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 Register of Deeds, Douglas County, NE  
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2006123072

### ASSIGNMENT OF SUBLEASE AGREEMENT

THIS ASSIGNMENT OF SUBLEASE AGREEMENT ("Sublease"), dated this 18<sup>th</sup> day of October, 2006, is entered into by and between **DUNHAM CAPITAL MANAGEMENT, L.L.C.**, a South Dakota limited liability company, whose address is 230 South Phillips Avenue, Suite 202, Sioux Falls, South Dakota 57104 ("Assignor") and **GC OMAHA LIMITED PARTNERSHIP**, a South Dakota limited partnership, whose address is 230 South Phillips Avenue, Suite 202, Sioux Falls, South Dakota 57104 ("Assignee").

#### WITNESSETH:

WHEREAS, pursuant to a Sublease dated May 17, 2006, Assignor is the Landlord and Granite City Good & Brewery, Ltd., is the Tenant, which is attached as Exhibit A; and

WHEREAS, the property is legally described on Exhibit B, attached hereto.

WHEREAS, Assignor desires to assign its interest as Landlord in said Sublease listed in Exhibit A to Assignee, and Assignee desires to accept the assignment thereof.

NOW, THEREFORE, in consideration of the promises and conditions contained herein, the parties hereby agree as follows:

1. Assignor hereby assigns to Assignee all of its right, title, and interest in and to the Sublease described in Exhibit A.

2. Assignor warrants and represents that:

(a) The attached Sublease affects the property being acquired by Assignee from Assignor. Assignor has not assigned or agreed to assign said Lease to any other party.

(b) The Sublease is in full force and effect and there exist no defaults thereunder, nor any acts or events which with the passage of time or the giving of notice could become defaults thereunder, on the part of the Assignor or any tenant thereunder.

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BKP \_\_\_\_\_ C/O \_\_\_\_\_ COMP *[Signature]*

DEL \_\_\_\_\_ SCAN \_\_\_\_\_ FV \_\_\_\_\_

3. Assignor hereby agrees to indemnify and hold Assignee harmless from any and all cost, liability, damage or expense, including without limitation, reasonable attorneys' fees, originating prior to the date hereof and arising out of the Sublease described in Exhibit A.


4. Assignee hereby assumes all of the Landlord's obligations under the Sublease described in Exhibit A and agrees to indemnify and hold Assignor harmless from any and all cost, liability, damage or expense, including without limitation reasonable attorneys' fees, originating subsequent to the date hereof and arising out of said Sublease.

5. This Agreement shall be binding on and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors in interest and assigns.

IN WITNESS WHEREOF, the parties have caused these presents to be executed on the day and year first above written.

ASSIGNOR:

DUNHAM CAPITAL MANAGEMENT, L.L.C.,  
A South Dakota limited liability company

By   
Donald A. Dunham, Jr.


Its Authorized Member

ASSIGNEE:

GC OMAHA LIMITED PARTNERSHIP  
A South Dakota limited partnership

By: Dunham Equity Management, L.L.C.

Its: General Partner

By   
Donald A. Dunham, Jr.

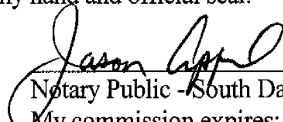
Its Managing Member

STATE OF SOUTH DAKOTA     )  
   :SS  
 COUNTY OF MINNEHAHA     )

On the 18<sup>th</sup> day of October, 2006, before me, the undersigned officer, personally appeared Donald A. Dunham, Jr., who acknowledged himself to be the Authorized Member of Dunham Capital Management, L.L.C., a South Dakota limited liability company, and that as such Authorized Member, being authorized so to do, executed the foregoing instrument for the purpose therein contained, by signing the name of the limited liability company by himself as Authorized Member.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

**NOTARIAL SEAL  
 REGISTER OF DEEDS**

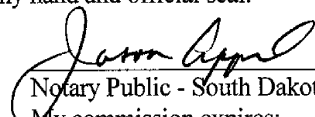
  
 Notary Public - South Dakota  
 My commission expires: 2-28-2011

STATE OF SOUTH DAKOTA     )  
   :SS  
 COUNTY OF MINNEHAHA     )

On the 18<sup>th</sup> day of October, 2006, before me, the undersigned officer, personally appeared Donald A. Dunham, Jr., who acknowledged himself to be the Managing Member of Dunham Equity Management, L.L.C., general partner of GC Omaha Limited Partnership, a South Dakota limited partnership, and that as such Managing Member, being authorized so to do, executed the foregoing instrument for the purpose therein contained, by signing the name of the general partner by himself as Managing Member.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

**NOTARIAL SEAL  
 REGISTER OF DEEDS**

  
 Notary Public - South Dakota  
 My commission expires:

**EXHIBIT A**  
**Sublease Agreement**

### SUBLEASE AGREEMENT

THIS SUBLEASE AGREEMENT, made and entered into on this 17<sup>th</sup> day of May 2006, by and between Dunham Capital Management, L.L.C., a South Dakota limited liability company (hereinafter referred to as "Landlord") and Granite City Food & Brewery, Ltd., having its principal place of business in St. Louis Park, Minnesota, (hereinafter collectively referred to as "Tenant").

WHEREAS, Donald A. Dunham, Jr. and Tenant have entered into a Development Agreement on October 22, 2002 ("Development Agreement"); and

WHEREAS, Dunham Capital Management, LLC, as a tenant, has entered into a Lease Agreement dated May 15<sup>th</sup>, 2006 (the "Ground Lease") with Westroads Mall, L.L.C. ("Ground Lease Landlord"); and

WHEREAS, Dunham Capital Management, LLC, as the Landlord and Granite City Food & Brewery, Ltd., as Tenant, have agreed to enter into this sublease pursuant to the Development Agreement; and

WHEREAS, any capitalized terms used herein and not otherwise defined shall have the meaning and effect of such term as set forth in the Development Agreement.

### ARTICLE 1. LEASED PREMISES

- a. Description of Premises. Landlord hereby leases and demises to Tenant and Tenant hereby accepts and leases from Landlord, on the terms and conditions hereinafter set forth, that certain real property and building, fixtures, and other related improvements to be constructed in Omaha, Nebraska in the Westroads Mall ("Shopping Center"), on land which is legally described on Exhibit A-1 and depicted on Exhibit A-2, and hereinafter in this Lease called the "Premises." The Premises consist of an area of approximately 9,000 square feet of interior space, subject to adjustment as provided in the Ground Lease.
- b. Quiet Enjoyment. Landlord covenants and agrees that so long as Tenant is not in default under the terms of this Lease, Tenant shall have quiet and peaceful possession of the Premises and shall enjoy all of the rights granted herein without interference.
- c. Construction of Building. Landlord shall erect on the real property a 9,000 square foot Building including the Fixtures and Equipment set forth on Exhibit B and excepting such work, as Tenant is to finish as set forth on Exhibit C ("Tenant's Work"). The Building shall be built in accordance with plans and specifications prepared by Wemlinger Architecture, 2035 15<sup>th</sup> Street North, St. Cloud, MN 56303 to include the following documents: Drawings (Sheets T1, C-1, C-2, C-3, L-1, A1.1, A2.1, A2.2, A2.3, A2.4, A3.1, A5.1, A6.1, A7.1, A7.2, A8.1, A8.2, A8.3, A9.1, A10.1, S1, S2, S3, S4, ME1, M2, M3, M4, M5, M6, E2, E3, E4, and E5) dated 10 January 2003; Project Manual (Specifications) dated 10 January 2003; Addendum #1 dated 17 January 2003;

Addendum #2 dated 30 January 2003; Addendum #3 dated 3 February 2003; and Addendum #4 dated 4 February 2003 (the "Plans and Specifications") as agreed to by the parties hereto and in accordance with the Development Agreement. Landlord's completion of its portion of the construction of the Building and all related improvements shall be on or before \_\_\_\_\_, 2006 ("Completion Date") and such construction shall be done in a good and workmanlike manner and sufficient to receive a certificate of occupancy, and shall be in compliance with all governmental laws, ordinances, regulations, building codes and requirements. Landlord shall complete all landscaping prior to the time Tenant completes the Tenant's Work except if the landscaping work cannot be completed prior to winter and the landscape plan has been approved by the City of Omaha, Nebraska ("City") and the City has granted a Temporary Certificate of Occupancy, the Landlord shall complete the landscaping work as soon as possible during the spring of the following calendar year. The Completion Date shall not be changed except by written amendment executed by both parties or by Unavoidable Delay as hereinafter defined.

Tenant shall furnish, construct and install the Tenant's Work at its own expense and in accordance with the Plans and Specifications as soon as can reasonably be done after the Building has been prepared by Landlord. However, any delay caused by the Landlord shall extend the completion period of the Tenant. All Tenant's work shall be done in a good and workmanlike manner and in accordance with all city building codes. Landlord is under no obligation to make any structural or other alterations, decoration, additions or improvements in or to the Premises except as expressly set forth in the Plans and Specifications. Tenant shall have the right to make changes from time to time in the Plans and Specifications by submitting to Landlord revised plans and specifications (herein called the "Revisions"). Upon timely receipt of any Revisions, Landlord shall submit the Revisions for performance to the contractors performing the trade or trades involved in the Revisions, and if so requested by Tenant, obtain proposed Bids from those contractors before embarking on such performance. Landlord shall have the right to reject any Revisions which would materially delay the Commencement Date of this Lease unless, in conjunction therewith, Tenant agrees to pay rental for the Premises on the date the Rent Commencement Date would have occurred but for the completion of the Revisions.

- d. Preparation of Premises. Tenant shall take and accept the Premises upon completion of construction and receipt from the City of a Temporary Certificate of Occupancy (TCO). The Premises shall be in tenantable condition so that the lights, water, sewer, front and rear doors, HVAC, plumbing, and water heater are in working or operating condition and the Tenant is able to operate its customary restaurant business in the Premises. Taking of possession of the Premises by Tenant shall be conclusive evidence that the Premises, was, on that date, in good, clean and tenantable condition as represented by Landlord, subject to latent defects or concealed conditions. Notwithstanding the previous sentence, taking of possession of the Premises by Tenant shall not act to waive the obligation of Landlord to remedy any defects in construction of the Premises nor to complete punch list items.

- e. Signs. Tenant shall be allowed to install exterior signage, containing Tenant's name and logo on the exterior of the Premises, such signage not to exceed the allowable signage per the Ground Lease. All exterior signage shall comply with local codes and ordinances, as well as requirements under the Ground Lease and be approved by Landlord. It is understood that Tenant will pay for the signage and that Landlord, if requested, will use its best effort to assist Tenant in securing required approvals, provided Tenant will promptly reimburse Landlord for any monies expended for this purpose. 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 Premises.
- f. Easements. Landlord hereby grants to Tenant the irrevocable right to utilize and make use of all easements of benefit to the Premises which the Landlord has been granted or will be granted in the future or is a third party beneficiary to. Tenant acknowledges and agrees to comply with any easements of record affecting the Premises.

