor any acts of the parties hereto, shall be deemed to create any relationship between the parties hereto other than the relationship of Landlord and Tenant. This Lease shall not confer rights or benefits, including third-party beneficiary rights or benefits to anyone that is not a named party to this Lease, including any individual, corporation, partnership, trust, unincorporated organization, governmental organization or agency or political subdivision.

Section 21.02. Construction. Tenant has read and understands this Lease. The rule of construction that a document should be construed most strictly against the party which prepared the document shall not be applied, because both parties have participated in the preparation of this Lease. The necessary grammatical changes required to make the provisions of this Lease apply in the plural sense where there is more than one tenant and to either corporations, associations, partnerships or individuals, males or females, shall, in all instances, be assumed as though fully expressed. The captions used in this Lease are for convenience only and do not in any way limit or amplify the terms and provisions hereof.

Section 21.03. Parties Bound. It is agreed that this Lease, and each and all the covenants and obligations hereof, shall be binding upon and inure to the benefit of, as the case may be, the parties hereto, their respective heirs, executors, administrators, successors and assigns, subject to all agreements and restrictions herein contained with respect to assignment or other transfer of Tenant's interest herein.

Section 21.04. Entire Agreement. This Lease contains the entire agreement between the parties, and no agreement shall be effective to change, modify or terminate this Lease in whole or in part unless such agreement is in writing and duly signed by the party against whom enforcement of such change, modification or termination is sought.

Section 21.05. Brokers. Neither Tenant nor Landlord has had any dealings or negotiations with any broker or finder with respect to this Lease, except with Tim Rose of National Restaurant Development, Inc. and Landlord's broker, Chris Wilson of Wilson Commercial Real Estate, both of whom Landlord shall be solely responsible for any payment or other compensation. In the event of any claim for payment or compensation by any other agent or broker with respect to Tenant's lease of the Demised Premises other than Tim Rose of National Restaurant Development, Inc. and Landlord's broker, Chris Wilson of Wilson Commercial Real Estate, each party agrees to defend, indemnify, and hold the other harmless from and against all costs, fees, liabilities, and other claims incurred by the indemnified party as a result of the claim.

Section 21.06. Savings. If any provision of this Lease or any paragraph, sentence, clause, phrase or word is judicially or administratively held invalid or unenforceable, that shall not affect, modify or impair any other paragraph, sentence, clause, phrase or word. The parties acknowledge that certain charges, fees and other payments are deemed "additional rental" in order to enforce Landlord's remedies, and shall not be construed to be "rent" if rent controls are imposed. The laws of the state of California shall govern the interpretation, validity, performance and enforcement of this Lease.

Section 21.07. Force Majeure. In the event that either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lockouts, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, war or other reason of a like nature not the fault of the party delayed in performing work or doing acts required under the terms of this Lease, then performance of such act shall be excused for the period of the delay, and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. The provisions of this Section 21.07 shall not operate to excuse Tenant from prompt payment of Minimum Guaranteed Rent, or any other payments required by the terms of this Lease, except as provided for herein.

Section 21.08. Recording of Lease. It is understood by the parties hereto that this Lease shall not be recorded, but that a short form lease of even date herewith, describing the property herein demised, giving the term of the Lease and referring to this Lease may be recorded by either party upon execution by both parties. The party so requesting such short form lease shall be responsible for preparation and recording thereof, and release thereof after termination of this Lease.

Section 21.09. Tenant's failure to object to a statement, invoice or billing within two years after receipt shall constitute Tenant's acquiescence. Tenant shall be required to provide Landlord with a specific and detailed list of Tenant's objections at the time Tenant makes its objection to Landlord. The statement, invoice or billing shall be an account stated between Landlord and Tenant.

Section 21.10. No Option. The submission of this Lease for examination or execution does not constitute a reservation of or option for the Demised Premises, and this Lease becomes effective as a lease only upon execution and delivery thereof by Landlord and Tenant.

Section 21.11. Third Parties. Recognizing that both parties may find it necessary to establish to third parties the then current status of performance hereunder, either party, on the written request of the other made from time to time, will promptly furnish a written statement on the status of any matter pertaining to this Lease.

Section 21.12. Notices. Wherever any notice is required or permitted hereunder, such notice shall be in writing. Any notice or document required or permitted to be delivered hereunder shall be deemed to be delivered when deposited in the United States Mail, postage prepaid, Registered or Certified Mail, Return Receipt Requested, addressed to the parties hereto at the respective addresses set out on Page 1 of this Lease, or at such other addresses as they have theretofore specified by written notice delivered in accordance herewith. In addition, any notice of an alleged Landlord default shall be sent to the following:

Montclair Plaza L.L.C.
c/o General Growth Properties, Inc.
110 North Wacker Drive
Chicago, Illinois 60606
Attention: Law/Lease Administration

Section 21.13. Assignment to Mortgagee. With reference to any assignment by the Landlord of its interest in this Lease, or the rents payable hereunder conditional in nature or otherwise, which assignment is made to or held by a bank, trust company or insurance company holding a mortgage on the Demised Premises, the Tenant agrees that such mortgagee shall be treated as having assumed the Landlord's obligations thereunder only upon such mortgagee taking possession of the Demised Premises through foreclosure or in lieu of foreclosure. Any said mortgagee shall also confirm said assumptions in writing.

