

**LANDLORD'S  
ESTOPPEL AND CONSENT**



**Lender:**

SunTrust Bank, as Administrative Agent for itself and the other lenders who are or may become parties to the Credit Agreement dated as of May 14 2001 as now in effect and as may be amended or amended and restated from time to time hereafter

**Premises:**

Bakers Square, store # 20199 at 3545 Ridge Road, Lansing, Illinois 60438, the legal description of which is contained in the Lease which is attached to this Landlord's Estoppel and Consent as Exhibit "A"

**Landlord:**

CNL Funding 2000-A, LP, a Delaware limited partnership

**Tenant:**

Vicorp Restaurants, Inc., a Colorado corporation

1. Lease: A complete copy of the Lease between Landlord and Tenant is attached hereto as Exhibit "A", (the "Lease"). The Lease is in full force and effect and has not, except as specifically stated in Exhibit "A", been modified, amended or changed in any manner whatsoever. The Lease constitutes the entire agreement between the parties with respect to the Premises.

2. Term: Termination date of the Lease is October 27, 2014, and Tenant has one successive ten (10) year option and two (2) successive five (5) year options, to extend the term of the Lease.

3. Lease Default: Landlord has no actual knowledge of: (a) any default by Tenant under any of the terms, covenants or conditions of the Lease on the part of Tenant to be observed

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or performed, and (b) any event which has occurred and which with the passage of time or the giving of notice, or both, would constitute a default by Tenant under the Lease, except as follows: None.

4. No Action: Landlord has not commenced, and has no actual knowledge that Tenant has commenced, any action or has given or received any notice for the purpose of terminating the Lease.

5. Consent: Landlord hereby consents to the execution by Tenant of a mortgage or deed of trust in favor of Lender as to Tenant's interest in the Lease, and agrees that the execution of the mortgage or deed of trust by Tenant and Lender will not constitute a default under the Lease.

6. Subordination of Landlord's Lien as to Personal Property: Landlord hereby subordinates, as to the lien related to Lender's security interest only, any lien, right or claim it may now or hereafter possess relative to certain goods and equipment (hereinafter referred to as "Collateral", a description of which is attached as Exhibit "B"), now or to be installed on or deposited at the above described Premises, provided that:

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- (a) The Collateral shall remain personal property and not be deemed a fixture whether or not it becomes attached to any real property.
  - (b) The Collateral may be recovered or repossessed at any time by Lender and Landlord will not interfere therewith, regardless of the manner or degree of the attachment of the Collateral to the Premises, provided Lender provides Landlord with twenty-four (24) hours written notice of its intent to remove the Collateral. In the event that such removal creates any type of holes or openings in the roof or exterior of the building, Lender will immediately repair, close, secure and seal such holes or openings in such a manner that (a) leaves the building in a secure condition and (b) prevents the intrusion of weather, vermin or other damaging elements into the building. Lender shall be liable for any and all damage caused to the building by its failure to repair, close, secure and seal any such holes or openings. Further, Lender shall be responsible for restoring and repairing to Landlord's reasonable satisfaction any and all damages to the Premises caused by the removal, recovery or repossession of the Collateral, all of which shall be completed within seven (7) days from such removal, recovery or repossession. If such Collateral is not removed within thirty (30) days after Landlord serves upon Lender written notice of termination of the Lease, then such Collateral shall be deemed abandoned.
  - (c) Lender may enter upon the Premises at any reasonable time in order to inspect the Collateral; however, Lender shall make arrangements with Tenant prior to such inspection. If the Premises have been vacated, such arrangements shall be coordinated with Landlord.

7. Notice to Landlord: In the event Tenant shall fail, refuse or neglect to perform, observe or comply with any term, condition, covenant, agreement or obligation contained in any agreement entered into by and between Lender and Tenant in conjunction with the mortgage or deed of trust in favor of the Lender as to Tenant's interest in the Lease, Lender shall provide Landlord with written notice of the same and Landlord may, at its option and sole discretion, enter upon the Premises and/or do whatever may be deemed necessary by Landlord to cure such failure by Tenant. Further, Lender shall provide Landlord with written notice of Tenant's satisfaction of its obligations to Lender related to the Collateral or Premises, within thirty (30) days of such satisfaction.

8. Notice to Lender: Landlord agrees to use reasonable efforts (but is under no obligation) to send to Lender notice of the occurrence of any default under the Lease, and to permit Lender to cure any such default within such time as Tenant is permitted to cure such default under the Lease, although Lender shall not be under any obligation to do so. Notwithstanding the foregoing paragraph, Lender shall not be permitted to cure defaults under the Lease for a period exceeding four (4) consecutive months, without becoming liable under the Lease for Tenant's obligations thereunder. Landlord agrees to send to Lender notice of any action taken by the Landlord to terminate the Lease.

9. Notice: Notice from one party to another relating to this Landlord's Estoppel and Consent shall be deemed effective if made in writing and delivered to the recipient's address set forth below by any of the following means: i) hand delivery, ii) registered or certified mail, postage prepaid, or iii) overnight courier service such as Federal Express, Airborne or United States Postal Service Express Mail. Notice made in accordance with these provisions shall be deemed delivered on receipt if delivered by hand on a business day during business hours (or if not during business hours then on the next business day) on the third (3<sup>rd</sup>) business day after mailing if mailed by registered or certified mail, or on the next business day after mailing or deposit with an overnight courier service. Addresses for notices shall be as follows:

If to Landlord: CNL Funding 2000-A, LP, a Delaware limited partnership  
P.O. Box 1711  
Orlando, FL 32802-1711  
Attention: Servicing Department

If to Lender: SunTrust Bank, as Administrative Agent  
303 Peachtree Street  
25<sup>th</sup> Floor  
Atlanta, Georgia 30308  
Attn: Agency Services

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With a copy to:  
Bingham Dana LLP  
150 Federal Street  
Boston, Massachusetts 0211  
Attn: Amy L. Kyle, Esq.