## ARTICLE 2.

### TERM

- a. Lease Commencement. The term of this Lease shall commence on the "Rent Commencement Date" as defined in the Ground Lease (herein referred to as "Commencement Date"). The parties shall execute an amendment to the Lease setting forth the exact "Commencement Date" within thirty (30) days of Tenant commencing public restaurant operations in the Premises.
- b. Initial Term. The initial term of this Lease (the "Initial Term") shall commence on the Commencement Date and continue thereafter until the last day of February 2027. Hereinafter, "Term" shall mean the Initial Term and any extension thereof.

## ARTICLE 3.

### RENT

- a. Base Rent. Notwithstanding any provision herein to the contrary, Tenant covenants and agrees to pay to Landlord, "Base Rent" equal to the sum of (i) the amount of any rent payments paid by Landlord pursuant to the Ground Lease, including without limitation any payments of Minimum Guaranteed Rent, Percentage Rent, Promotional Charges and Maintenance Charges (as each of those terms is defined in the Ground Lease); and (ii) ten point five percent (10.5%) ("Lease Rate") of the approved Project Costs as reflected on Exhibit D attached hereto. The parties agree that any developer's guaranty fee shall be included in the Project Costs. The Base Rent, excluding the Percentage Rent, shall be payable in equal monthly installments in advance on or before the first day of each month beginning on the "Rent Commencement Date." If the "Rent Commencement Date" is not on the first of the month, the Rent for the first month shall be prorated.

Tenant shall pay Percentage Rent and deliver all required reports in connection therewith, in accordance with Section 3.02 of the Ground Lease.

The Landlord will supply the Tenant with a Guaranteed Maximum Price construction contract. The Guaranteed Maximum Price shall be amended from time to time as necessary to reflect any amendments made under the Development Agreement and subsequent to the execution of this Lease.

- b. Additional Rent. It is the intent of Landlord and Tenant that the Base Rent set forth above shall be on a triple net basis, as that term is used and understood in connection with the leasing of real property. Accordingly, as additional rental hereunder, Tenant shall pay, directly to the appropriate authorities or as otherwise directed by Landlord, during the term of this Lease, subject to proration to the date of commencement and termination of the term hereof, all real estate taxes, installments of special assessments, gross receipts taxes and taxes on rentals (other than income taxes) relating to the Premises; the costs of heating, cooling, utilities, insurance (including but not limited to liability insurance and fire and casualty insurance with rent interruption endorsement, boiler and pressure vessel insurance, and owners protective liability insurance), security, snow removal, landscaping, janitorial and cleaning services; fees for professional services; charges under maintenance and service contracts; all supplies purchased for use in the Premises; maintenance and repair costs as hereinafter set forth; any equipment rental; altering, maintaining and repairing the Premises. Tenant shall be responsible for any Additional Rent, or other fees or deposits required of the Landlord under the Ground Lease. Notwithstanding the above, Tenant shall not be obligated to pay or reimburse Landlord for i) depreciation of the Premises or any personal property of Landlord within the Premises, ii) real estate leasing commissions, iii) mortgage principal or interest, iv) capital expenditures, v) accountant fees, vi) attorney fees, except as required under Article 16, vii) environmental remediation costs, penalties, attorney fees and all related costs except for costs related to a release of hazardous substances arising out of the act or omission of Tenant, viii) Landlord's employee or overhead costs, ix) costs resulting from defective construction of the Premises, x) special assessments attributable to the initial construction of the Premises, xi) costs of travel, entertainment or promotion, xii) management fees, and xiii) costs allocated to Landlord pursuant to other provisions of this Lease.

#### **ARTICLE 4.**

#### **TAXES, ASSESSMENTS AND UTILITIES**

- a. Taxes and Assessments. Tenant covenants and agrees to pay 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, pursuant to the terms of Section 7.01 of the Ground Lease.
- b. Utilities. Tenant shall promptly pay or cause to be paid all charges for water, gas, sewer, electricity, light, heat, air conditioning, power, telephone or other service of any kind whatsoever submitted, rendered or supplied in connection with the Premises, and shall contract for the same in Tenant's own name. Landlord and Tenant shall each reasonably



assist the other in transition of payments for, and control of, services and utilities at the commencement and termination of this Lease.

## ARTICLE 5. USE OF PREMISES

- a. Restrictions on Use. The Premises are leased to Tenant for the purpose of Tenant conducting its restaurant and dining establishment pursuant to the Development Agreement or any other purpose permitted by the Ground Lease. Such operations may include limited sales of clothing, take-out food and beverage products and other items sold now or in the future in Tenant's restaurants, except to the extent such activities would violate Sections 4.04 and 4.05 of the Ground Lease, including, but not limited to a prohibition against Tenant's alcohol sales exceeding 30% of Gross Sales. The term "Gross Sales" shall have the same meaning as defined in Section 3.02(c) of the Ground Lease. Tenant shall not do anything in or about the Premises which will in any way tend to increase insurance rates for the Premises. Tenant agrees to pay as additional rent any increase in premiums for insurance against loss by fire or extended coverage risks resulting from the business carried on in the Premises by Tenant. Tenant shall not suffer or permit any waste of the Premises during the term of this Lease. There shall be no other Granite City establishments, or other business similar to or in competition with that for which the Premises are then being used, owned, operated or affiliated with Tenant, affiliate, parent, controlling owner or manager, or any guarantor or person or entity have an interest in this Premises, within a radius of five (5) miles of the Shopping Center. Notwithstanding the foregoing, this Section shall not be applicable to (a) locations within such five (5) mile radius in existence on the date of this Lease If Tenant shall breach the covenant contained in this Section, Tenant shall be deemed to be in default of this Lease, and in addition to the rights and remedies provided in this Lease, Landlord may, at its option include all Gross Sales generated by any violative store of Tenant in calculating the Percentage Rent due under this Lease; or (iii) pursue any remedies identified in Section 4.01 (c) of the Ground Lease. Tenant acknowledges that the permitted use is not a use granted exclusively to Tenant, and that Ground Lease Landlord reserves the right to lease premises in the Westroads Mall or adjacent property to other tenants for the same or a similar use.
- b. Hazardous Waste. Tenant shall not cause or permit any Hazardous Substance to be used, stored, generated, or disposed of on, in or about the Premises by Tenant, or any of its agents, employees, representatives, contractors, suppliers, customers, subtenants, concessionaires, licensees, or invitees unless Tenant shall have received Landlord's prior written consent, which Landlord may withhold or at any time revoke in its sole discretion.
  - i. Notwithstanding the foregoing, Tenant may store, use and dispose of customary amounts of restaurant and cleaning products and other Hazardous Substances in the normal course of general restaurant use, and Tenant covenants to comply with all applicable laws, rules, regulations and ordinances governing same. Tenant shall also furnish Landlord not less than the annually a renewal certification that

such permits, documents or exceptions are still current, and Tenant shall immediately notify Landlord of any change, revocation or enforcement action concerning such permits, documents or exceptions.

- ii. Tenant shall indemnify and defend Landlord, and hold Landlord harmless, from and against any and all claims, damages, fines, judgments, penalties, costs, expenses, liabilities, or losses relating to any violation by Tenant of any Environmental Law (as hereinafter defined) or of this Paragraph 5(b) (including, without limitation, a decrease in value of the Premises as evidenced by a sale of the Premises, damages caused by loss or restriction of rentable or usable space as evidenced by a lease or sale of the Premises, damages caused by adverse impact on marketing of space, and any and all sums paid for settlement of claims, attorneys' fees, consultant fees, and expert fees) incurred by or asserted against Landlord arising during or after the term of this Lease as a result thereof, except to the extent such violation is the result of any act or omission of Landlord, Landlord's contractors or is a condition or release which was created or occurred prior to Tenant's occupancy of the Premises. This indemnification includes, without limitation, any and all costs incurred because of any investigation of the site or any cleanup, removal, testing, or restoration mandated or conducted by or on behalf of any federal, state, or local agency or political subdivision. Without limitation of the foregoing, if Tenant causes a release of any Hazardous Substance in the Premises that results in any contamination, Tenant shall promptly, at its sole expense, take any and all necessary or appropriate actions to return the Premises to the condition existing prior to the release of any such Hazardous Substance. Tenant shall first obtain Landlord's written approval for any such remedial action, which shall not be unreasonably withheld.
- iii. Landlord shall indemnify and defend Tenant, and hold Tenant harmless, from and against any and all claims, damages, fines, judgments, penalties, costs, expenses, liabilities, or losses relating to any violation of any Environmental Law (as hereinafter defined) or of this Paragraph (including, without limitation, a decrease in value of the Premises, damages caused by loss or restriction of rentable or usable space, damages caused by adverse impact on marketing of space, and any and all sums paid for settlement of claims, attorneys' fees, consultant fees, and expert fees) incurred by or asserted against Tenant arising during or after the term of this Lease as a result of any condition that existed on the Premises prior to date of Tenant's occupancy under this Lease, or as a result of any act or omission of Landlord. This indemnification includes, without limitation, any and all costs incurred because of any investigation of the site or any cleanup, removal, testing, or restoration mandated or conducted by or on behalf of any federal, state, or local agency or political subdivision. Without limitation of the foregoing, if Landlord causes or permits the presence of any Hazardous Substance in the Premises that results in any contamination, Landlord shall promptly, at its sole expense, take any and all necessary or appropriate actions to return the Premises to the condition existing prior to the presence of any

such Hazardous Substance. Landlord shall first obtain Tenant's written approval for any such remedial action.

- iv. "Hazardous Substance" means any substance that is regulated by any local government, the State of Minnesota, the United States government, or any agency, authority and/or instrumentality thereof and includes any and all materials or substances that are defined as "hazardous waste," "extremely hazardous waste," or a "hazardous substance" pursuant to any Environmental Law. "Hazardous Substance" includes but is not restricted to petroleum and petroleum byproducts, asbestos, explosives, polychlorinated biphenyls ("PCBs") and infectious waste.
- v. "Environmental Laws" means all federal, state and local laws, including statutes, regulations, and requirements, relating to the discharge of air pollutants, water pollutants or process waste water or otherwise relating to the environment or Hazardous Substances, including, but not limited to, the Federal Clean Water Act, the Federal Resource Conservation and Recovery Act of 1976, the Federal Comprehensive Environmental Responsibility Cleanup and Liability Act of 1980, regulations of the Environmental Protection Agency, regulations of the Nuclear Regulatory Agency, and regulations of any state department of natural resources or state environmental protection agency, as amended or supplemented from time to time, now or at any time hereafter in effect.

Landlord represents that, prior to the Commencement Date, to the best of its knowledge, there has been no installation, use, generation, storage or disposal of in or about the Premises any Hazardous Substance. The foregoing representation shall be deemed remade by Landlord as of the Commencement Date except to the extent Landlord gives written notice of an exception to the representation to Tenant prior to the Commencement Date. Landlord shall indemnify, defend and hold Tenant harmless from and against any claim, damage or expense arising out of such prior installation, use, generation, storage, or disposal of any such substance of which Landlord had knowledge.