Section 21.14. Landlord's Liability. Anything contained in this Lease to the contrary notwithstanding, Tenant agrees that Tenant shall look solely to Landlord's interest in the Shopping Center, including, without limitation, all of the rent, income, profits and issues and all proceeds from insurance, condemnation, sales and financings relating to the Shopping Center or any portions thereof, in the event of any default or breach by Landlord with respect to any of the terms and provisions of this Lease to be observed and/or performed by Landlord, and no other assets of the Landlord shall be subject to levy, execution or other judicial process for the satisfaction of Tenant's claims. The foregoing limitation on Landlord's liability is subject to Landlord maintaining at all times a minimum unencumbered equity in the Shopping Center of not less than five million dollars \$ 5,000,000. In the event Landlord conveys or transfers its interest in the Demised Premises or in this Lease, except as collateral security for a loan, upon such conveyance or transfer, Landlord (and in the case of any subsequent conveyances or transfers, the then grantor or transferor) shall be entirely released and

relieved from all liability with respect to the performance of any covenants and obligations on the part of the Landlord to be performed hereunder from and after the date of such conveyance or transfer, provided that any amounts then due and payable to Tenant by Landlord (or by the then grantor or transferor) or any other obligations then to be performed by Landlord (or by the then grantor or transferor) for Tenant under any provisions of this Lease, shall either be paid or performed by Landlord (or by the then grantor or transferor) or such payment or performance assumed in writing by the grantee or transferee and further provided that any said grantee or transferee assumes in writing any and all other obligations of Landlord under the Lease; it being intended hereby that the covenants and obligations on the part of the Landlord to be performed hereunder shall, subject as aforesaid, be binding on Landlord, its successors and assigns only during and in respect of their respective period of ownership of an interest in the Demised Premises or in this Lease. Notwithstanding any other provisions of this Lease, in no event shall Tenant be liable for any loss of profit or revenue, or for any indirect, consequential, incidental, punitive or similar or additional damages, except as expressly provided for in this Lease.

Section 21.15. Net Lease. This is an absolutely net lease and Landlord shall not be required to provide any services or do any act or thing with respect to the Demised Premises, or the buildings and improvements thereon, or the appurtenances thereto, except as may be specifically provided herein, and the Minimum Guaranteed Rent reserved herein shall be paid to Landlord without any prior notice and without any claim on the part of Tenant for diminution, set-off or abatement and nothing shall suspend, abate or reduce any rent to be paid hereunder, except as may be otherwise expressly provided herein.

Section 21.16. Right to Perform Tenant's Covenants. In the event that Tenant shall fail to make any payment or perform any act required hereunder to be made or performed by Tenant, then Landlord may, but shall be under no obligation to, after the required notice to Tenant, and Tenant's failure to cure within the applicable cure period, if any, make such payment or perform such act with the same effect, as if made or performed by Tenant. Entry by Landlord upon the Demised Premises for such purpose shall not discharge or release Tenant from any obligation or default hereunder. Tenant shall reimburse (with interest thereon at the highest rate permitted by law) Landlord for all reasonable sums so paid by Landlord and all reasonable costs and expenses incurred by Landlord in connection with the payment of moneys or the performance of any such act.

Section 21.17. Public User. Tenant shall not suffer or permit any portion of the Demised Premises to be used by the public, as such, in such manner as might reasonably make possible a claim or claims of adverse user or adverse possession by the public, as such, or of implied dedication, of the Demised Premises or any portion thereof; Tenant hereby acknowledges that Landlord does not hereby consent, expressly or by implication, to the unrestricted use or possession of the whole or any portion of the Demised Premises by the public, as such;

Section 21.18. Estoppel Certificates. Both Landlord and Tenant agree, upon request of the other party, at any time and from time to time upon ten (10) days' notice, to execute and deliver to the requesting party, without charge, a written declaration, in recordable form: (1) ratifying this Lease, (2) confirming the commencement and expiration dates of the term; (3) certifying that Tenant is in occupancy of the Demised Premises, and that this Lease is in full force and effect and has not been assigned, modified, supplemented or amended, except by such writings as shall be stated; (4) that there are no defenses or offsets against the enforcement of this Lease, or stating those claimed; and (5) reciting the amount of advance rental, if any, paid by Tenant and the date to which rental has been paid.

Section 21.19. Execution of Documents. Tenant shall pay Landlord up to \$750 to reimburse Landlord for the administrative and legal expense for the review, preparation and processing of any document sent to Landlord at Tenant's request.

Section 21.20. Printed Provisions. The printed provisions of this Lease and written or typed additions shall be given equal weight for the interpretation of this Lease. The deletion of any portion of this Lease shall not create an implication regarding the intent of the parties, and this Lease shall be read and interpreted as if the deleted portion had never been in this Lease.

Section 21.21. Ownership. If the ownership of the Shopping Center is in a Real Estate Investment Trust, then Landlord and Tenant agree that Minimum Annual Rental, Percentage Rental and all additional rental paid to Landlord under this Lease (collectively referred to in this Section as "Rent") shall qualify as "rents from real property" within the meaning of Section 856(d) of the Internal Revenue Code of 1986, as amended (the "Code") and the U.S. Department of Treasury Regulations (the "Regulations"). Should the Code or the Regulations, or interpretations of them by the Internal Revenue Service contained in Revenue Rulings, be changed so that any Rent no longer qualifies as "rent from real property" for the purposes of Section 856(d) of the Code and the Regulations, other than by reason of the application of Section 856(d)(2)(B) or 856(d)(5) of the Code or the Regulations, then Rent shall be

adjusted so that it will qualify (provided however that any adjustments required pursuant to this Section shall be made so as to produce the equivalent (In economic terms) Rent as payable prior to the adjustment). Notwithstanding the foregoing, in no event shall any said change in the Code or the Regulations or any interpretations of them by the Internal Revenue Service in any Revenue Rulings (i) increase or otherwise affect the amount of any Rent paid or payable by Tenant or any other economic burden of Tenant under this Lease, (ii) decrease or otherwise affect the amount of any costs or expenses that Tenant is entitled to deduct for financial, accounting or tax purposes or otherwise or any other economic benefit of Tenant under this Lease, or (iii) affect any other rights or obligations of Tenant under this Lease. Landlord expressly acknowledges and agrees that no change, amendment or deletion of any provisions of the Code or the Regulations or any interpretations of them by the Internal Revenue Service contained in the Revenue Rulings with respect to Section 856 of the Code or the Regulations or with respect to Real Estate Investment Trusts shall affect the validity of this Lease or the parties' respective rights or obligations and that the sole effect of any said change, amendment or deletion shall be the recharacterization of the Rent to qualify as "rent from real property" under Section 856(d) of the Code and the Regulations solely to the extent possible, if at all, subject to the limitations set forth in the preceding sentence.

Section 21.22. Waiver of Redemption. Tenant waives any right of redemption if Tenant is evicted or dispossessed for any cause, or if Landlord obtains possession of the Demised Premises because of the default of Tenant or otherwise. The rights given to Landlord are in addition to rights that may be given to Landlord by statute or otherwise.