If to Tenant: Vicorp Restaurants, Inc.  
400 W. 48<sup>th</sup> Ave.  
Denver, CO 80216  
Attn: General Counsel

10. Lender Assignment: Landlord agrees that if Lender recovers possession of Tenant's rights under the Lease through foreclosure or otherwise, Lender may assign or sublet the tenant's interest under the Lease, but only in accordance with the terms of the Lease. Landlord shall not unreasonably withhold its consent to any such assignment of the Lease by Lender, or subletting thereunder by Lender, provided that: (A) such assignment or subletting is to an assignee or sublessee operating an "Approved Concept" (as defined below) on the Premises and (B) such assignee or sublessee meets Landlord's then current underwriting and credit guidelines and is capitalized in a manner acceptable to Landlord and which has the financial capability to pay all sums due under the Lease and to adequately operate the Premises and the restaurant thereon. "Approved Concept" shall mean those restaurant concepts which are (i) listed in the "Top 100 Restaurant Chains" as ranked in the most recently published edition of the *Nations Restaurant News* or similar publications selected by Landlord at the time of the proposed subletting or assignment; (ii) approved restaurant concepts by Landlord according to Landlord's then current underwriting and credit guidelines; (iii) not in violation of Landlord's then current concentration requirements; and (iv) not otherwise a modification of the Lease.

11. This Landlord's Estoppel and Consent shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, representatives, successors, and assigns.

12. This Landlord's Estoppel and Consent is made and entered into under, and shall be construed according to the laws of the State of Florida, and the exclusive jurisdiction for any action arising hereunder shall be the State in which the Premises are located.

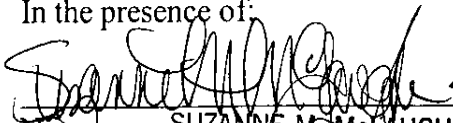
13. This Landlord's Estoppel and Consent may not be amended except by a written instrument signed by the parties hereto.

14. This Landlord's Estoppel and Consent shall not impair, modify or otherwise affect the terms of the Lease, including without limitation, Tenant's obligations to pay rent and any other sums payable by Tenant pursuant to the terms of the Lease.

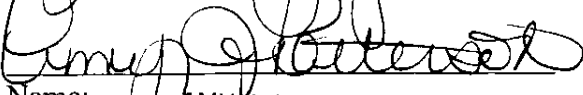
**(Signatures on Following Pages)**

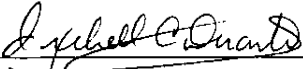
Signed, Sealed and Delivered  
In the presence of:

CNL FUNDING 2000-A, LP, a Delaware  
limited partnership

  
Name: SUZANNE M. McLAUGHLIN

By: CNL Funding 2000-A, Inc., a Delaware  
corporation, as general partner

  
Name: AMY J. PATTERSON

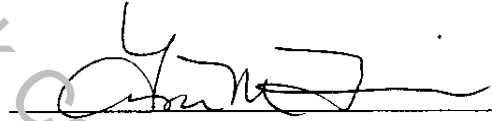
By:   
Name: Ixchell C. Duarte  
As its: CFO/SVP/Secretary & Treasurer

STATE OF FLORIDA )  
COUNTY OF ORANGE ) ss.

*May 11, 2001*

Then personally appeared the above-named Ixchell C. Duarte,  
CFO/SVP/Sec + Treasurer of CNL Funding 2000-A, Inc., general partner of CNL Funding 2000-A,  
LP, and acknowledged the foregoing instrument to be his free act and deed and the free act and  
deed of said corporation and partnership,

Before me,

  
Notary Public  
My Commission expires: 7-27-04



Lisa M. Fannin  
MY COMMISSION # CC957419 EXPIRES  
July 27, 2004  
BONDED THRU TROY FAIN INSURANCE, INC.

PROPERTY OF ORANGE COUNTY CLERK'S OFFICE

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Signed, Sealed and Delivered  
In the presence of:

VICORP RESTAURANTS, INC., a Colorado  
corporation

Michelle M. Kohlmeier  
Name: Michelle M. Kohlmeier

By: Stanley Erickson Jr.  
Name: STANLEY ERECKSON, JR.  
As Its: Sr. VP

Belita Jardine  
Name: Belita Jardine

STATE OF Massachusetts ) May 11, 2001

COUNTY OF Suffolk ) ss.

Then personally appeared the above-named Stanley Erickson Jr.,  
Sr. VP of Vicorp Restaurants, Inc. and acknowledged the foregoing instrument to  
be her/his free act and deed and the free act and deed of said corporation,

Before me,

Joseph Gilday  
Notary Public  
My Commission expires:

JOSEPH GILDAY  
NOTARY PUBLIC  
My Commission Expires Sept. 2, 2004

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Signed, Sealed and Delivered  
In the presence of:

SUNTRUST BANK,  
as Administrative Agent

Michelle K. Kohlmeier  
Name: Michelle K. Kohlmeier

By: William D. Priester

Betita Tardive  
Name: Betita Tardive

Name: William D. Priester  
As Its: Vice President

STATE OF Massachusetts

May 11, 2001

COUNTY OF Suffolk ) ss.