- c. Parking Spaces. Landlord shall provide parking spaces on the Premises as described in the Ground Lease. Additional parking may be provided subject to cross-easement agreements as filed in the public record.
- d. Continuous Operation. Tenant shall open and occupy the Premises on the Commencement Date and thereafter continuously operate and conduct business in all of the Premises during all hours on all days that the Shopping Center is open for business to the public. Tenant shall maintain an adequate stock of merchandise and staff to service the usual and ordinary demands of its customers, using only such minor portions of the Premises for storage and office purposes as are reasonably required. Tenant agrees to keep the Premises open for business to the public during the regular and customary hours that such businesses are customarily open for business. If Tenant fails to perform its obligations under this Section for reasons other than temporary closures due to casualty or repairs, and if such failure continues for a period of ~~ten~~ (10) days following written notice thereof from Landlord to Tenant, Landlord shall be entitled to (a) injunctive relief

requiring Tenant to occupy the Premises and operate as hereinabove provided, and/or (b) at Landlord's election after giving ten (10) days written notice, immediate possession of the Premises for the purpose of commencing reletting efforts, without prejudice in each instance to Landlord's right to damages and other remedies set forth in this Lease. If Tenant fails to perform its obligations under this Section 5.d, in addition to any remedies provided in Section 4.01(c), (a) Landlord shall be entitled to injunctive relief requiring Tenant to occupy the Premises and operate as hereinabove provided, and/or (b) recognizing that the actual damages Landlord will incur by reason of Tenant's failure to comply with this Section are likely to be uncertain and not easily proven, Tenant and Landlord hereby agree that Landlord may elect to receive from Tenant as liquidated damages and not as a penalty, and Tenant hereby agrees to pay to Landlord promptly upon receipt of notice thereof, in addition to the Rent and other sums due under this Lease, in each month or any part thereof during the remainder of the Term during which Tenant does not comply with this Section, additional sums equal to (i) twice the Rent per month, and additionally (ii) one-sixth (1/6) of the highest annual Percentage Rent payable, if any, by Tenant at any time during the Term, the parties further agreeing that the amount of liquidated damages hereunder has been arrived at by Landlord and Tenant in good faith in an effort to establish agreed upon liquidated damages which Landlord will suffer in the event Tenant fails to comply with this Section, and/or (c) at Landlord's election after giving ten (10) days' written notice, Landlord shall be entitled to immediate possession of the Premises for the purpose of commencing reletting efforts. Landlord's rights and remedies under this Section are in addition to and are without prejudice to Landlord's rights and other remedies set forth in this Lease hereof. A vacation of premises or cessation of operations by any other tenant(s) in the Shopping Center shall not in any way release Tenant from Tenant's obligations under this Lease, such obligations being independent covenants of this Lease.

- e. Rules and Regulations. Tenant shall comply with the provisions of Section 4.05 of the Ground Lease, as well as any additional rules or regulations the Ground Lease Landlord may adopt from time to time, and any easements or agreements of records affecting the Premises.

#### **ARTICLE 6.**

#### **MAINTENANCE, REPAIRS AND ALTERATIONS**

- a. Maintenance and Repairs. The Premises and every part thereof shall be, at the Commencement Date, in good order, condition and repair. Landlord at its cost shall be responsible for the replacement of all of the structural elements and exterior surfaces and exterior walls of the Premises including roof and roof membrane, concrete slab, footings, plumbing exterior to the building, at Landlord's sole expense as and when necessary. Tenant shall replace and maintain the heating, ventilation and air conditioning and other equipment and maintain, repair and replace interior walls, interior ceiling, painting, floor coverings, plate glass and doors at Tenant's sole expense. Landlord shall provide landscaping in accordance with the Plans and Specifications or any landscaping plan agreed to by the parties at Landlord's expense. Tenant shall, at its own cost and expense, maintain landscaping, if any, on the Premises. Landscaping shall not, because of initial

size or untrimmed growth, be allowed to obstruct the visibility of improvements or signs on the Shopping Center or adjacent lots. In the event Tenant does not maintain the Premises in the aforesaid manner, after reasonable written notice to Tenant, Landlord or its designees shall have the right as often as may be reasonably necessary to enter upon the Premises and restore the same to a neat, clean and sanitary condition; provided, however, in the event Tenant commences such clean-up and/or maintenance within the aforesaid time period and diligently prosecutes same to completion, Landlord shall not exercise the aforesaid rights of self-help. Tenant covenants and agrees to reimburse Landlord upon demand for the reasonable expenses thus incurred. Tenant agrees to keep and maintain the Premises and the fixtures and equipment therein in first class, properly functioning, safe, orderly and sanitary condition, will suffer no waste or injury thereto, and will at the expiration or other termination of the Term of this Lease, surrender the same with all improvements in the same order and condition in which they were on the Commencement Date, or in such better condition as they may hereafter be put, ordinary wear and tear and casualty damage to the extent covered by insurance excepted. All alterations, decorations, additions or improvements in or to the Premises made by Tenant shall become the property of Landlord upon expiration of the term and shall remain upon and be surrendered with the Premises as a part thereof without disturbance or injury, unless Landlord requires specific items thereof to be removed by Tenant at Tenant's sole expense by written notice made at the time of installation or construction, in which event Tenant shall do so prior to the expiration of the term at its expense, and shall repair any damage caused thereby. Tenant shall have the right to remove, during the last 90 days of the term of this Lease, all movable fixtures and furniture paid for by Tenant during the term of the Lease, at the direct expense of Tenant, provided the same is completed with no damage to the Premises. Any such fixtures or furniture not removed prior to such time shall be deemed abandoned and shall be property of Ground Lease Landlord. Tenant agrees to keep the parking lot maintained, stripped, patched and seal coated as necessary, or as requested by the Landlord. Such striping shall be in accordance with Ground Lease Landlord's approval and the REA documents referenced in the Ground Lease, so that the correct parking rates can be maintained.

- b. Alteration. Subject to the prior written consent of the Landlord and Ground Lease Landlord, which shall not be unreasonably withheld, Tenant shall have the right to make such additions, alterations, changes or improvements to the Premises as Tenant shall deem necessary or desirable; provided, however, that no such addition, alteration, change or improvement shall be made which will weaken the structural strength of, lessen the value of, interfere with or make inoperable, any portion of the Premises or appurtenances thereto. All additions, alterations, changes and improvements shall be made in a workmanlike manner, in full compliance with all building laws and ordinances applicable thereto, and when permitted to be made shall become a part of the Premises and except for furniture and movable fixtures shall be surrendered as a part of the Premises upon the termination of this Lease.
- c. Non-Liability of Landlord. Landlord shall not be obligated to maintain nor to make any repairs or replacements of any kind, nature, or description whatsoever to the Premises, except as provided specifically herein.

- d. Utility Services. Landlord shall arrange for the provision of electricity, water, sewer and any utility service necessary for heat and air conditioning to the Premises.

#### ARTICLE 7.

##### LANDLORD'S ACCESS TO PREMISES

- a. Inspection of Premises by Landlord. Tenant agrees to permit Landlord and the authorized representatives of Landlord to enter the Premises at all reasonable times provided Tenant's business operations are not unreasonably interfered with, for the purposes of: (a) inspecting same, (b) making such repairs or reconstruction to the Premises permitted to be made by Landlord, and (c) performing any work therein which may be necessary by reason of Tenant's default under the terms of this Lease, (d) decorating, remodeling, repairing, altering, or otherwise preparing the Premises for reoccupancy at any time after Tenant is legally ejected from the Premises for a continuous period of ten (10) days, and (e) entering the Premises without notice for emergency purposes. Landlord shall use reasonable efforts to give Tenant notice by telephone or e-mail prior to entering the Premises for any emergency and in any event shall give Tenant notice of such entry as soon as practical after any such entry. For said purposes, Landlord shall have the right to possess passkeys to the Premises. Nothing herein contained shall imply any duty on the part of Landlord to do any such work which, under the provisions of this Lease, Tenant is required to perform, and the performance thereof by Landlord shall not constitute waiver of Tenant's default in failing to perform the same. Landlord may, during the performance of any work on the Premises, keep and store upon the parking area of or within the Premises all necessary materials, tools and equipment. Landlord shall not in any event be liable for any reasonable inconvenience, annoyance, disturbance, loss of business or other damage sustained by Tenant during the making of repairs or the performance of any work on the Premises, or on account of bringing materials, supplies, and equipment into or through the Premises during the course thereof provided that Landlord shall make reasonable efforts to minimize interference with Tenant's restaurant operations. In the event Landlord makes any repairs or maintenance which Tenant has failed to do or perform, the cost thereof shall constitute additional rent and shall be paid to Landlord with the next installment of the monthly Base Rent due hereunder.
- b. Right to Exhibit Premises. Landlord is hereby given the right during usual business hours to enter the Premises and to exhibit the same for the purpose of sale or mortgage, and during the last six (6) months of the term of this Lease, or any extension thereof, to exhibit the same to any prospective Tenant or place sale or rental signs in or about the Premises.

#### ARTICLE 8.

##### MECHANIC'S LIENS

Neither party shall suffer or permit any mechanic's liens to be filed against the Premises or any part thereof by reason of work, labor, services, or materials supplied or claimed to have been supplied to such party or anyone holding the Premises or any part thereof through or under

such party. If any such mechanic's liens shall at any time be filed against the Premises, the party who directed such work to be performed shall cause the same to be discharged of record within thirty (30) days after the date of filing the same or in the event such party disputes the validity of such lien, such party may deposit 150% of the amount claimed by the lien holder, or any larger amount required by law, in escrow with a title insurance company and/or the other party as security against mortgage foreclosure. If such party shall fail to discharge such mechanic's lien within such period, then, in addition to any other right or remedy of the other party hereto, may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit in court or by giving security or in such other manner as is or may be prescribed by law. Any amount paid by such party for any of the aforesaid purposes, and all reasonable legal and other expenses of such party, including reasonable attorneys' fees, in or about procuring the discharge of such lien, with all necessary disbursements in connection therewith, with interest thereon at the rate of twelve percent (12%) per annum from the date of payment shall be repaid by the other party on demand. Any such amount owed by Tenant to Landlord shall become due and payable by Tenant as additional rent with the next succeeding installment of monthly base rent which shall become due after such demand. Any such amount owed by Landlord to Tenant may be deducted from the next succeeding installment of rent, which shall become due after such demand. Nothing herein contained shall imply any consent or agreement on the part of Landlord to subject Landlord's estate to liability under any mechanic's lien law.