ARTICLE XXII. TITLE TO IMPROVEMENTS; SURRENDER.

Tenant covenants and agrees that its interest in the improvements to be constructed on the Demised Premises shall become subject to the terms and conditions of this Lease and that any grantees or assignees of its interest in the improvements or this Lease shall take subject to and be bound by the terms and conditions of this Lease, expressly including the following provisions:

(a) During the term of this Lease, Tenant shall own any and all improvements made or constructed by Tenant on the Demised Premises, but excluding the value of the improvements paid for with the Tenant Improvement Allowance, as outlined in Section 2.05. Upon termination of this Lease, by expiration or prior termination by default or otherwise, Landlord shall be the sole and absolute owner of the improvements, free of any right, title, interest or estate of Tenant therein without the execution of any further instrument and without payment of any money or other consideration thereof. Tenant shall execute such further assurances of title as may be requisite. Tenant hereby grants, releases, transfers, sets over, assigns and conveys to Landlord all of its right, title and interest in and to the improvements upon the termination of this Lease. Nothing herein contained shall adversely affect any right that Tenant may have to quiet enjoyment and possession so long as the Lease shall continue in force and effect and Tenant shall not be in default hereunder.

(b) The Tenant shall, upon such termination, surrender and deliver the Demised Premises and deliver the improvements, excepting Tenant's moveable trade fixtures, machinery, equipment and personal property (without any payment or allowance whatever to Tenant on account of, or for, the improvements or any part thereof) to the possession and use of Landlord, without delay and in good order, condition and repair, ordinary wear and tear and damage due to casualty, condemnation or acts or omissions of Landlord or its employees, agents or contractors excepted.

(c) The Tenant covenants and agrees that it will not execute and deliver or renew any sublease to a subtenant which would extend beyond the term of this Lease, as extended, it being the intention of the parties that the Landlord at the termination of this Lease shall be the sole owner of the improvements, as well as the land (Demised Premises), not subject to any lease, or subtenant's rights of any kind.

(d) Landlord, upon termination of this Lease for any reason, may, without notice (any notice to quit or intention to re-enter required by law being expressly waived by Tenant), re-enter upon the Demised Premises and possess itself thereof by summary proceedings, abatement, or otherwise, and may dispossess Tenant and remove Tenant and all other persons and property from the Demised Premises and may enjoy the Demised Premises and improvements and have the right to receive all rents and other income from the same. Any personal property of Tenant remaining on the Demised Premises after termination or expiration of this Lease shall be deemed abandoned by it and be retained by Landlord as its sole property or be disposed of, without liability or accountability, as Landlord sees fit, but at not cost to Tenant.

ARTICLE XXIII. MECHANICS' LIENS.

Notice is hereby given that Landlord shall not be liable for any work performed or to be performed on the Demised Premises, or in any building or improvement thereon, or in connection with any appurtenance thereto, for Tenant or any subtenant, or for any materials furnished or to be furnished at the Demised Premises for Tenant or any subtenant, and that no mechanic's or other lien for such work or materials shall attach to the reversionary or other interest of Landlord. If, in connection with any work being performed by Tenant or any subtenant or in connection with any materials being furnished to Tenant or any subtenant, any mechanic's lien or other lien or charge shall be filed or made against the Demised Premises or any part thereof or any buildings or improvements now or hereafter erected and maintained thereon or on any appurtenances thereto, or if any such lien or charge shall be filed or made against Landlord as owner, then Tenant, at Tenant's cost and expense, within thirty (30) days after such lien or charge shall have been filed or made, shall cause the same to be canceled and discharged of record by payment thereof or filing of a bond or otherwise, and shall also defend, at Tenant's cost and expense, any action, suit or proceeding which may be brought for the enforcement of such lien or charge, and shall pay any damages suffered or incurred therein by Landlord and shall satisfy and discharge any judgment entered therein. In the event of the failure of Tenant to discharge within the above-mentioned thirty (30) day period any mechanic's lien or other lien or charge herein required to be paid or discharged by Tenant, Landlord may pay such items or discharge such liability by payment or bond, or both, and Tenant will repay to Landlord upon demand any and all amounts paid by Landlord therefor, or by reason of any liability on any cash bond, and also any and all incidental expenses, including counsel fees in reasonable amount, incurred by Landlord in connection therewith together with interest thereon; provided, however, Tenant shall have the right to contest any such mechanic's lien or other lien, provided, that Tenant (i) diligently continues such contest in good faith, and (ii) deposits or delivers to Landlord satisfactory indemnification or other security reasonably satisfactory to Landlord.

ARTICLE XXIV. RENEWAL OPTIONS.

Section 24.01. Tenant's Option to Renew. Provided Tenant is not then in default of any substantial obligations under this Lease and is operating a restaurant and bar facility on the Demised Premises, Landlord grants to Tenant two (2) options to renew the term of this Lease for an additional period of five (5) years each. Notice of Tenant's election to exercise the option granted herein shall be delivered, in writing, to Landlord at least one (1) year prior to the end of the original term of this Lease, with respect to the first option term, and at least one (1) year prior to the end of the first option term of this Lease, with respect to the second option term. The extended term shall be on the same terms and conditions as contained in this Lease except for the provisions of this Article XXIV. Tenant's failure to exercise any first available renewal option shall automatically cancel any subsequent option.

ARTICLE XXV. PRESENT CONDITION OF PREMISES.

Tenant represents, subject to Tenant's due diligence period and rights to terminate this Lease as provided herein, that the Demised Premises has been preliminarily examined by Tenant and that Tenant accepts the same, without recourse to Landlord, in the condition or state in which they or any of them now are, without representation or warranty, express or implied, in fact or by law, as to the nature, condition or useability thereof or as to the use or uses to which the Premises or any part thereof may be put or as to the prospective income from, and expense of operation of, the Demised Premises. Each party agrees, except as provided for herein, that the other party, its employees and agents have made no representations, inducements or promises about the Leased Premises, the Shopping Center or this Lease, or about the characteristics or conditions regarding or pertaining to the Demised Premises or the Shopping Center, unless the representations, inducements and promises are in this Lease. Therefore, no claim or liability, or cause for termination, shall be asserted by either party against the other party, its employees and agents, for, and they shall not be liable because of, the breach of any representations, inducements or promises not expressly in this Lease.