Then personally appeared the above-named William D. Priester,  
Vice President of SunTrust Bank and acknowledged the foregoing instrument to be  
her/his free act and deed and the free act and deed of said bank,

Before me,

Marjorie S. Spiel

Notary Public  
My Commission expires:

**MARJORIE S. SPIEL**  
NOTARY PUBLIC  
My Commission Expires Sept. 20, 2002

Mail To:

LandAmerica National Commercial Svc.  
One Washington Mall, 15th Floor  
Boston, MA 02108  
Attn: Kristin Wyckoff

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EXHIBIT "A"

(attach copy of lease)

Property of Cook County Clerk's Office



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Bakers Square #20199/Lansing, Cook County, Illinois

## LEASE AGREEMENT

**THIS LEASE AGREEMENT** is made and entered into as of October 28, 1999, by and between:

(i) **CNL APF PARTNERS, LP**, a Delaware limited partnership, with principal office and place of business at 400 E. South Street, Suite 500, Orlando, Florida 32801 ("Landlord"), and

(ii) **VICORP RESTAURANTS, INC.**, a Colorado corporation, with a mailing address of ~~480~~ West 48th Avenue, Denver, Colorado 80216 ("Tenant"). <sup>400</sup>

### WITNESSETH:

Landlord leases to Tenant, for the purpose of operating a Bakers Square Restaurant and for such other purpose as is specifically authorized in paragraph 12(b) of this Lease (but for no other use or purpose whatsoever) and subject to the terms and conditions of the Rent Addendum attached hereto, and Tenant rents from Landlord the following described premises, (hereinafter "Premises") located at 3545 Ridge Road, Lansing, Cook County, Illinois and being more particularly described in Exhibit "A" attached hereto and made a part hereof, together with all rights and privileges in and about the Premises as may be necessary or convenient to Tenant's business, inclusive of all easements benefitting the real property described in Exhibit "A". Premises shall include all improvements and structures whether now existing or hereafter constructed thereon.

The following additional stipulations are hereby declared to be covenants of this Lease and shall, unless otherwise expressly stated, be applicable at all times throughout the term of this Lease and any extension or renewal thereof:

#### 1. DEFINITIONS

For purposes of this Lease, the following terms are hereby defined to mean:

"Effective Date" shall mean the first date set forth at the beginning of this Lease.

"Landlord" shall mean CNL APF PARTNERS, LP, a Delaware limited partnership, its successors and assigns.



"Lease" shall include this Lease Agreement and all amendments hereto, if any, entered into from time to time hereafter.

"Lease Year" shall mean a fiscal period beginning on the Effective Date (and each anniversary thereof) and expiring twelve (12) months thereafter.

"Rent" shall mean the Rent payable under this Lease as set forth in the Rent Addendum attached hereto and incorporated herein, and shall include and Annual Rent (all as defined in the Rent Addendum).

## 2. TERM AND RENT

(a) Term. The term of this Lease shall begin on the Effective Date and shall expire on a date fifteen (15) years thereafter unless previously terminated or renewed or extended as provided herein.

(b) Rent. Rent shall be due and payable as provided in the Rent Addendum attached hereto and incorporated herein.

## 3. ALTERATIONS AND IMPROVEMENTS, INVESTMENT TAX CREDIT, MECHANIC'S LIENS, LANDLORD'S DISCLAIMER

(a) *Alterations and Improvements.*

(i) Tenant's Property. Tenant shall be permitted to install, use on and about, and remove from the Premises at any time and from time to time all trade fixtures and other personal property (exclusive of lighting, electrical, heating and air conditioning improvements) which are not a component of the building located or to be located on the Premises (hereinafter referred to as the "Tenant's Property"), all of which at all times shall remain the property of Tenant with the right of removal (subject to paragraph (d) below) at the expiration of this Lease. Trade fixtures shall include: (1) removable decor items and office equipment; (2) building lettering, signs, sign posts and sign standards; (3) unattached food and customer service equipment; and (4) food and customer service equipment attached to the building by bolts and screws and/or by utility connections, including without limitation, walk-in refrigerators and freezers, remote refrigeration systems, exhaust systems and hoods.

(ii) Subsequent Improvements. Tenant shall also have the right to make any additions, alterations, changes and improvements, structural and nonstructural, including but not limited to construction of additional

buildings and additions to the then existing buildings, as Tenant shall desire; provided, however, (i) Tenant shall submit plans of all structural changes to Landlord at least thirty (30) days in advance of the proposed construction date, which plans shall be subject to the Landlord's reasonable approval, (ii) Tenant shall provide Landlord with evidence of Tenant's financial ability to pay for such changes, (iii) if the cost of structural changes exceeds FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00) for the Premises, Tenant shall post payment and performance bonds for such work naming Landlord and Tenant as dual obligees, (iv) all such construction shall be completed in a workmanlike manner and in full compliance with all building laws and ordinances applicable thereto, at Tenant's expense, and (v) such additions, alterations, changes and improvements shall not reduce the fair market value of the Premises. Notwithstanding the foregoing provisions of paragraph 3(a)(ii)(ii), no payment or performance bonds shall be required, provided, however: (i) Tenant meets the minimum cash flow and net worth requirements set forth in paragraph 4(h) of this Lease; and (ii) Tenant has no more than One Million Dollars (\$1,000,000.00) of contracts for construction or renovation relating to the premises identified in Exhibit "B" attached hereto at any one time.

- (iii) Improvements Upon Termination, Subletting or Assignment. Tenant shall have the right, at its option and expense, to redecorate or otherwise remodel the Premises upon any termination hereof or upon subletting or assignment in such manner as will, without reducing the fair market value thereof, avoid the appearance of the Bakers Square Restaurant operated under this Lease; provided, however, Tenant shall not impair the structural condition of the Premises or reduce the size thereof.

All such Subsequent Improvements, Improvements Upon Termination, Subletting or Assignment, or other additions, alterations, changes and improvements of any type shall be deemed to be a part of the Premises.

(b) *Investment Tax Credit.* Landlord hereby grants Tenant the right and privilege of applying for and receiving all investment tax credits, if any, under the Internal Revenue Code which may be available with respect to the building and other improvements to be constructed. To this end, Landlord agrees to execute all such further documents and supply such additional information as may be required to make such election effective.