#### **ARTICLE 9. COMPLIANCE WITH LAWS**

- a. Generally. Tenant shall through the term, at Tenant's sole cost and expense, promptly comply with all laws and ordinances, and the orders, rules, regulations and requirements of all Federal, State and municipal governments and appropriate departments, commissions, boards and offices thereof, foreseen or unforeseen, existing or hereafter constituted, ordinary as well as extraordinary, which may be applicable to the Premises, or the use or manner of use of the Premises; provided, however, that in any event any such law, ordinance, order, rule or regulation requires structural repairs or alterations to the Premises, such repairs or alterations shall be at the expense of Landlord as provided in Article 6(a) herein. Tenant will likewise observe and comply with the requirements of all policies of public liability, fire and all other policies of insurance at any time in force with respect to the building and improvements on the Premises and the personal property thereof.
- b. License. Tenant shall use its best efforts to obtain all appropriate licenses required from all Federal, State, and municipal governments, if any, needed to operate its business on the Premises and Tenant shall be responsible to maintain such licenses, as long as the Lease is in effect.
- c. Non-Compliance. Landlord agrees that if at any time or times any governmental authorities or insurance rating bureaus having jurisdiction shall complain that the Premises or the Buildings were not constructed in compliance with any law, ordinance or regulation of any governmental authority or insurance rating bureau having jurisdiction

and shall request compliance, then Landlord shall, upon receipt of notice of such complaint, cause such repairs, alterations or other work to be done so as to bring about the compliance requested. If by reason of such failure of compliance or by reason of such repairs, alterations or other work done by Landlord, Tenant shall be deprived of the use and enjoyment of the whole or any part of the Premises, all base rent, additional rent and other sums payable hereunder shall abate on a per diem basis in proportion to said deprivation. If at any time during the term of this Lease, any person claiming a prior right to Tenant or any governmental authority shall cause an injunction to be entered against Tenant restricting Tenants using or enjoying the Premises or any rights of Tenant under this Lease, and if said injunction shall not be dismissed within sixty (60) days after Tenant shall give Landlord notice thereof, then Tenant, without waiving any other rights Tenant may have against Landlord on account thereof (including, without limitation, the right to an abatement of all rent payable hereunder so long as said injunction shall remain in effect), may terminate this Lease by giving Landlord notice thereof.

#### **ARTICLE 10. INDEMNIFICATION OF LANDLORD**

Tenant agrees to indemnify and hold harmless Landlord against and from any and all claims by or on behalf of any person, arising from the conduct or management of, or from any work or thing whatsoever done, in and on the Premises except work done through or at the behest of Landlord and except for claims arising out of the negligent act or omission or intentional act of Landlord and will further indemnify and save Landlord harmless against any and from any and all claims arising during the term of this Lease from any condition of any street, curb, or sidewalk adjoining the Premises, or of any vaults, passageways or space therein or appurtenant thereto, or arising from any breach or default on the part of Tenant in performance of any covenant or agreement on the part of Tenant to be performed, pursuant to this Lease, or arising from any act or negligence of Tenant or any other occupant of the Premises, or any part thereof, or of its or their agents, contractors, servants, employees or licensees, or arising from any accident, injury or damage whatsoever caused to any person or property occurring during the term of this Lease in or about the Premises, or upon or under the sidewalks and the land adjacent thereto, and from and against all judgments, costs, expenses and liabilities incurred in or about any such claim or action or proceeding brought therein except as such claims or liabilities are the result of the negligence of the Landlord, and in case any action or proceeding be brought against Landlord by reason of any such claim, Tenant upon notice from Landlord covenants to resist or defend such action or proceeding by counsel reasonably satisfactory to Landlord.

Landlord agrees to indemnify and hold harmless Tenant against and from any and all claims by or on behalf of any person arising from the condition of the land on which the Premises is located prior to Tenant's occupancy of the Premises or from the construction of the Premises by Landlord except for claims arising from the negligent act or omission or intentional act of Tenant.



**ARTICLE 11.**  
**INSURANCE**

- a. Insurance. Tenant shall obtain, on or before the earlier of the commencement of the Term or Tenant's entering the Premises for any purpose, and keep in force at all times thereafter during the Term of this Lease:
- (i) carry, or cause to be carried in the name of Landlord and Ground Lease Landlord and Tenant as their interest may appear, in insurance companies satisfying the requirements listed below to Landlord, All Risk Insurance and, at Landlord's option, coverage for earthquake and flood, including sprinkler leakage coverage, insuring the building and other improvements located on 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, hurricane and tornado and damage from aircraft and vehicles, and such other risks as are customarily insured against by persons in the same or a similar business in the city in which the Premises are located. Such policy shall name Landlord as loss payee, shall include an "agreed amount" endorsement, eliminating any coinsurance penalty and also insure for the perils of flood. The term "full replacement value" shall mean the actual replacement cost (excluding foundation and excavation cost and cost of underground flues, pipes and drains);
  - (ii) effect and maintain in insurance companies satisfactory to Ground Lease Landlord and 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 Ground Lease Landlord, 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. 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 Ground Lease Landlord, Landlord, and the parent, subsidiaries, affiliates of each and, if Ground Lease Landlord and Landlord elect, any owner or occupant in or adjoining the Shopping Center 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) effect and maintain business automobile liability insurance covering owned, non-owned and leased vehicles for limits not less than \$1,000,000 per occurrence;
  - (vii) effect and maintain business interruption insurance;
  - (viii) In the event of restoration, permitted alterations or changes in the Premises that may be made by the Tenant in excess of \$20,000.00 per job, provide and keep in force (or cause Tenant's contractors to provide and keep in force) for the benefit of the Ground Lease Landlord and Landlord contingent liability and broad form builder's risk insurance in insurance companies satisfactory to the Ground Lease Landlord and 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 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 at least ten (10) days prior to the date that Tenant is required to have any such insurance in effect, then, upon five (5) days prior written notice to Tenant, Landlord may effect the same and Tenant agrees to pay, within thirty (30) days after demand, any 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 Premises which should have been insured hereunder. Tenant shall not violate or permit to be violated 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 A 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 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 materially changed, amended or 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 shall contain an endorsement containing an express waiver of any right of subrogation by the insurance company against Ground Lease Landlord (whether named as an insured or not). All Tenant's policies shall contain cross-liability endorsements and name Ground Lease Landlord, Ground Lease Landlord's mortgagees, beneficiaries and additional individuals and entities which Landlord may from time to time designate, as "Additional Insureds" Premises.

- d. Indemnification of Landlord. Excluding the willful misconduct of 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 Premises or any Tenant's operations or activities at the Shopping Center (whether or not occurring or resulting in damage or injury within the 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 first 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 Leased Premises. Tenant's indemnification obligation shall survive the expiration of the Term or the earlier termination of this Lease.
- e. Waiver of Subrogation. Notwithstanding anything to the contrary contained in this Lease, Landlord and Tenant do hereby waive any and all right of recovery, claim, action or cause of action against the other, their respective agents and employees, for any loss or damage that may occur to the Premises or the property or any additions or improvements thereto, or any contents therein, by reason of fire, the elements or any other cause which could be insured against under the terms of a standard special extended coverage (formerly all risk) insurance policy or policies, or for which Landlord or Tenant may be reimbursed as a result of insurance converge effecting any loss suffered by either party hereto regardless of cause or origin, including the negligence of Landlord or Tenant, or their respective agents and employees. All insurance policies covering the Premises or the property, including, but not limited to contents, fire and other casualty insurance, shall expressly waive any right on the part of the insurer against the other party for damage to or destruction of the Premises and/or the property resulting from the acts or omissions of the other party. Any additional charge by the insurance company for such waiver shall be paid by the party benefiting from such waiver.

**ARTICLE 12.**  
**DESTRUCTION**

- a. Subject to b. below, if any building, fixture or other improvements now or hereafter situated on the Premises (except moveable trade fixtures, furniture and furnishings) should at any time during the term of this Lease be damaged or destroyed by fire or otherwise, the Tenant shall, at its sole cost and expense (except to the extent that it shall be reimbursed out of insurance proceeds) restore and rebuild the same as nearly as possible to the condition they were in immediately prior to such damage or destruction, and such restoration and rebuilding, prosecuted with due diligence, shall be completed as soon as reasonably possible. No damage or destruction of the building or any of the fixtures or other property therein shall be grounds for the termination of this Lease or relieve the Tenant from any obligation created or imposed by the virtue of this Lease, any laws of the state in which the Premises is located to the contrary notwithstanding, including, but without limiting the generality of the foregoing, Tenant's obligation to make payment of the rent and all other charges on the part of the Tenant to be paid, and the Tenant's obligation to perform all other covenants and agreements on the part of the Tenant to be performed. All insurance moneys payable on account of such damage arising from insurance required under the provisions of this Lease shall be paid to Tenant in the case of any particular casualty resulting in a loss payment not exceeding Ten Thousand Dollars (\$10,000.00) in the aggregate. In case of any particular casualty resulting in a loss payment in excess of Ten Thousand Dollars (\$10,000.00) in the aggregate, the insurance proceeds shall be paid in accordance with the standard mortgagee clause, if any, and if there is none, shall be paid to and held in trust by Landlord in a bank or trust company doing business in the state in which the Premises is located designated by Landlord and shall be disbursed to Tenant, or its contractor, from time to time as construction progresses, subject to a ten percent (10%) holdback payable upon satisfactory completion of the restoration, rebuilding or repair. In the event any surplus of insurance moneys shall remain after repairs or replacement of said building shall have been made (and whether insurance proceeds shall, pursuant to the preceding provisions hereof, have been paid directly to Landlord or Tenant), such excess shall forthwith be paid to and become the property of Landlord. In the event the funds held in trust by Ground Lease Landlord are insufficient to complete the restoration, rebuilding or repair, such additional funds shall be advanced by Tenant prior to any disbursement of trust funds by Ground Lease Landlord.
  
- b. In the event of any damage by fire or other casualty, the terms of this Lease shall be otherwise unaffected, and Tenant shall remain and be continued liable for the payment of rent, real estate taxes and assessments, and other charges hereunder as though no damage by fire or other casualty had occurred. However, if the improvements on the Premises are partially or totally damaged or destroyed during the last four (4) years of the Term and Tenant elects not to repair and restore such improvements, then, and in such event, this Lease shall be deemed canceled and terminated as of the date of such damage or destruction on condition that (i) Tenant delivers to Ground Lease Landlord a thirty (30) day notice of such election to cancel and terminate and (ii) Ground Lease Landlord shall be entitled to retain the net insurance proceeds, as hereinafter defined. "Net insurance

proceeds" shall mean the total amount of insurance proceeds payable (or which would have been payable had Tenant maintained the insurance coverage required hereunder) from which amount shall be deducted the costs of collection thereof, including appraisers' and attorneys' fees. In the event that Tenant shall have defaulted in its obligation to maintain the All Risk insurance required hereunder, Tenant shall be obligated to pay the amount of insurance proceeds that would have been payable under the required policy.