ARTICLE XXVI. CONDITIONS TO BE SATISFIED BY LANDLORD.

The Demised Premises are adjacent to certain premises owned by Landlord on which Landlord has constructed or is constructing the Shopping Center. The location of the Shopping Center is identified on Exhibit B hereof.

Landlord agrees to construct or cause to be constructed, at its sole cost and expense, the roadways identified on Exhibit B hereof. Such construction shall be completed prior to Tenant's completion of the improvements required to be constructed by Tenant under the provisions of Article II hereof.

ARTICLE XXVII. HAZARDOUS WASTE.

Tenant shall not cause or permit any Hazardous Material (defined below) to be brought upon, transported through, stored, kept, used, discharged or disposed in or about the Leased Premises or the Shopping Center (collectively "Property") by Tenant, its agents, employees or contractors. Tenant shall notify Landlord promptly after the discovery by Tenant of the presence of or disposal of Hazardous Material on or near the Leased Premises, and of any notice by a party alleging the presence of Hazardous Material on or near the Leased Premises. However, Hazardous Materials brought upon, transported, used, kept or stored in or about the Property which is necessary for Tenant to operate its business for the use permitted under Reference Provision 1.03 of this Lease shall be brought upon, transported, used, kept and stored only in the quantities necessary for the usual and customary operation of Tenant's business and in a manner that complies with: (i) all laws, rules, regulations, ordinances, codes or any other governmental restriction or requirement of all federal, state and local governmental authorities having jurisdiction and regulating the Hazardous Material; (ii) permits (which Tenant shall obtain prior to bringing the Hazardous Material in, on or about the Property) issued for the Hazardous Material; and (iii) all producers' and manufacturers' instructions and recommendations, to the extent they are stricter than laws, rules, regulations, ordinances, codes or permits. If Tenant, its agents, employees or contractors, in any way breaches the obligations in the preceding sentence; or if the presence of Hazardous Material on the Property caused or permitted by Tenant results in the release or threatened release of Hazardous Material on, from or under the Property; or if the presence on, from or under the Property of Hazardous Material otherwise arises out of the operation of Tenant's business then, without limitation of any other rights or remedies available to Landlord under this Lease or at law or in equity, Tenant shall indemnify, defend, protect and hold harmless Landlord (and Landlord's parents, subsidiaries, affiliates, employees, partners, agents, mortgagees or successors to Landlord's interest in the Leased Premises) (collectively "Indemnity") from any and all claims, sums paid in settlement of claims, judgments, damages, clean-up costs, penalties, fines, costs, liabilities, losses or expenses (including, without limitation, attorneys', consultants' and experts' fees and any fees by Landlord to enforce the Indemnity) which arise during or after the Term as a result of Tenant's breach of the obligations or the release or contamination of the Property, including, without limitation: diminution in value of the Property; damages for the loss of, or the restriction on the use of, rentable or usable space or any amenity of the Property; damages arising from any adverse impact on the sale or lease of the Property; and damage and diminution in value to the Property or other properties, whether owned by Landlord or by 3rd parties. This Indemnity includes, without limitation, costs incurred in connection with any investigation of site conditions or any clean-up, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of Hazardous Material present in the soil or groundwater on, under or originating from the Property. Without limiting the foregoing, if the presence of Hazardous Material on the Property caused or permitted by Tenant results in the contamination, release or threatened release of Hazardous Material on, from or under the Property or other properties, Tenant shall promptly take all actions at its sole cost and expense which are necessary to return the Property and other properties to the condition existing prior to the introduction of the Hazardous Material; provided that Landlord's written approval of the actions shall be obtained first (which approval shall not be unreasonably withheld) and so long as such actions do not have or would not potentially have any material, adverse long-term or short-term effect on Landlord or on the Property or other properties. This Indemnity shall survive the Expiration Date or earlier termination of this Lease and shall survive any transfer of Landlord's interest in the Property. "Hazardous Material" means any hazardous, radioactive or toxic substance, material or waste, including, but not limited to, those substances, materials and wastes (whether or not mixed, commingled or otherwise combined with other substances, materials or wastes) listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302) and amendments thereto, or substances, materials and wastes which are or become regulated under any applicable local, state or federal law including, without limitation, any material, waste or substance which is (i) a petroleum product, crude oil or any fraction thereof, (ii) asbestos, (iii) polychlorinated biphenyls, (iv) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. Section 1251, et seq. (33 U.S.C. Section 1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. Section 1317), (v) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq. (42 U.S.C. Section 6903) or (vi) 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). Landlord represents and warrants to Tenant that (i) there are no Hazardous Materials on, in, under or about the Demised Premises, the Common Areas or the Shopping Center or any real property underlying the Demised Premises, the

Common Areas or the Shopping Center arising out of any acts or omissions of Landlord or any of its employees, agents or contractors, (ii) to the best of Landlord's knowledge, there are no Hazardous Materials on, in, under or about the Demised Premises, the Common Areas or the Shopping Center or any real property underlying the Demised Premises, the Common Areas or the Shopping Center arising out of any acts or omissions of any prior owner or any tenant, licensee, occupant or user of the Shopping Center or any portion thereof or any other third party or any employees, agents or contractors of any of the foregoing persons or entities, (iii) to the best knowledge of Landlord, neither the Demised Premises, the Common Areas or the Shopping Center is in violation of any laws, rules, regulations, ordinances, codes or any other governmental restrictions or requirements of any federal, state or local governmental authority arising out of any acts or omissions of Landlord or its employees, agents or contractors, or arising out of any acts or omissions of any prior owner or any tenant, licensee, occupant or user of the Shopping Center or any portion thereof or any other third party or any employees, agents or contractors of any of the foregoing persons or entities, and (iv) Landlord has received no notice that the Demised Premises, the Common Areas or the Shopping Center or any portion thereof is in violation of any laws, rules, regulations, ordinances, codes or any other governmental restrictions or requirements of any federal, state or local governmental authority. In addition to all of Tenant's other rights and remedies, Landlord shall defend, indemnify and hold harmless Tenant from and against any and all losses, claims, damages, fines, penalties, liabilities, costs and expenses, including, without limitation, attorneys' fees, arising out of any misrepresentation by Landlord under this Article or any violation by Landlord or any of its employees, agents or contractors of any laws, rules, regulations, ordinances, codes or other governmental restriction or requirement of any federal, state or local governmental authority relating to Hazardous Materials or any deposit, spill, discharge, release, disposal or other matter relating to Hazardous Materials arising out of any acts or omissions of Landlord or any of its employees, agents or contractors. In the event of the discovery of any Hazardous Materials in the Demised Premises, the Common Areas or the Shopping Center (excluding any Hazardous Materials that originate in the Demised Premises during the term of this Lease and are caused by Tenant or its employees, agents or contractors which Tenant shall be obligated to remediate, at Tenant's expense), Landlord, at its expense, shall immediately take all steps necessary to remediate the same in accordance with all applicable laws, rules, regulations, ordinances, codes or other governmental restriction or requirement of any federal, state or local governmental authority and Tenant shall be entitled to a rent abatement to the extent that the presence of said Hazardous Materials or the remediation thereof materially and adversely affects Tenant's occupancy, use or development of the Demised Premises or Tenant's business operations in the Demised Premises.