(c) *Mechanic's Liens.* Tenant shall not do or suffer anything to be done whereby the Premises, or any part thereof, may be encumbered by a mechanic's lien or similar lien, and, if, whenever and as often as any mechanic's lien or similar lien is filed against the Premises, or any part thereof, purporting to be for or on account of any labor done, materials or services furnished in

connection with any work in or about the Premises, done by, for or under the authority of Tenant, or anyone claiming by, through or under Tenant, Tenant shall discharge the same of record within thirty (30) days after service upon Tenant of notice of the filing thereof or such longer period as agreed to by Landlord, in its sole discretion, (provided, however, Tenant is diligently and in good faith attempting to discharge such lien) or within ten (10) days after written request of Landlord, whichever is earlier; provided, however, Tenant shall have the right to remove the lien by bonding same in accordance with applicable law and to contest any such lien; provided further that Tenant shall diligently prosecute any such contest, at all times effectively staying or preventing any official or judicial sale of the Premises under execution or otherwise, and, if unsuccessful, satisfy any final judgment against Tenant adjudging or enforcing such lien or, if successful, procuring record satisfaction or release thereof.

(d) *Landlord's Disclaimer.* All of Tenant's Property placed in or upon the Premises by Tenant shall remain the property of Tenant with the right to remove the same at any time during the term of this Lease. Landlord, if requested by Tenant, agrees to execute such documentation subordinating its lien rights (vis a vis any equipment lender or landlord) to Tenant's personalty and to all rights of levy for distraint for rent against same as shall be reasonably required by any equipment lender or lessor of Tenant; provided any damage caused by, or resulting from the removal of any trade fixtures, equipment or other personal property shall be promptly repaired by Tenant or the party entitled to remove same.

#### 4. DESTRUCTION OF PREMISES, INSURANCE

(a) If the Premises are damaged or destroyed by fire, flood, tornado or other element, or by any other casualty and such damage or destruction does not occur within the last twenty-four (24) months of the original or of any extended or renewed term of this Lease, this Lease shall continue in full force and effect and Tenant shall, as promptly as possible, restore, repair or rebuild the Premises to substantially the same condition as it existed before the damage or destruction, including any improvements or alterations required to be made by any governmental body, county or city agency, due to any changes in code or building regulations. Tenant shall for this purpose use all, or such part as may be necessary, of the insurance proceeds received from insurance policies carried on the Premises under the provision of subparagraph 4(b) hereinbelow. If such insurance proceeds are not sufficient to pay such costs, Tenant shall pay such deficit. Should the Premises be damaged or destroyed by any of the foregoing described casualties within the last twenty-four (24) months of the original term or of any extended or renewed term of this Lease, to the extent that they are untenable or unsuitable, in Tenant's opinion for continued use in the normal conduct of Tenant's business, Tenant shall have the right, exercisable by written notice to Landlord given within sixty (60) days after the date of such damage or destruction, of terminating this Lease effective upon the date of such damage or destruction. If Tenant terminates this Lease as thus provided Landlord shall be entitled to all of the insurance proceeds on the Premises, but not to the proceeds of insurance carried by Tenant on Tenant's Property; provided, however, Tenant shall not have the right to terminate this Lease unless (i) the damage or destruction of the Premises was caused by a peril which

was insured against by the provisions of subparagraph 4(b) of this Lease; (ii) at the time of such damage and destruction the said insurance policies plus any Tenant deductibles to be carried by Tenant were in the amount of the full replacement cost of such improvements and in full force and effect; and (iii) the insurer has confirmed coverage and its obligation to pay. The foregoing sixty (60) day period may be extended in the reasonable discretion of the Landlord in the event the insurer (notwithstanding the due diligence of the Tenant) has not yet confirmed coverage or its obligation to pay as required in paragraph 4(a)(iii) above. If Tenant defaults in its obligation to carry insurance in the amount required under subparagraph 4(b), then, prior to a Tenant termination of this Lease, Tenant shall be obligated to pay toward said reconstruction or to Landlord the difference between the amount actually carried and the amount required to be carried under this paragraph.

(b) Tenant, at its expense and as additional rent hereunder, shall throughout the term of this Lease and any extension or renewal thereof, keep the Premises insured with "all risk" coverage, including code changes, glass breakage, vandalism and malicious mischief coverage, and builder's risk (if the Premises are to be constructed) ("all risk" as such term is used in the insurance industry) for the full replacement value, with any deductible in excess of One Hundred Thousand Dollars (\$100,000.00) to be approved by Landlord (and without any co-insurance provision (Agreed Value endorsement)). The reference to "code changes" herein shall mean that Tenant shall carry "Ordinance and Law Coverage" with limits of not less than the building value for Coverage A (loss to the undamaged portion of the building), limits of not less than fifteen percent (15%) of the building value for Coverage B (Demolition Cost Coverage), and limits not less than fifteen percent (15%) of the building value for Coverage C (Increased Cost of Construction Coverage). If Tenant serves alcoholic beverages, or if the Premises are located in a flood or earthquake zone (as defined in subparagraphs "(e)" and "(f)" below), then additional coverage shall be obtained by Tenant in amounts and in form acceptable to Landlord.

(c) Tenant shall maintain, at its own expense and as additional Rent, public liability insurance (including product and liquor liability) covering the Premises, for the joint benefit of and insuring Tenant and Landlord, each with coverage of not less than One Million Dollars (\$1,000,000.00) per occurrence, with a Two Million Dollars (\$2,000,000.00) general aggregate limit, and with umbrella liability coverage (including product and liquor liability or "following form insurance") of not less than Ten Million Dollars (\$10,000,000.00) per occurrence/aggregate, with any deductible in excess of One Hundred Thousand Dollars (\$100,000.00) to be approved by Landlord. Landlord (and if Landlord is either a general or limited partnership, all general partners) shall be named as an additional insured.