### ARTICLE 13. CONDEMNATION

- a. In the event the entire Premises shall be appropriated or taken under the power of eminent domain by any public or quasi-public authority, this Lease shall terminate and expire as of the date of such taking or conveyance made in lieu thereof, and Landlord and Tenant shall thereupon be released from any further liability thereafter accruing under this Lease.
- b. In the event any portion of the building on the Premises or twenty-five percent (25%) or more of the parking spaces in the Shopping Center shall be appropriated or taken under the power of eminent domain by any public or quasi-public authority, and Tenant determines in its reasonable discretion that the remaining portion will not permit Tenant to operate its business with sufficient parking therefor, or in the event access to the Shopping Center is taken and such remaining access does not provide reasonably adequate access to the Premises, Tenant shall have the right to terminate this Lease as of the date of such taking upon giving notice to Landlord of such election within thirty (30) days after the date of such taking or conveyance in lieu thereof. In the event of such termination, Landlord and Tenant shall thereupon be released from any liability thereafter accruing under this Lease.
- c. If a portion of the Premises is taken, or conveyance made in lieu thereof, and if this Lease shall not be terminated as provided in subsection (b), then the Rent shall be equitably apportioned according to the building space so taken, if any, and Tenant shall, at its own expense, restore the remaining portion of the building on the Premises to a single architectural unit.
- d. All compensation awarded or paid upon such a total or partial taking of the Premises shall belong to and be the property of Landlord without any participation by Tenant; provided, however, Tenant shall first receive an amount necessary to cover all restoration costs incurred by Tenant, if any, and Tenant shall have the right to pursue a separate action seeking recovery for (i) the unamortized portion of the cost of the building and other improvements constructed on the Premises by and at the expense of Tenant, less Landlord's Construction Allowance, as hereinafter defined (amortized over the initial Term of this Lease), and (ii) Tenant's moving expenses, relocation costs and other expenses associated with the termination of this Lease.
- e. Condition. The above shall only apply to the extent not inconsistent with the Ground Lease. In the event that the terms conflict, the Ground Lease terms shall prevail.

**ARTICLE 14.**  
**ASSIGNMENT AND SUBLETTING**

- a. Prohibition Against Assignment. Subject to 14.b. below, Tenant shall not assign this Lease or sublet the whole of the Premises either voluntarily or by operation of law without the prior written consent of Landlord and the Ground Lease Landlord; and such consent shall not be unreasonably withheld based on the financial credit worthiness and expertise in restaurant operations of the proposed or potential transferee. Tenant shall not hypothecate or pledge this Lease except as security for the financing of leasehold improvements. Any such assignment or subletting not provided for below, without Landlord's and Ground Lease Landlord's prior written consent shall be void and, at Landlord's and/or Ground Lease Landlord's option, shall terminate this Lease. Any assignment or transfer of this Lease shall not be effective unless the assignee or transferee shall, at the time of such assignment or transfer, assume in writing all the terms, covenants and conditions of this Lease thereafter to be performed by the Tenant, and shall agree in writing to be bound thereby. Tenant specifically understands and agrees that any assignment or sublease shall in no way release (unless by written agreement with Landlord and Ground Lease Landlord) the Tenant from any of its obligations and covenants under this Lease, nor should said assignment or sublease be construed or taken as a waiver of any of Landlord's or Ground Lease Landlord's rights or remedies hereunder against or as relating to Tenant. Tenant must comply with the terms of Section 12.02 if Tenant desires to seek assignment or subletting of the Premises, including, but not limited to any fees required to be paid to the Ground Lease Landlord.
- b. Landlord Assignment. Landlord may assign his interest in this Sublease Agreement without the consent of the Tenant, provided Landlord provides Tenant with a copy of such assignment as a precondition to the effectiveness of such assignment.
- c. Ground Lease Landlord Consent. Notwithstanding any provision herein to the contrary, no assignment or sublease by Tenant shall be effective until the prior written consent of Ground Lease Landlord has been obtained as provided in the Ground Lease.

**ARTICLE 15.**  
**SECURITY INTEREST**

Purchase Money Security Interest. Provided that Tenant is not then in default of this Lease beyond any applicable notice and cure periods, Landlord agrees, upon Tenant's written request, to execute a financing agreement between Tenant and a lending institution, which agreement is reasonably acceptable to Landlord in form and content, under which Landlord will agree to subordinate Landlord's lien to the rights of the lender created by the agreement.

**ARTICLE 16.**  
**EVENTS OF DEFAULT: REMEDIES**

- a. Events of Default. Each of the following events shall be an Event of Default hereunder by Tenant and a breach of this Lease:
- i. If Tenant shall file a petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or any insolvency act of any state or shall voluntarily take advantage of any such law or act by answer or otherwise or shall be dissolved or shall make an assignment for the benefit of creditors (unless a petition filed against Tenant is dismissed within 60 days).
  - ii. If involuntary proceedings under any such bankruptcy law or insolvency act shall be instituted against Tenant or if a receiver or trustee shall be appointed for all or substantially all of the property of Tenant, and such proceedings shall not be dismissed or such receivership or trusteeship vacated within sixty (60) days after institution or appointment.
  - iii. If Tenant shall fail to pay Landlord any rent or additional rent as and when the same shall become due and payable and shall not make such payment within five (5) days after written notice thereof.
  - iv. If this Lease or the estate of Tenant hereunder shall be transferred to any other person or party, except in a manner permitted under Article 14 hereof.
  - v. If Tenant shall make an assignment for the benefit of creditors or shall apply for or consent to the appointment of a receiver for itself or any of its property, unless Tenant's possession of its property is restored within 30 days.
  - vi. If Tenant shall fail to keep, observe or perform any of the other covenants and agreements herein contained to be kept, observed and performed by Tenant, and such failure shall continue for ten (10) days after notice thereof in writing to Tenant by Landlord, provided, however, that in the case of a default which cannot, with due diligence, be cured within a period of ten (10) days, Tenant shall have such additional time to cure such default as may reasonably be necessary, provided Tenant proceeds promptly and with due diligence to cure such default within ten (10) days after receipt of said notice.
  - vii. If the Premises shall be abandoned, deserted or vacated, or if Tenant ceases to conduct its normal business operations for a period of ten (10) days during the Term. The Premises, all improvements and all trade fixtures, equipment and inventory therein shall be conclusively deemed abandoned by Tenant upon (i) ten (10) consecutive days' absence from the Premises by Tenant or its agents (unless such absence results from fire or other casualty) together with the failure to pay Rent, or (ii) removal of all or a substantial portion of Tenant's trade fixtures, equipment or inventory from the Premises together with a failure to pay Rent. In such event and in addition to Landlord's remedies set forth in this Section 21, Landlord may enter

the Premises and may remove all such remaining trade fixtures, equipment and inventory at Tenant's expense. All such property shall, at Landlord's option, become the property of Landlord, or said property may be placed in storage at Tenant's cost and expense, or sold or otherwise disposed of, in which event the proceeds of such sale or other disposition shall be applied to any amounts owing by Tenant hereunder.

- viii. If Tenant shall do or permit to be done anything which creates a non-permitted lien upon the Demised Premises, which is not satisfied within 10 days after written notice to Tenant, 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 satisfactory to Landlord and Ground Lease Landlord.
- ix. 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. Remedies. If Tenant fails to cure Tenant's Event of Default within the time provided to cure, Landlord may resort to any and all legal remedies or combination of legal remedies which Landlord may desire to assert including but not limited to Landlord bringing an action for ejectment of Tenant and obtain an order for the sheriff to enter the Premises and removing all persons and chattels therefrom and Landlord shall not be liable for damages or otherwise by reason of re-entry or termination. Notwithstanding such termination, the liability of Tenant for the rent provided for hereinabove shall not be extinguished for the balance of the term remaining after said termination.

Should termination of Tenant's estate occur as herein provided, or should Landlord take possession pursuant to legal proceedings or pursuant to any notice provided by law, it may either terminate this lease or it may from time to time without terminating this Lease, make such alterations and repairs as may be necessary in order to relet the premises, and relet said premises or any part thereof for such term or terms (which may be for a term extending beyond the term of this lease) and at such rental or rentals and upon such other terms and conditions as reletting all rentals received by Landlord from such reletting shall be applied, first, to the payment of any indebtedness other than rent due hereunder from Tenant to Landlord; second, to the payment of any costs and expenses of such reletting, including brokerage fees and attorneys' fees and of costs of such alterations and repairs; third, to the payment of rent due and unpaid hereunder, and the residue, if any, shall be held by Landlord and applied in payment of future rent as the same may become due and payable hereunder.

If such rentals received from such reletting during any month be less than that to be paid during that month by Tenant hereunder, Tenant shall pay any such deficiency to Landlord. Such deficiency shall be calculated and paid monthly. No such re-entry or taking possession of said premises by Landlord shall be construed as an election on its part to terminate this lease unless a written notice of such intention be given to Tenant or unless the termination thereof be decreed by a court of competent jurisdiction.



Notwithstanding any such reletting without termination, Landlord may at any time thereafter elect to terminate this lease for such previous breach. Should Landlord at any time terminate this lease for any breach, in addition to any other remedies it may have, it may recover from Tenant all damages it may incur by reason of such breach, including the worth at the time of such termination of the excess, if any, of the amount of rent and charges equivalent to rent reserved in this lease for the remainder of the stated term over the then reasonable rental value of the Premises for the remainder of the stated term, all of which amounts shall be immediately due and payable from Tenant to Landlord. In determining the rent which would be payable by Tenant hereunder, subsequent to default, the rent for the unexpired term shall be calculated in accordance with Section 13.02 of the Ground Lease. The "worth" of such sum shall be determined by determining the sum of the present value of all such payments using a 10.5% interest factor. Upon termination of the Lease, Tenant shall surrender possession and vacate the Premises immediately, and deliver possession thereof to Landlord. The above shall be in addition to Landlord's right to be reimbursed by Tenant for any amounts imposed on Landlord or remedies available to Ground Lease Landlord under the Ground Lease as a result of Tenant's default.

- c. Cure of Default. If Tenant defaults in the making of any payment, or in the doing of any act herein required to be made or done by Tenant, or does or suffers any act prohibited herein, beyond applicable cure periods, then Landlord may, but shall not be required to, make such payment or do such act, or correct any damage caused by such prohibited act and to enter the Premises as appropriate in connection therewith, and the amount of the expense thereof, if made or done so by Landlord, with interest thereon at the Interest Rate (as hereinafter defined) from the date paid by Landlord, shall be paid by Tenant to Landlord and shall constitute additional rent hereunder due and payable with the next monthly installment of rent.
- d. Landlord's Default. Should Landlord be in default under the terms of this lease, Landlord shall have thirty (30) days (or such additional time as is reasonably required to correct any such default) after written notice by Tenant to Landlord properly specifying wherein Landlord has failed to perform any such obligation.
- e. Bankruptcy. In the event Tenant becomes subject to voluntary or involuntary bankruptcy proceedings under the Bankruptcy Reform Act of 1978, the terms of Article XX of the Ground Lease shall apply.
- f. Waiver of Redemption/Notice of Re-entry. Tenant hereby expressly waives, to the full extent waivable, any and all rights or redemption granted by or under any present or future laws in the event of Tenant being evicted or dispossessed for any cause, or in the event of Landlord obtaining possession of the Premises, by reason of the violation of Tenant of any of the covenants or conditions of this lease, or otherwise.