[The remainder of this page is intentionally left blank.]

The Exhibits are incorporated by reference into this Lease.

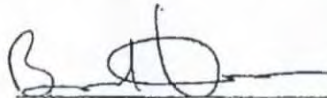
If Tenant is a corporation, the authorized officers shall sign on behalf of the corporation and indicate the capacity in which they are signing. The Lease must be executed by the president or vice president and attested by the secretary or assistant secretary, unless the bylaws or a resolution of the board of directors provides otherwise. In that case, the bylaws or a certified copy of the resolution shall be attached to this Lease.

DATED this 18th day of May, 2001.

LANDLORD:

MONTCLAIR PLAZA L.L.C.,
a Delaware limited liability company

By: GGP/HOMART II L.L.C., a Delaware
limited liability company, its Member

By: 
Name: Bernard Freibaum
Its: Authorized officer

TENANT:

S. B. RESTAURANT CO.,
a California corporation

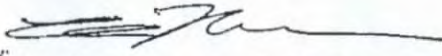
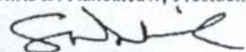
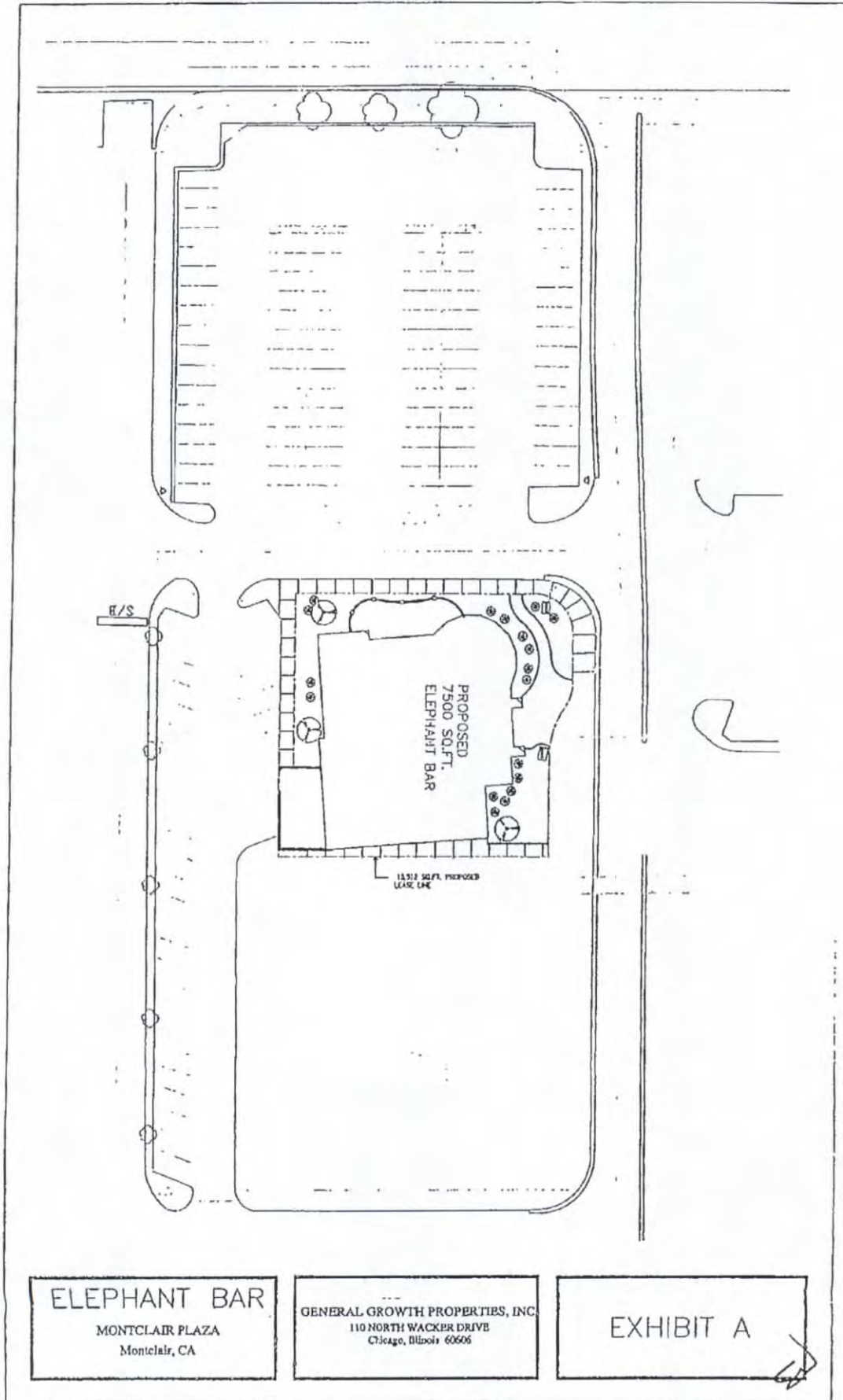
By: 
Chris D. Nancarrow, President
By: 
Sean K. Walwick, Secretary