(d) Tenant shall maintain, at its own expense, rental value insurance covering risk of loss due to the occurrence of any of the hazards insured against under Tenants' "all risk" coverage insurance and providing coverage in an amount sufficient to permit the payment of rents payable hereunder for a period (in such case) of not less than six (6) months.



(e) In the event the Premises are located in an area identified by the National Flood Insurance Program as an area having "special flood hazards" (zones beginning with "A" or "V," Tenant shall maintain flood insurance for the full replacement value of the Premises, with any deductible in excess of One Hundred Thousand Dollars (\$100,000.00) to be approved by Landlord.

(f) In the event the Premises are located in a major earthquake damage area and earthquake insurance is available, Tenant shall maintain earthquake insurance for the full replacement value of the Premises, with any deductible in excess of One Hundred Thousand Dollars (\$100,000.00) to be approved by Landlord.

(g) Upon mutual agreement of the Landlord and Tenant, in writing, all stated deductibles or self insured retentions may be increased; provided, however, Tenant's EBITDA (as defined in subparagraph (h) below) and audited net worth thresholds are reasonably acceptable to the Landlord. All insurance companies providing the coverage required under this Paragraph 4 shall (unless prior written consent has been obtained by Landlord) be (i) selected by Tenant; (ii) rated A minus (A-)(ix) or better by Best's Insurance Rating Service; (iii) licensed to write insurance policies in the state in which the Premises is located; and (iv) acceptable to Landlord in Landlord's reasonable discretion. Tenant shall provide Landlord with copies of all policies or certificates of such coverage for the insurance coverages referenced in this Paragraph 4, and all commercial general liability and umbrella liability policies shall name Landlord and any mortgagee designated by Landlord as an additional insured. All property insurance policies shall name the Landlord as a loss payee as their interests may appear, and shall provide that all losses shall be payable as herein provided. All such property insurance policies of insurance shall provide that the amount thereof shall not be reduced and that none of the provisions, agreements or covenants contained therein shall be modified or canceled by the insuring company or companies without thirty (30) days prior written notice being given to Landlord; and that all property insurance proceeds shall be paid by check jointly payable to Landlord and Tenant. Such policy or policies of insurance may also cover loss or damage to Tenant's Property, and the insurance proceeds applicable to Tenant's Property shall not be paid to Landlord or any mortgagee but shall accrue and be payable solely to Tenant. In the event of a casualty, Tenant shall be responsible for any deficiency between the replacement cost of the Premises and the amount actually paid by the insurance company.

(h) Notwithstanding the foregoing, Tenant shall have the ongoing right during the term of this Lease to self insure (including the right to increase all stated deductibles) for all or a portion of the insurance required hereunder, subject, however, to the following: (i) Tenant's earnings before interest, taxes, depreciation and amortization ("EBITDA") shall, for Tenant's prior fiscal year, equal or exceed the sum of Fifteen Million Dollars (\$15,000,000.00) and (ii) Tenant's net worth shall at all times equal or exceed the sum of Thirty Million Dollars (\$30,000,000.00).

## 5. MAINTENANCE AND REPAIR; CONDITION OF PREMISES

(a) Tenant shall maintain the Premises and all buildings and improvements thereon (interior and exterior, structural and otherwise) in good order and repair and, subject to the provisions of paragraph 4(a) with respect to damage within the last twenty-four (24) months of the Lease, and paragraph 6 herein, return the Premises and all buildings and improvements thereon at the expiration of the term of this Lease or any extension thereof in as reasonably as good condition as when received, ordinary wear and tear excepted.

(b) Tenant agrees that Landlord shall have no obligation under this Lease to make any repairs or replacements (including the replacement of obsolete components) to the Premises or the buildings or improvements thereon, or any alteration, addition, change, substitution or improvement thereof or thereto, whether structural or otherwise. The terms "repair" and "replacement" include the replacement of any portions of the Premises which have outlived their useful life during the term of the Lease (or any extensions thereof). Landlord and Tenant intend that the rent received by Landlord shall be free and clear of any expense to Landlord for the construction, care, maintenance (including common area maintenance charges and charges accruing under easements or other agreements relating to the Premises), operation, repair, replacement, alteration, addition, change, substitution and improvement of or to the Premises and any building and improvement thereon. Upon the expiration or earlier termination of this Lease, Tenant shall remain responsible for, and shall pay to Landlord, any cost, charge or expense for which Tenant is otherwise responsible for hereunder attributable to any period (prorated on a daily basis) prior to the expiration or earlier termination of this Lease.

(c) Tenant acknowledges and agrees that the Premises is and shall be leased by Landlord to Tenant in its present "AS IS" condition, and that Landlord makes absolutely no representations or warranties whatsoever with respect to the Premises or the condition thereof. Tenant acknowledges that Landlord has not investigated and does not warrant or represent to Tenant that the Premises is fit for the purposes intended by Tenant or for any other purpose or purposes whatsoever, and Tenant acknowledges that the Premises is to be leased to Tenant in their existing condition, i.e., "AS IS", on and as of the Effective Date.