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 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. The parties waive trial by jury in any action, proceeding or counterclaim brought by either of the parties against the other.

- g. Remedies Cumulative. No remedy herein or otherwise conferred upon or reserved to Landlord or Tenant shall be considered to exclude or suspend any other remedy, but the same shall be cumulative and shall be in addition to every other remedy given hereunder now or hereafter existing at law or by statute and every power and remedy given by this Lease to Landlord or Tenant may be exercised from time to time and as often as occasion may arise or may be deemed expedient. No delay or admission of Landlord or Tenant to exercise any right or power arising from any event of default shall impair any such right or power or shall be construed to be a waiver of any such event of default or acquiescence therein. Notwithstanding the above Landlord shall not be entitled to double recovery or inequitable accumulation of remedies.
- h. Death of Guarantor. Tenant acknowledges that Ground Lease Landlord has required the personal guarantee of the Ground Lease. Therefore, pursuant to the Ground Lease, in the event of any guarantor's death prior to February 1, 2027, Tenant and Landlord shall cooperate to provide Ground Lease Landlord with a sub guarantor with financials reasonably acceptable to Ground Lease Landlord. In the event such sub guarantor is not provided within said 120 days, the Ground Lease Landlord shall declare default and this Lease shall likewise be in default.
- i. Miscellaneous. If any installment of rent is not paid by Tenant when due and payable: (i) a late charge in the amount of \$100.00 shall become immediately due and payable as compensation to Landlord for administrative costs; and (ii) the unpaid balance due Landlord shall bear interest at the Interest Rate from the date such installment became due and payable to the date of payment thereof by Tenant, and such interest shall constitute additional rent hereunder which shall be immediately due and payable. The "Interest Rate" shall be computed at a rate equal to the Prime Rate (as hereinafter defined) plus two (2) percentage points. If, however, payment of interest at such rate by Tenant (or by the tenant then in possession having succeeded to the Tenant's interest in accordance with the terms of this Lease) should be unlawful, that is, violative of usury statutes or otherwise, then "Interest" shall, as against such party, be computed at the maximum contract rate payable by such party. "Prime Rate" shall mean the Prime Rate as published in The Wall Street Journal from time to time (or the higher Prime Rate if more than one is published), any change or retraction in such Prime Rate to effect a change in the rate charged hereunder on the date of each such change or retraction. If The Wall Street Journal ceases to be published or ceases to publish a Prime Rate, then the highest rate used by BancOne (or its successor) shall be used.

**ARTICLE 17.**  
**SURRENDER OF PREMISES**

Tenant shall, upon the expiration or earlier termination of this Lease, peaceably vacate and surrender the Premises to Landlord in good order, condition and repair, reasonable wear and tear excepted. Tenant shall leave the Premises and appurtenances thereto free and clear of rubbish and broom clean and in compliance of the terms of Article XII of the Ground Lease

**ARTICLE 18.**  
**SUBORDINATION AND FINANCING**

Tenant 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, or any reciprocal easement agreement or other operating agreement which now encumbers or which at any time hereafter may encumber the Premises (such ground lease, deed of trust, mortgage lien or charge or any reciprocal easement agreement or other operating agreement 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 Premises. Tenant, on Tenant's behalf, and on behalf of all persons claiming through and under Tenant, covenants and agrees that, from time to time at the request of the holder of any Encumbrance, Tenant will execute and deliver any necessary or proper instruments or certificates reasonably necessary to acknowledge or confirm the priority of the Encumbrance over this Lease and the subordination of this Lease thereto or to evidence Tenant's consent to any Encumbrance.

Tenant shall also cooperate in satisfying any subordination requirements of Landlord under the Ground Lease.

**ARTICLE 19.**  
**CERTIFICATES BY TENANT AND LANDLORD**

- a. Certificate by Tenant. Tenant shall, at any time and from time to time, upon not less than twenty (20) days' prior notice by Landlord, execute and acknowledge to Landlord a statement in writing certifying that this Lease is unmodified and in full force and effect (or if there shall have been modifications that the Lease is in full force and effect as modified and stating the modifications), and the dates to which the base rent and the additional rent have been paid, and stating whether or not to the best knowledge of the signer of such certificate, Landlord is in default in keeping, observing or performing any term, covenant, agreement, provision, condition or limitation contained in this Lease, and, if in default, specifying each such default of which the signer may have knowledge, it being intended that any such statement delivered pursuant to this Article 19(a) may be relied upon by Landlord or any prospective purchaser of the fee or any mortgage thereto or any assignee of any mortgage upon the fee of the Premises, but reliance on such certificate may not extend to any default of Landlord as to which the signer for Tenant

shall have had no actual notice. Such certificate shall not contain any amendments to the substantive terms of the Lease.

- b. Certificate by Landlord. Landlord shall, at any time and from time to time, upon not less than twenty (20) days' prior notice by Tenant execute and acknowledge to Tenant a statement in writing certifying that this Lease is unmodified and in full force and effect (or if there shall have been modifications that the Lease is in full force and effect as modified and stating the modifications), and the dates to which the base rent and additional rent have been paid, and stating whether or not, to the best knowledge of the signer of such certificate, Tenant is in default in keeping, observing or performing any term, covenant, agreement, provision, condition, or limitation contained in this Lease, and if in default, specifying each such default of which the signer may have knowledge, it being intended that any such statement delivered pursuant to this Article 19(b) may be relied upon by any prospective assignee of Tenant's interest in this Lease, any prospective sublessee of the entire Premises or any mortgagee of this Lease or of any sublease of the entire Premises, or any assignee of any mortgage upon the leasehold estate created hereby or by any sublease, but reliance on such certificate may not extend to any default of Tenant as to which the signer for Landlord shall have had no actual knowledge.

#### ARTICLE 20.

##### NOTICE

All notices or demands which shall be required or permitted by law or any provisions of this Lease shall be sent by United States certified mail, postage prepaid, to the addresses set out below for Landlord and Tenant, and such notices shall be properly given if directed to those addresses until notices given in the manner described above to change such address.

To Tenant:	Granite City Food & Brewery, Ltd. c/o Steven Wagenheim 5831 Cedar Lake Road St. Louis Park, MN 55416
To Landlord:	Donald A. Dunham, Jr. 230 South Phillips Avenue, Suite 202 Sioux Falls, SD 57104
To Ground Lease Landlord:	Westroads Mall, LLC c/o General Growth Properties, Inc. Attn: Law/Lease Administration 110 North Wacker Drive Chicago, Illinois 60606

#### ARTICLE 21.

##### WAIVER

Failure of Landlord to insist upon the strict performance of any or all of the terms or conditions herein shall not constitute, nor be construed as, a waiver of Landlord's right to

thereafter enforce any such terms or conditions, but the same shall continue in full force and effect.

**ARTICLE 22.**  
**HOLDING OVER**

In the event Tenant shall continue to occupy the Premises after the expiration of the term hereof, such holding over shall not operate to extend or renew this Lease, or be treated as holding over. However, in the event Tenant remains, its possession shall be subject to all the terms and provisions of this Lease and Base Rent shall be increased to an amount 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.

**ARTICLE 23.**  
**COVENANTS**

- a. Covenant of Faithful Performance. It is mutually agreed that this Lease is made upon and subject to the terms, covenants, and conditions herein contained, and that Tenant covenants, as a material part of the consideration for this Lease, to keep and perform each and all of said terms, covenants and conditions to be kept and performed by it and that this Lease is made upon the condition of such performance.
- b. Provisions Deemed Covenants and Conditions. The parties hereto agree that all the provisions hereof are to be construed as covenants and conditions as though the words imparting such covenants and conditions were used in each instance.

**ARTICLE 24.**  
**RIGHT OF FIRST REFUSAL**

If at any time during the term of this Lease or any renewal period thereof, Landlord receives a bona fide offer from a third party for the sale to said third party of the Landlord's interest in the Premises, Landlord shall give Tenant the right to purchase the Premises at the same price and on the same terms as contained in said bona fide offer. Upon receipt of written notice (and a copy of said offer) from Landlord that Landlord has received a bona fide offer it is willing to accept, Tenant shall, within fifteen (15) days after receipt of said notice, give written notice to Landlord as to whether Tenant has elected to exercise its right to purchase the Premises, or said part interest, on the same terms and conditions as contained in said bona fide offer. In the event that Tenant exercises said right to purchase the Premises, Tenant shall be required to close its acquisition of the Premises within ninety (90) days, and upon the terms and conditions as third party offeror would have been required to close its acquisition of the Premises. In the event that Tenant does not exercise said right to purchase the Premises Landlord shall require as a condition of sale that the third party offeror agree that the Tenant's interest in this Lease shall not be affected by said transfer of ownership and the third party offeror shall assume all of the Landlord's obligations hereunder.

It is understood that, for purposes of this paragraph, a bona fide offer shall refer to an offer where the earnest money deposited with Landlord by said third party is equal to at least five percent (5%) of the purchase price offered by said third party.

This right of first refusal is a continuing right and if Tenant does not exercise its right of first refusal shall continue with regard to further offers so long as this Lease is in effect.

#### **ARTICLE 25. OPTION TO PURCHASE**

So long as this Lease is in full force and effect and Tenant is not in default hereunder, Tenant shall have the option to purchase, at any time after the nineteenth anniversary of the Commencement Date and prior to the twentieth anniversary of the Commencement Date, all right, title and interest of Landlord in and to the Premises for the fair market value as defined below and as determined below.

- a. Fair Market Value. "Fair Market Value" shall mean the price a willing buyer would pay a willing seller for the Premises with the buyer having no necessity to purchase the Premises and the seller having no necessity to sell the Premises.
- b. Determination of Fair Market Value. Within fifteen (15) days of the date Tenant gives notice to Landlord of Tenant's election to have the fair market value and the Premises determined, Tenant shall give Landlord written notice of an appraiser and Landlord shall give Tenant written notice of an appraiser. Within thirty (30) days after the Election Date the two appraisers shall select a third appraiser. All appraisers shall be independent from the Landlord and Tenant and have no conflict of interest, shall have MAI certification and at least ten (10) years experience appraising real estate including appraising at least five (5) restaurants. Each appraiser shall complete and deliver to Tenant and Landlord an appraisal of the Premises in compliance with MAI standards within 120 days of the Election Date.

Any appraisal that is ten percent (10%) more or less than the average of the appraisals shall not be used. The average of the remaining appraisals shall be deemed the fair market value of the Premises. The appraisers shall give each party copies of the appraisals and final written notice of the fair market value. The decision shall be final and not subject to appeal in the absence of fraud or other failure to follow the requirements set forth herein. The parties shall each pay one-half the cost of the appraisers.