EXHIBIT A
DEMISED PREMISES

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ELEPHANT BAR
MONTCLAIR PLAZA
Montclair, CA

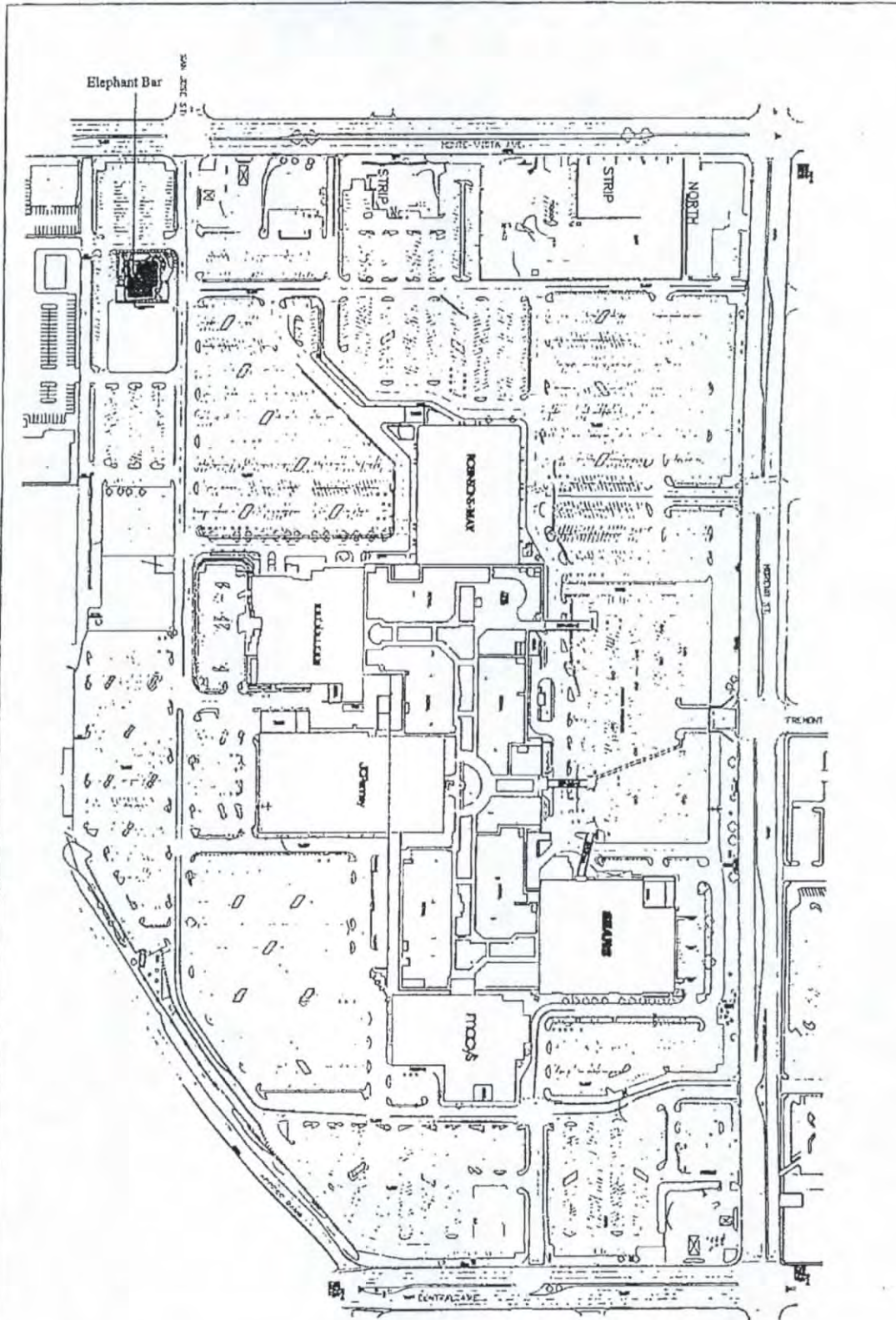
GENERAL GROWTH PROPERTIES, INC.
110 NORTH WACKER DRIVE
Chicago, Illinois 60606