## 6. CONDEMNATION

(a) In the event that (i) any part of the building on the Premises or (ii) such a material portion of the land constituting a portion of the Premises (for purposes hereof, "material" shall mean 40% or more of the land constituting a portion of the Premises) or (iii) a material portion of the parking (where Landlord is unable within fourteen (14) days prior to the date of surrender to provide suitable replacement parking facilities adjacent to the Premises) shall be taken during the term of this Lease or any extension or renewal thereof for any public or quasi-public use under any governmental law, ordinance, regulation or by right of eminent domain, or shall be sold to the condemning authority under threat of condemnation, with the result occurring from (i), (ii) or (iii)

above being that the Premises cannot continue to be operated as the type of restaurant contemplated herein, or if reasonable access to the adjacent roadways from the existing or comparable curb cuts shall be taken (any of such events being hereinafter referred to as a "taking"), Tenant shall have the option of terminating this Lease as of a date no earlier than the date of such taking, such termination date to be specified in a notice of termination to be given by Tenant to Landlord not fewer than fourteen (14) days prior to the date on which possession of the Premises, or part thereof, must be surrendered to the condemning authority or its designee.

(b) In the event of any taking which does not give rise to an option to terminate or in the event of a taking which does give rise to an option to terminate and Tenant does not elect to terminate, Landlord shall make its award available to Tenant and Tenant shall, to the extent of the award from such taking (which word "award" shall mean the net proceeds after deducting expenses of any settlement, or net purchase price under a sale in lieu of condemnation), promptly restore or repair the Premises and all improvements thereon (except the items which Tenant is entitled to remove) to the same condition as existed immediately prior to such taking insofar as is reasonably possible. If the estimated cost of restoration or repair shall exceed the amount of Landlord's award, Tenant shall deposit with Landlord the amount of such excess. The award and any excess shall be held in trust by Landlord and used, to the extent required, for the purpose of such restoration or repair. A just and proportionate part of the Rent payable hereunder shall be abated from the date of such taking until ten (10) days after Tenant has restored same and thereafter the Rent shall be reduced in proportion to the reduction in the then rental value of the Premises after the taking in comparison with the rental value prior to the taking. If the award shall exceed the amount spent or to be spent promptly to effect such restoration, repair or replacement, such excess shall unconditionally belong to Landlord and shall be paid to Landlord.

(c) In the event of any partial taking where this Lease is not terminated, Tenant shall not be entitled (except for use in reconstruction) to any part of the compensation or award given Landlord for the taking of the fee of the Premises, but Tenant shall have the right to recover from the condemning authority such compensation as is specifically awarded to Tenant (i) to reimburse Tenant for any cost which Tenant may incur in removing Tenant's Property from the Premises and (ii) for loss of Tenant's business.

(d) If this Lease is terminated by reason of a taking, then Landlord shall be entitled to receive the entire award in any such condemnation or eminent domain proceedings or purchase in lieu thereof and Tenant hereby assigns to Landlord all of its right, title and interest in and to all and any part of such award, provided, however, Tenant shall be entitled to receive any award specifically made to reimburse Tenant.

## 7. TAXES AND ASSESSMENTS

Tenant shall pay prior to delinquency all taxes and assessments which may be levied upon or assessed against the Premises and all taxes and assessments of every kind and nature whatsoever



(excluding Landlord's income tax, if any) arising in any way from the use, occupancy or possession of the Premises or assessed against the improvements situated thereon, together with all taxes levied upon or assessed against Tenant's Property. To that end, Landlord shall not be required to pay any taxes or assessments whatsoever which relate to or may be assessed against this Lease, the Rent and other amounts due hereunder, the Premises, improvements and Tenant's Property. Provided, however, that any taxes or assessments which may be levied or assessed against the Premises for a period ending after the termination hereof shall be prorated between Landlord and Tenant as of such date. Within thirty (30) days after Tenant receives the paid receipted tax bills, Tenant shall furnish Landlord with copies of a paid receipt for such tax bills. Tenant may, at its option, contest in good faith and by appropriate and timely legal proceedings any such tax and assessment; provided, however, that Tenant shall indemnify and hold harmless Landlord from any loss or damage resulting from any such contest, and all expenses of same (including, without limitation, all attorneys' fees, court and other costs) are paid solely by Tenant.

## 8. COMPLIANCE, UTILITIES, SURRENDER

(a) Tenant at its expense shall promptly comply with all governmental requirements, whether or not compliance therewith shall require structural changes in the Premises; will procure and maintain all permits, licenses and other authorizations required for the use of the Premises or any part thereof then being made and for the lawful and proper installation, operation and maintenance of all equipment and appliances necessary or appropriate for the operation and maintenance of the Premises, and shall comply with all easements, restrictions, reservations and other instruments of record applicable to the Premises, including without limitation, the procuring and maintaining of insurance required to be maintained by the owner or occupant of the Premises. Tenant shall indemnify and save Landlord harmless from all expenses and damages by reason of any notices, orders, violations or penalties filed against or imposed upon the Premises, or against Landlord as owner thereof, because of Tenant's failure to comply with this paragraph.

(b) Tenant shall pay all charges for heat, water, gas, sewage, electricity and other utilities used or consumed on the Premises and shall contract for the same in its own name. Landlord shall not be liable for any interruption or failure in the supply of any such utility service to the Premises.

(c) Tenant shall peacefully surrender possession of the Premises, the buildings and other improvements thereon, to Landlord at the expiration, or earlier termination, of the original term or any extended or renewed term of this Lease.

## 9. QUIET ENJOYMENT

Landlord covenants and warrants that Landlord has full power and authority to make this Lease, and that Tenant shall have and enjoy full, quiet and peaceful possession of the Premises, their appurtenances and all rights and privileges incidental thereto during the term hereof and any renewals or extensions, subject to the provisions of this Lease and any easements, restrictions,

reservations and other instruments of record applicable to the Premises and in existence at the time of the conveyance of the Premises to Landlord by Tenant.