Such option shall be exercised, if at all, by Tenant giving written notice thereof to Landlord, said notice period to be within thirty (30) days after having received a Final Written Notice of the fair market value as described above. Landlord shall provide Tenant with a warranty deed conveying marketable title to Tenant and with a current title insurance commitment to insure marketable title to the Premises. The title insurance company may use the sales proceeds to pay such encumbrances and costs as are necessary to insure marketable title in the name of Tenant subject to Tenant's mortgage financing. Subsequent closing of the sale and purchase must occur within ninety (90) days from the date the option is exercised.

**ARTICLE 26.**  
**GENERAL PROVISIONS**

- a. Captions. The captions of the Articles of this Lease are for convenience only and are not a part of this Lease, and do not in any way limit or amplify the terms or provisions of this Lease.
- b. Successors and Assigns. Subject to the provisions hereof, this Lease shall bind and inure to the benefit of the parties hereto and their respective successors and assigns.
- c. Attorney's Fees. In the event either of the parties hereto commences any action or proceeding against the other under or on account of this Lease, then and in each such event, the successful party in such action or proceeding shall be entitled to receive, and the parties hereto respectively agree to pay, a reasonable attorneys' fee on account of such action or proceeding.
- d. Construction. The language in all parts of this Lease shall be in all cases construed according to its fair meaning and not strictly for or against Landlord or Tenant.

If any term, covenant, condition or provision of this Lease is held by a court of competent jurisdiction to be invalid, void or unreasonable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

The parties intend that the obligations herein of Tenant are the joint and several obligations of the corporation and the Guarantors named in attached Lease Guaranty.

- e. 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 26(e) shall not operate to excuse Tenant from prompt payment of Minimum Guaranteed Rent, or any other payments required by the terms of this Lease.
- f. Law Governing. This Lease shall be governed by and construed in accordance with the laws of the State of South Dakota, without respect to its conflict of law principles. Notwithstanding, in the event the governing law of the Ground Lease results in greater liability of Landlord to Ground Lease Landlord, Tenant shall be responsible to indemnify Landlord to such extent.
- g. Landlord Rules and Regulations. Tenant and its employees shall observe and comply with any reasonable rules and regulations that Landlord or Landlord's agents may from time to time adopt for the Premises and that are applicable to Tenant provided Tenant has

received notice of such rules and regulations pursuant to the notice provisions of Article 20 hereof, and provided such rules and regulations do not deprive Tenant of any rights set forth in this Lease or materially and unreasonably interfere with the benefits of the Lease.

- h. Initial Tenant Covenant. Tenant covenants and warrants that it has full right and lawful authority to enter into this Lease for the full term herein granted and for any and all extensions herein provided.
- i. Entire Agreement. This Lease, together with any written modifications or amendments hereto, hereinafter entered into, shall constitute the entire agreement between the parties relative to the subject matter hereof and shall supersede any prior agreements or understandings, whether written or oral, which the parties may have had relating to the subject matter hereof. No subsequent alteration, amendment, change or addition to this Lease shall be binding upon Landlord or Tenant unless reduced to writing and signed by them. Tenant shall not record this Lease without Landlord's written consent.
- j. Counterparts. This Lease may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- k. Review by Ground Lease Landlord. In the event any review, preparation or processing by Ground Lease Landlord is required hereunder or is requested by Tenant, Tenant agrees to reimburse Landlord for the review charges set out in Section 21.19 of the Ground Lease.
- l. Tenant Financial Statements. On an annual basis, in addition to the other reports required to be submitted to Landlord, Tenant hereby agrees to provide to Landlord a copy of its audited financial statements.
- m. Brokerage Commission. Landlord will pay any brokerage commission payable in connection with this Lease.

#### **ARTICLE 27. GROUND LEASE**

- a. Contract. Tenant acknowledges and accepts that the land is leased land and that Landlord has entered into a lease agreement on the leased land, and said lease agreement is hereby attached as Exhibit E. Tenant represents that it has received a copy of said lease agreement and agrees to abide by the terms and conditions of said lease agreement including the economic issues in said lease agreement. Tenant further agrees that it shall deliver to Landlord, upon request, an assignment and assumption agreement in form reasonably satisfactory to Ground Lease Landlord prior to the effective date of the assignment.
- b. Landlord's Default under the Ground Lease. Within three (3) days of receiving notice from the Ground Lease Landlord, or any mortgagee of the real estate which constitutes all or part of the Premises or any easement beneficiary to the Premises, that the Landlord



is in default under the Ground Lease, or the respective mortgagee, Landlord shall deliver such notice to the Tenant.

- c. Right to Cure and Offset. Upon receipt of the notice from the Landlord that the Landlord is in default under the Ground Lease, the Tenant, within three (3) days of such receipt of the notice, shall have the right, but not the obligation, to cure any Landlord default with the Tenant being entitled to reimbursement of the costs to cure on behalf of the Landlord and the right to offset such cost to cure against any rent owed to Landlord.
- d. Required Payments. If Landlord defaults under the Ground Lease, and if Tenant is required by Ground Lease Landlord to make monthly rent payment under the Ground Lease directly to Ground Lease Landlord, Tenant may do so and pay the balance of the monthly rent due under the Lease to Landlord's mortgagee.
- e. Amendment to Ground Lease. Landlord shall not amend the Ground Lease without the consent of the Tenant or the Landlord's mortgagee, which consent shall not be unreasonably withheld.

#### ARTICLE 28.

##### TENANT'S RECORDS, REPORTS AND AUDIT

- a. Tenant's Records. Tenant shall prepare and keep at its home office full, complete and proper books and source documents, in accordance with Generally Accepted Accounting Principles, of the Gross Sales, whether for cash, credit or otherwise, of each separate department at any time operated in the Premises and of the operations of each concessionaire, and shall require and cause all such parties to prepare and keep books, source documents, records and accounts sufficient to substantiate those kept by Tenant. The books and source documents to be kept by Tenant shall include, without limitation, true copies of all state and local sales tax returns and reports, records of inventories and receipts of merchandise, daily receipts from all sales and other pertinent original sales records and records of any other transactions conducted in or from the Premises by Tenant and any other persons and concessionaires conducting business from the Premises. Pertinent original sales records shall include any such records which would normally be examined by an independent accountant pursuant to Generally Accepted Auditing Standards in performing an audit of Gross Sales. All of the foregoing books, source documents and records shall at all reasonable times be open to the inspection of, and may be copied or extracted from, in whole or in part, by, Landlord or Landlord's authorized representative or agent for a period of at least three (3) years after the expiration of each Lease Year.
- b. Reports by Tenants. Tenant shall submit to the Landlord, a written quarterly statement of Gross Sales within 15 days after the end of each quarter, and a written annual statement of Gross Sales, including a quarterly breakdown of Gross Sales certified by a certified public accountant or by a financial officer, owner or partner of Tenant, within 30 days after the end of each Lease Year. Each annual statement will include, among the appropriate items, all deductions or exclusions used to calculate Tenant's Gross Sales.

For the second and each subsequent time that Tenant fails to submit when due a quarterly or annual statement of Gross Sales, Landlord will have the right, in addition to all other remedies set forth in this Lease, to (i) collect from Tenant the sum of \$250 which will be deemed liquidated damages for administrative and overhead expenses resulting from such failure, and (ii) estimate Tenant's Gross Sales for any non-reported period and bill Tenant's Percentage Rent accordingly.

- c. Tenant shall keep for at least 3 years full accurate books and records adequate to support an audit of Gross Sales conducted in accordance with generally accepted accounting principles for the shopping center industry consistently applied ("GAAP"), including detailed records of each exclusion or deduction made in determining Gross Sales. Landlord will have the right during normal business hours, upon not less than 10 days written notice to Tenant, to audit such books and records. Such audit will be conducted by auditors of Landlord's choice. If the audit discloses a deficiency in the payment of Percentage Rent, then such deficiency shall become immediately due and payable with interest at the Default Rate from the date such payment was due. In addition, if Tenant's statement for the pertinent year understated Gross Sales by 3% or more, or if Tenant's Gross Sales cannot be verified due to the insufficiency or inadequacy of Tenant's records, then Tenant shall pay the reasonable costs of any audit performed by Landlord for the purpose of determining Tenant's Gross Sales for such year. If the audit discloses an overpayment of Percentage Rent, then the excess will be credited against Tenant's obligation to pay Percentage Rent or other rent items or if the excess relates to the last year of the Term, Landlord shall refund such amount to Tenant. If Tenant does not furnish the sales documentation referred to above or otherwise impedes Landlord's audit of Gross Sales, Landlord shall be entitled, in addition to Landlord's other remedies, to estimate Tenant's Gross Sales as 125% of the Gross Sales for any previous year, and bill Tenant for any Percentage Rent which may be due based upon the estimated Gross Sales.
- d. Right To Examine Books. Notwithstanding the acceptance by Landlord of payments of Fixed Rent, Indexed Rent or Percentage Rent or installments thereof, Landlord shall have the right to examine all of Tenant's books and records relating to all rentals and other charges actually due hereunder. Tenant shall make available to Landlord within five (5) days following Landlord's request for the same at Tenant's home business office in the United States for examination and extracting all books, source documents, accounts, records and sales tax reports of Tenant and any concessionaires, filed with applicable government agencies in order to verify the amount of Gross Sales in and from the Premises.
- e. Audit. At its option, Landlord may at any time upon ten (10) days' prior written notice to Tenant, cause a complete audit to be made by an auditor selected by Landlord of the entire records and operations of Tenant and/or any concessionaires, relating to the Premises for the period covered by any statement issued or required to be issued by Tenant or a concessionaire as above set forth in this Article. Tenant shall make available to Landlord's auditor at Tenant's principal business office in the United States, within ten (10) days following Landlord's notice requiring such audit, all of the books, source documents, accounts, records and sales tax reports of Tenant and any of its

concessionaires which such auditor deems necessary or desirable for the purpose of making such audit. If such audit discloses that Gross Sales as previously reported for the period audited were understated, Tenant shall immediately pay to Landlord the additional Percentage Rent due, if any, for the period audited. Further, if such understatement was in excess of three percent (3%) of Tenant's actual Gross Sales as disclosed by such audit, Tenant shall immediately pay to Landlord the cost of such audit, and if Tenant shall have made any fraudulent or misleading statement, Tenant shall be considered in default of this Lease. In addition, if, twice during the Term there is an understatement was in excess of ten percent (10%) of Gross Sales as disclosed by such audit, Landlord may declare this Lease terminated and the Term ended, in which event this Lease shall cease and terminate on the date specified in such notice with the same force and effect as though the date set forth in such notice were the date set forth in this Lease for expiration of the Term, and Tenant shall vacate and surrender the Premises on or before such date. Notwithstanding the foregoing, Landlord shall not have the right to terminate this Lease if Tenant can prove to Landlord's satisfaction that any understatement in excess of ten percent (10%) of Gross Sales was purely and directly due to clerical errors and was not intended to deprive, whether intentionally or negligently, Landlord the benefit of the Gross Sales so derived from the Premises.

- f. Defined Terms. Any capitalized terms contained in this Section 28 which are not expressly defined in this Sublease shall have the same meanings as set forth in the Ground Lease.