EXHIBIT A

EXHIBIT B

SITE PLAN

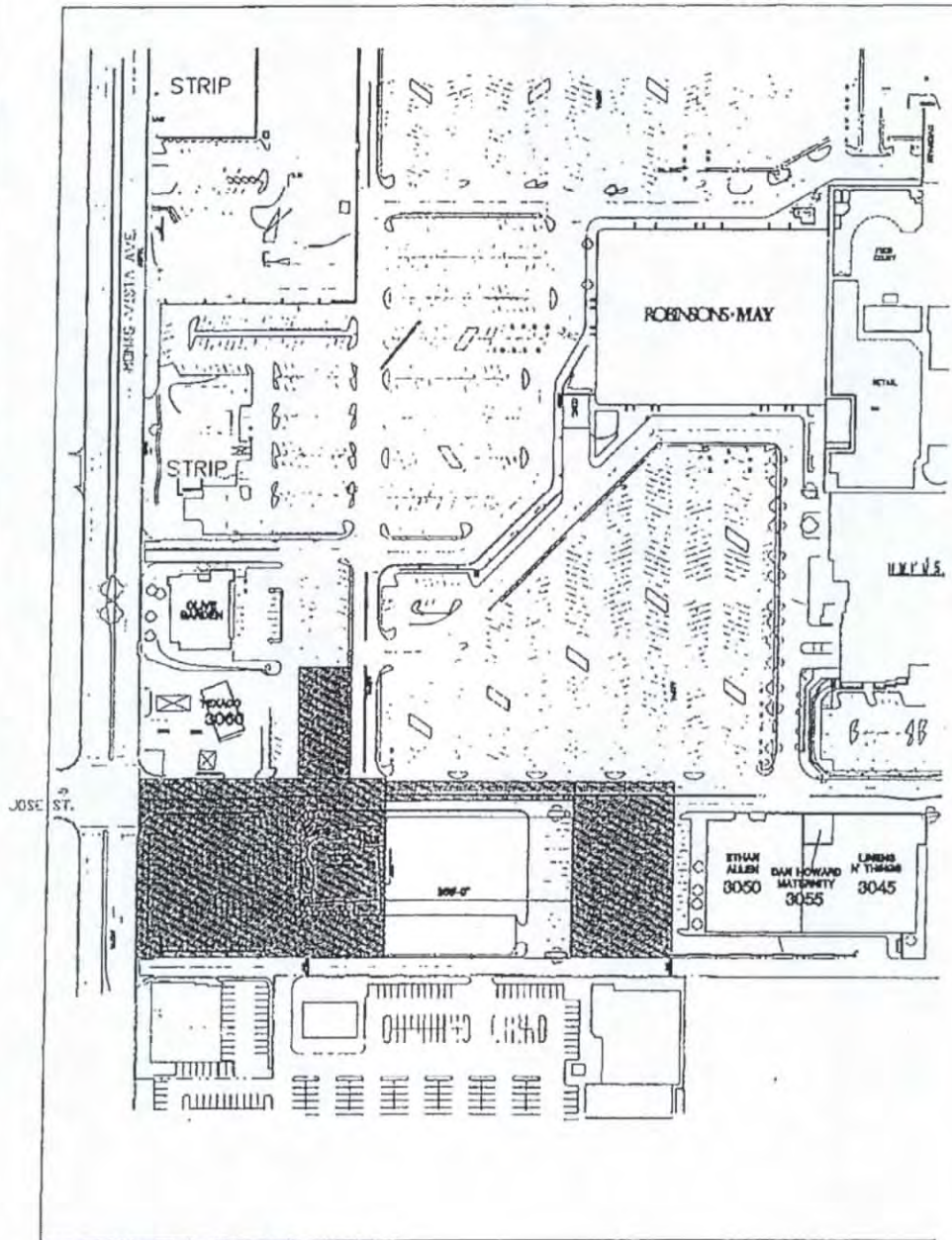




ELEPHANT BAR
MONTCLAIR PLAZA
Montclair, CA

GENERAL GROWTH PROPERTIES, INC
110 NORTH WACKER DRIVE
Chicago, Illinois 60605

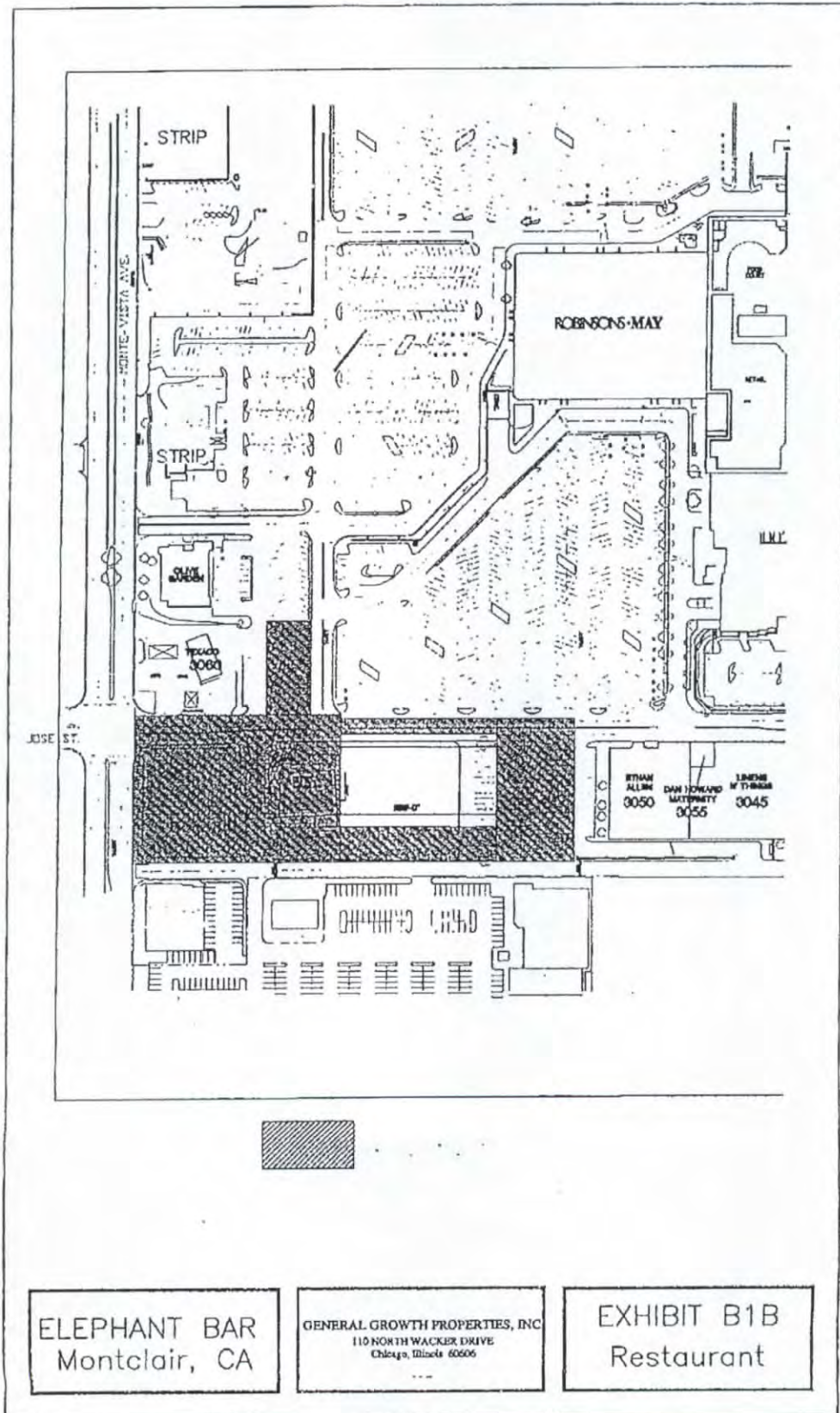
EXHIBIT B



ELEPHANT BAR
Montclair, CA

GENERAL GROWTH PROPERTIES, INC
110 NORTH WACKER DRIVE
Chicago, Illinois 60606

EXHIBIT B1A
RETAIL



ELEPHANT BAR
Montclair, CA

GENERAL GROWTH PROPERTIES, INC
110 NORTH WACKER DRIVE
Chicago, Illinois 60606

EXHIBIT B1B
Restaurant

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EXHIBIT C

CONSTRUCTION

1. Delivery of Demised Premises.

Tenant has inspected the Demised Premises and accepts the same in its "AS IS" condition, except as provided in the Lease. Tenant shall be responsible, at its sole cost and expense, for bringing the necessary utilities to the property line. All other work of every type and character shall be at the sole cost and expense of Tenant.