## 10. OPTION TO RENEW

Tenant shall have one (1) successive ten (10) year and two (2) successive five (5) year options (to be exercised in the order stated) to extend this Lease for up to an additional twenty (20) years upon the same terms, covenants, conditions and rental as set forth herein provided that Tenant is not in default hereunder at the commencement of such option period. Tenant may exercise each such ~~five (5) year~~ option by giving written notice to Landlord not less than six (6) months prior to the expiration of the then current term of this Lease. Should Tenant fail to give Landlord such timely written notice during the required period, all remaining rights of renewal shall automatically expire.

## 11. FIRST RIGHT OF REFUSAL TO PURCHASE; ECONOMIC INFEASIBILITY

(a) So long as Tenant is not in default under this Lease, Tenant shall have the right to purchase the Premises in accordance with the terms of this paragraph. If Landlord receives and desires to accept a bona fide offer to purchase (excluding any transfer to an affiliate of Landlord) the Premises during the term of this Lease or any extension or renewal thereof, Landlord shall serve a notice on Tenant stating the name of such offeror with a copy of the terms and conditions of such offer attached and Tenant shall have the right to purchase the Premises on the same terms and conditions set forth in Landlord's notice, provided Tenant delivers written notice to Landlord of its election to do so within twenty (20) days after receipt of such notice from Landlord. If Tenant does not elect to exercise its right to purchase as aforesaid, Landlord may sell the Premises, provided the sale is consummated with the offeror and on the terms and conditions set forth in Landlord's notice to Tenant. The foregoing preemptive right shall remain in existence notwithstanding its non-exercise in respect to any sale and shall be binding upon Landlord's successors in title.

(b) In the event the Tenant determines in its reasonable business discretion, exercised in good faith, that the Premises is inadequate or unprofitable for the purposes for which the same are then used pursuant to the Lease, then Tenant may, at Tenant's option, during the term of the Lease or any extensions thereof, give written notice to the Landlord of its intention to substitute another improved property having a Village Inn or Bakers Square located thereon, which shall have a value no less than the greater of the following: (1) the then current value of the Premises as established by a qualified independent appraiser (who is a member of the American Institute of Real Estate Appraisers); or (2) Landlord's original Purchase Price for the Premises. Such other restaurant shall be subject to Landlord's approval and shall be subject to the approval of any then mortgagee having an interest in the Premises. The terms of the related lease for such substitute property shall be identical to this Lease, except that the term shall be for the then remainder of the term of this Lease (considering renewal options). Tenant shall pay all reasonable costs associated with the closing to effect the substitution. Upon Landlord's and any mortgagee's approval of the substitution of the

Premises, a closing of title shall take place as soon as reasonably practical thereafter, but in no event later than sixty (60) days after Tenant is notified that the Landlord has approved the substitution. If the Landlord and the Landlord's mortgagee (if any) do not approve such substitute property, Tenant may submit other properties to the Landlord for the Landlord's (and the Landlord's mortgagee, if any) approval.

## **12. NONCOMPETE; CONDUCT OF BUSINESS**

(a) Tenant shall not own an interest in, or operate, another Bakers Square Restaurant within a three (3) mile radius of the Premises. The foregoing restriction shall not preclude Tenant from: (i) selling its products in supermarkets and other similar stores; (ii) operating kiosks or counters from which its food products will be sold; or (iii) operating another Bakers Square concept within such three (3) mile radius provided such concept (a) does not use the word "Restaurant" in its name or advertising or promotional materials and (b) is not larger than two thousand five hundred (2,500) total square feet in size and (c) has limited table service. Violation of this covenant shall constitute a default hereunder and, because the parties agree that damages would not be an adequate remedy, Tenant hereby agrees that Landlord shall be entitled to equitable relief, including injunctive relief and specific performance in addition to any remedy available at law.

(b) The use of the Premises shall be limited to the operation of a Bakers Square Restaurant or an "Approved Concept" as defined in paragraph 17(a), and Tenant shall continuously operate such restaurant on the Premises except for temporary closure due to repairs, Acts of God and similar matters. The Tenant shall at all times maintain the Premises and operate its business in compliance with all applicable regulations and requirements of all county, municipal, state, federal and other governmental authorities, and instruments of record affecting the Premises which are now in force or which are enacted during the term of the Lease.

## **13. DEFAULT**

(a) If any one or more of the following events occur, said event or events shall hereby be classified as a "Default":

(i) If Tenant fails to pay Interim Rent (if applicable), Annual Rent, any additional rent, or any other charges required hereunder or in the event there is a payment or monetary default in any other lease for a property identified on Exhibit "B" attached hereto between Tenant and Landlord or an affiliate of Landlord with the (x) payment amount in default at any one time exceeding Fifty Thousand Dollars (\$50,000.00) or (y) the aggregate of payment or monetary defaults at any one time exceeding Fifty Thousand Dollars (\$50,000.00) when same shall become due and payable, and such failure continues for ten (10) days after written notice from Landlord.

(ii) If Tenant shall fail to perform or observe any term, condition, covenant, agreement, or obligation of this Lease and such failure continues for fifteen (15) days after written notice from Landlord (except that such fifteen (15) day period shall be automatically extended for such additional period of time as is reasonably necessary to cure such Default, if such Default cannot be cured within such period, provided Tenant is in the process of diligently curing the same).

(iii) [INTENTIONALLY DELETED]

(iv) If Tenant fails to continuously operate its business within the Premises except for (i) temporary periods of closure caused by casualty, or (ii) temporary and reasonable periods of remodeling (not to exceed ninety (90) days in any Lease Year without first obtaining Landlord's written approval).

(v) If Tenant shall make an assignment for the benefit of creditors or file a petition, in any federal or state court, in bankruptcy, reorganization, composition, or make an application in any such proceedings for the appointment of a trustee or receiver for all or any portion of its property.