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

LANDLORD: Dunham Capital  
Management, L.L.C.

By: \_\_\_\_\_

Its: \_\_\_\_\_

TENANT: Granite City Food & Brewery, Ltd.

By: Steve Wagner

Its: President

**Exhibits**

- |    |     |    |  |
|----|-----|----|--|
| 1. | A-1 | -- | Legal Description of Land                    |
| 2. | A-2 | -- | Depiction of Land                            |
| 3. | B   | -- | Fixtures and Equipment Installed by Landlord |
| 4. | C   | -- | Tenant's Work                                |
| 5. | D   | -- | Project Costs                                |
| 6. | E   | -- | Land Lease Agreement                         |

**EXHIBIT B**

**Fixtures and Equipment Installed by Landlord**

**All light fixtures**

## **EXHIBIT C**

### **Tenant's Work**

**Furniture, Fixtures and Equipment to include but not be limited to: premier equipment, brewery equipment including truck, ancillary brewery equipment, audio equipment and installation, visual equipment and installation, point of sale equipment, office furniture, additional cabinetry, pre-shift furniture and equipment, FOH menu boards, FOH art work and signage, FOH neon, miscellaneous installation labor, railings, divider glass, change orders, telephone system, accounting software, fax machine, printers, administrative systems and computers, safe, security systems and office start-up supplies.**

**EXHIBIT D****Project Costs**

The following items are included in, but not limited to, "Project Costs" identified in Section 3.a. of the Lease.

**HARD COSTS TO INCLUDE:**

- Building Permit(s)
- Soil Test(s)
- Survey & Stakeout
- Demolition and Clearing of Site
- Excavation, Fill, Grading, Final Grade
- Sewer and Water
- Footings and Foundations
- Damproofing
- Building Floor
- Exterior Concrete/Flatwork
- Patio
- Curb & Gutter
- Asphalt Paving
- Parking Lot Striping
- Lawn Sprinkler System, Sod, Landscaping
- Fences and Enclosures
- Exterior Signage
- Tools and Equipment
- Clean Up
- Temporary Power and Utilities
- Temporary Facilities
- Miscellaneous Materials & Labor
- HVAC
- Plumbing
- Electrical
- Electrical Fixtures (Some)
- Building Sprinkler Systems
- Framing
- Insulation
- Drywall
- Finish Labor
- Painting and Staining
- Acoustical Ceiling
- Quarry/Ceramic Tile, Carpet, Vinyl, Cove Base
- Building Package System, Building Materials, Trusses, Steel, Finish Materials
- Aluminum Entrance Assemblies/Exterior Doors

- Windows
- Roof, Gutters, Downspouts
- Fire Extinguishers
- Mini-Blinds
- Bathroom Accessories
- Cabinets
- Shelving
- Laminate/Marble Tops
- Furniture, Fixtures and Equipment installed and paid for by Landlord, if any.

LAND AND SOFT COSTS TO INCLUDE:

- Land Cost
- Title Insurance
- Architect
- Civil Engineer
- Mechanical Engineer
- Electrical Engineer
- Project Management Fee
- Legal Fees incurred in the acquisition and development of the Premises
- Appraisal
- Recording Fees
- Financing Fees
- Construction Interest
- Real Estate Taxes
- Drafting Fees
- Builders Risk Insurance
- Blueprints and Spec Books
- Project Sign
- Soil Test Costs
- Environmental Audit Costs including a Phase I Audit
- Developer's Fee as set forth in the Development Agreement

COSTS TO EXCLUDE:

- Any cost excluded from Cost of the Work by Article 8, AIA Document A111
- Any salaries and compensation of Developer's personnel other than the Developer's Fee set forth in the Development Agreement between the Landlord and Tenant
- Any overhead costs of Developer
- Any other costs not specifically included above unless the Landlord and Tenant have agreed in writing to add the cost of such item to the Project
- Any costs which would cause the Guaranteed Maximum Costs set forth in Section 3.a. herein, as it may be amended, to be exceeded



This Instrument Prepared By:

HAGEN, WILKA & ARCHER, P.C.  
 By: John F. Archer  
 600 S. Main Ave., Suite 102  
 Sioux Falls, SD 57101-0964  
 (605)334-0005

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(Space Above this Line for Recorder's Use)

### MEMORANDUM OF SUBLEASE

This Memorandum of Sublease (this "Memorandum") is made and executed effective \_\_\_\_\_, 2006, by and between Dunham Capital Management, L.L.C., a South Dakota limited liability company ("Landlord") and Granite City Food & Brewery, Ltd. ("Tenant").

FOR VALUABLE CONSIDERATION, Landlord leased to Tenant and Tenant leased from Landlord that certain real property (the "Property") in the City of Omaha, County of Douglas, State of Nebraska, and more particularly described in Exhibit A attached hereto and incorporated herein by reference, on the terms and conditions contained in that certain SubLease Agreement dated as of \_\_\_\_\_, 2006 (the "Sublease").

The term of the Sublease (the "Term") is twenty (20) years. Landlord has granted to Tenant the option to purchase, at any time after the nineteenth anniversary of the Commencement Date and prior to the twentieth anniversary of the Commencement Date, all right, title and interest of Landlord in and to the Premises for the fair market value as defined in the Sublease.

Pursuant to the terms of the Sublease, Landlord granted to Tenant a right of first refusal (the "Right of First Refusal") and an Option to purchase all of Landlord's right, title and interest in the Property, which Right and Option shall exist throughout the Term of the Sublease.

This Memorandum is executed for the sole purpose of giving notice of the existence of the Sublease, and the Right of First Refusal granted therein, to all interested parties, and shall in no way modify or affect the terms of the Sublease or the obligations of the parties thereunder.

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

**(Signature Page Follows)**

IN WITNESS WHEREOF, the undersigned have executed this Memorandum as of the date first above written.

DUNHAM CAPITAL MANAGEMENT, L.L.C. GRANITE CITY FOOD & BREWERY, LTD.

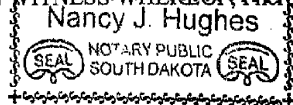
By [Signature]  
Its Authorized Member

By Steven J. Wagenheim  
Its President

STATE OF SOUTH DAKOTA )  
: SS  
COUNTY OF MINNEHAHA )

On the 10<sup>th</sup> day of July, 2006, before me, the undersigned officer, personally appeared Donald A. Dunham, Jr., who acknowledged himself to be the Authorized Member of Dunham Capital Management, L.L.C., a limited liability company, and that as such Authorized Member, being authorized so to do, executed the foregoing instrument for the purpose therein contained, by signing the name of the limited liability company by himself as Authorized Member.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

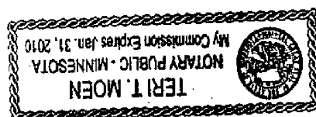


Nancy J. Hughes  
Notary Public - South Dakota  
My commission expires: 9/2/09

STATE OF Minnesota )  
: SS  
COUNTY OF Hennepin )

On the 6<sup>th</sup> day of July, 2006, before me, the undersigned officer, personally appeared Steven Wagenheim, who acknowledged himself to be the CEO of Granite City Food & Brewery, Ltd., a corporation, and that as such Steven Wagenheim being authorized so to do, executed the foregoing instrument for the purpose therein contained, by signing the name of the corporation by himself as CEO.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Teri T. Moen  
Notary Public -  
My commission expires: 01/31/2010

**EXHIBIT A  
LEGAL DESCRIPTION**

A legal description of a portion of Lot 2, Westroads Replat 2, an addition to the City of Omaha, located in the Southeast Quarter of Section 16, Township 15 North, Range 12 East of the Sixth Principal Meridian, Douglas County, Nebraska and more particularly described by metes and bounds as follows:

Referring to a found 1" pinched top pipe, being the North-Northeast Corner of Parcel C, Block 3, Westroads Addition, an addition to the City of Omaha, located in the Southeast Quarter of Section 16, Township 15 North, Range 12 East of the Sixth Principal Meridian, Douglas County, Nebraska and also said point is on the South Right-of-way Line of Nicholas Street; Thence S 89°48'31" W, (an assumed bearing) and on the North Line of Parcel C, Block 3 of said Westroads Addition and Lot 2, Westroads Replat 2, an addition to the City of Omaha, located in the Southeast Quarter of Section 16, Township 15 North, Range 12 East of the Sixth Principal Meridian, Douglas County, Nebraska or the South Right-of-way Line of said Nicholas Street, a distance of 1239.03 feet to a found chiseled 'x' in concrete, being the North-Northwest Corner of Lot 2 of said Westroads Replat 2 and also said point is the Point of Curvature; Thence S 15°49'26" W, a distance of 227.54 feet to a chiseled 'x' in concrete, being the POINT OF BEGINNING; Thence S 20°34'18" E, a distance of 178.20 feet to a chiseled 'x' in concrete; Thence S 69°25'42" W, a distance of 103.81 feet to a chiseled 'x' in concrete; Thence N 20°34'18" W, a distance of 178.20 feet to a chiseled 'x' in concrete; Thence N 69°25'42" E, a distance of 103.81 feet to the point of beginning and containing a calculated area of 18,500.00 square feet or 0.4247 acres, more or less.

**EXHIBIT B****Legal Description**

That part of Lot 2, Westroads Replat 2, an addition to the City of Omaha, located in the Southeast Quarter of Section 16, Township 15 North, Range 12 East of the Sixth Principal Meridian, Douglas County, Nebraska and more particularly described by metes and bounds as follows:

Referring to a found 1" pinched top pipe, being the North-Northeast Corner of Parcel C, Block 3, Westroads Addition, an addition to the City of Omaha, located in the Southeast Quarter of Section 16, Township 15 North, Range 12 East of the Sixth Principal Meridian, Douglas County, Nebraska and also said point is on the South Right-of-way Line of Nicholas Street; Thence S 89°48'31" W, (an assumed bearing) and on the North Line of Parcel C, Block 3 of said Westroads Addition and Lot 2, Westroads Replat 2, an addition to the City of Omaha, located in the Southeast Quarter of Section 16, Township 15 North, Range 12 East of the Sixth Principal Meridian, Douglas County, Nebraska or the South Right-of-way Line of said Nicholas Street, a distance of 1239.03 feet to a found chiseled 'x' in concrete, being the North-Northwest Corner of Lot 2 of said Westroads Replat 2 and also said point is the Point of Curvature; Thence S 15°49'26" W, a distance of 227.54 feet to a chiseled 'x' in concrete, being the POINT OF BEGINNING: Thence S 20°34'18" E, a distance of 178.20 feet to a chiseled 'x' in concrete; Thence S 69°25'42" W, a distance of 103.81 feet to a chiseled 'x' in concrete; Thence N 20°34'18" W, a distance of 178.20 feet to a chiseled 'x' in concrete; Thence N 69°25'42" E, a distance of 103.81 feet to the point of beginning and containing a calculated area of 18,500.00 square feet or 0.4247 acres, more or less.