(a) AS TO GRADE: Tenant shall receive the site "AS IS". It is the Tenant's responsibility to bring the site to final grade.

(b) AS TO SANITARY SEWER: Tenant shall cause, as required, a sanitary sewer line to be brought to Tenant's land parcel. It is Tenant's responsibility to make arrangements for taps and pay all fees for same.

(c) AS TO WATER: Tenant shall cause, as required, a water line to be brought to Tenant's land parcel. It is Tenant's responsibility to pay all fees involved.

(d) AS TO ELECTRICAL: Tenant shall cause, as required, an electrical line to be brought to Tenant's land parcel. It is Tenant's responsibility to arrange for service with the power company. All electric service must be underground.

(e) AS TO GAS SERVICE: Tenant shall cause, as required, a gas line to be brought to Tenant's land parcel. It is the Tenant's responsibility to arrange for service with the gas service company.

(f) AS TO TELEPHONE: It is Tenant's responsibility to make arrangements with the telephone company for phone service and pay all fees involved. All telephone service must be underground.

(g) AS TO SURVEY: Prior to the commencement of any construction, Landlord shall obtain a survey of the Demised Premises from a surveyor registered and/or licensed in the state in which the Demised Premises are located verifying the legal description of the Demised Premises all at Landlord's cost and expense. Such survey shall be subject to Tenant's approval, and upon such approval, Landlord and Tenant agree to enter into an agreement modifying this Lease to the extent necessary to incorporate such survey and the legal descriptions provided therewith in this Lease Agreement.

2. Signs.

The design and location of all signs, for the exterior of the Demised Premises shall be subject to prior written approval by Landlord, which consent shall not be unreasonably withheld. Tenant shall have the right, but not the obligation, to erect a monument sign along Monte Vista Avenue, subject to governmental approvals, and in reasonable proximity to the Demised Premises. The monument sign shall have no more than two panels and will be large enough to accommodate Tenant's sign, and the sign of a future tenant, whose premises will be immediately adjacent to the Demised Premises. The total cost of the monument sign, including governmental approvals, permits, etc., shall be shared equally by Tenant and Landlord. Tenant shall submit detailed sign drawings to Landlord; and no sign shall be installed until Landlord's written approval has been obtained by Tenant. Tenant acknowledges that Tenant is familiar with the sign restrictions contained in the REA. Drawings submitted shall be in duplicate and contain all vital information pertaining to dimensions, location, material, color and type of illumination. Color samples of all signs, if not white, shall be submitted to Landlord. However, the following limitations will apply:

- (a) Wording of all signs shall be limited to Tenant's Trade Name and logo only.
- (b) The size and location of all signs shall be limited.
- (c) All signs will be self-illuminated.
- (d) The following is not permitted and is expressly prohibited:
 - (i) (omitted)

- (ii) Signs with flashing, blinking, moving, flickering, animated or audible effects or type.
- (iii) Printed signs on fronts or show windows.
- (iv) Exposed raceways, ballast boxes or electrical transformers.
- (v) Paper signs, stickers, banners or flags, but excluding Tenant's metal diamond design element on the exterior of the bar area.
- (vi) Exposed sign company names or stamps.
- (vii) Exposed sign illumination or illuminated sign cabinets or modules.
- (viii) Painted signs on the exterior surface of any building.
- (ix) Roof top signs.
- (x) Sign boxes.
- (xi) Pylon signs.
- (xii) (omitted)

3. Construction Procedure.

The following provisions shall apply to Tenant's Work:

(a) Plans and Specifications: Tenant must receive written approval of Tenant's plans and specifications by Landlord prior to beginning any construction. A sepiia or mylar of all drawings is required. See Section 2.02 of the Lease for approval procedures.

(b) Coordination: To permit proper coordination, Tenant shall furnish Landlord after receipt of written request and prior to the commencement of Tenant's Work, with a detailed estimated work schedule of all work to be performed by Tenant's general contractor and subcontractors, as well as names, addresses and telephone numbers of Tenant's general contractor.

(c) Quality: Tenant's Work shall be performed in a first-class and workmanlike manner and shall be in good and usable condition at the date of completion thereof.

(d) Fees and Permits: Tenant's contractor shall pay for all necessary permits and/or fees required by public authorities and/or utility companies with respect to Tenant's Work.

(e) Debris: It shall be the Tenant's responsibility to cause each of Tenant's contractors and subcontractors participating in Tenant's Work to remove, haul away from the premises and dispose of all debris and rubbish caused by or resulting from the construction of Tenant's Work, provided however, if Tenant's Work is not completed at or prior to the opening of the Shopping Center, then debris and rubbish shall be removed on a daily basis. No construction waste, dirt, supplies or machinery and equipment may be placed in areas or space exposed to the public under any circumstances. Upon completion of Tenant's Work, Tenant shall cause its contractors to remove all temporary structures, surplus materials, machinery and equipment, debris and rubbish of whatever kind remaining on the Premises which has been brought in or created by the contractors and subcontractors in the construction of Tenant's Work. If Tenant fails to comply with the foregoing responsibilities and said failure continues for ten (10) days after delivery to Tenant of written notice thereof, then Landlord may cause the removal of all debris, rubbish, material and equipment, and charge the cost thereof to Tenant, who agrees to pay for the same within ten (10) days after billing.

(f) Protection: It shall be the Tenant's responsibility to cause each of Tenant's contractors and subcontractors participating in Tenant's Work to maintain continuous protection of adjacent premises in a reasonable manner as to limit any damage to Tenant's Work or adjacent property and improvements by reason of the performance of Tenant's Work. Each contractor and subcontractor shall properly protect Tenant's Work with lights, guard rails, and barricades.