(vi) If any petition shall be filed under federal or state law against Tenant in any bankruptcy, reorganization, or insolvency proceedings, and said proceedings shall not be dismissed or vacated within one hundred and twenty (120) days after such petition is filed.

(vii) If a receiver or trustee shall be appointed under federal or state law for Tenant, or any guarantor of Tenant's obligations hereunder, for all or any portion of the property of either of them, and such receivership or trusteeship shall not be set aside within one hundred and twenty (120) days after such appointment.

(b) Landlord will have the remedies set forth in subparagraphs (c) and (d) below if Tenant commits a default.

(c) Landlord can terminate this Lease and recover possession of the Premises by (i) notifying Tenant that Landlord elects to terminate this Lease, or (ii) terminating Tenant's right to possession of the Premises. For purposes hereof, reletting the Premises or denying Tenant access to the Premises will constitute a termination of Tenant's right to possession of the Premises; provided, however, that acts of maintenance, efforts to relet the Premises, or the appointment of a receiver on Landlord's initiative to protect Landlord's interest under this Lease will not constitute a termination of Tenant's right to possession. Upon any termination, Landlord has the right to recover from Tenant:

(1) The worth, at the time of the award, of the unpaid rent that had been earned at the time of termination of this Lease; plus

- (2) The worth, at the time of the award, of the amount by which the unpaid rent that would have been earned after the date of termination of this Lease until the time the award exceeds the amount of the loss of rent that Tenant proves could have been reasonably avoided; plus
- (3) The worth, at the time of the award, of the amount by which unpaid rent for the balance of the term after the time of award exceeds the amount of the loss of rent that Tenant proves could have been reasonably avoided; plus.
- (4) Any other amount, including court costs, and including, but not limited to, allocable overhead, alterations to the building, leasing, construction, architectural, legal and accounting fees necessary to compensate Landlord for all detriment proximately caused by Tenant's default.

The phrase "worth, at the time of the award" as used in (1) and (2) above is to be computed by allowing interest at the rate of eighteen percent (18%) per annum, or, if less, the highest rate allowable by law. The same phrase as used in (3) above is to be computed by discounting the amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award.

(d) Landlord can continue this Lease in full force and effect, and Landlord will have the right to collect rent when due, as long as Landlord does not terminate this Lease as set forth in paragraph 13(c).

(e) If this Lease shall terminate as provided hereinabove, Landlord may re-enter the Premises and remove Tenant, its agents and sub-tenants, together with all or any of Tenant's Property, by suitable action at law, or by force. Tenant waives any right to the service of any notice of Landlord's intention to re-enter and Landlord shall not be liable in any way in connection with any action it takes pursuant to this paragraph. Notwithstanding such re-entry or removal, Tenant's liability under the provision of this Lease shall survive and continue.

(f) The rights and remedies of Landlord set forth herein shall be in addition to any other right and remedy now or hereinafter provided by law, and all such rights and remedies shall be cumulative. No action or inaction by Landlord shall constitute a waiver of a Default, and no waiver of Default shall be effective unless it is in writing, signed by Landlord.

## 14. HOLDING OVER

In the event Tenant remains in possession of the Premises after the expiration of this Lease, without executing a new lease, Tenant shall occupy the Premises as a tenant from month to month subject to all the terms hereof, but such possession shall not limit Landlord's rights and remedies by reason thereof nor constitute a holding over.



## 15. WAIVER OF SUBROGATION

Notwithstanding anything in this Lease to the contrary, other than Tenant's obligations to repair, restore or rebuild described in paragraph 4 hereinabove, neither party shall be liable to the other for any damage or destruction of the property of the other resulting from fire or other casualty covered by insurance required of either party hereunder, whether or not such loss, damage or destruction of property is caused by or results from the negligence of such party (which term includes such party's officers, employees, agents and invitees), and each party hereby expressly releases the other from all total liability for or on account of any said loss, damage or destruction, whether or not the party suffering the loss is insured against such loss, and if insured whether fully or partially. Each party shall procure all endorsements of insurance policies carried by it necessary to protect the other from any right of subrogation and/or liability in the event of such loss.

## 16. LIEN FOR RENTS

[ INTENTIONALLY DELETED ]

## 17. ASSIGNMENT AND SUBLETTING

(a) The Tenant shall not have the right, without first obtaining the Landlord's prior written consent, to assign or sublet any part or all the Premises to any party for any purpose. Landlord's consent will not be unreasonably withheld, provided, however, (1) the Tenant remain fully liable for its obligations under the Lease; (2) the assignee or sublessee shall be an "Approved Tenant" (as defined below); and (3) the Premises shall be operated as an "Approved Concept" (as defined below). The Landlord, in its sole and absolute discretion, may withhold its approval if the aforementioned requirements are not satisfied. For purposes of this Lease, the term "Approved Tenant" shall mean an assignee or sublessee who (i) has a minimum net worth of not less than Ten Million Dollars (\$10,000,000.00) at the time of assignment or subletting; and (ii) operates not less than four (4) full service restaurants or ten (10) fast food or "quick serve" restaurant concepts which are Approved Concepts. For purposes of this Lease, the term "Approved Concept" shall mean a restaurant concept which (i) is listed in the "Top 200 Restaurant Chains" as ranked in the most recently published edition of the *Nation's Restaurant News* or similar publication selected by Landlord at the time of such assignment; (ii) is an approved restaurant concept by Landlord according to Landlord's then current underwriting and credit guidelines; and (iii) does not violate Landlord's then current concentration requirements. Notwithstanding the foregoing, Tenant shall have the right (subject to Landlord's prior written approval, which approval shall not be unreasonably withheld) to sublet (but not assign) the Premises to any entity operating a full service, sit-down restaurant concept with not more than fifty percent (50%) of its gross sales derived from the sale of liquor, provided: (i) Tenant sublets the Premises within the first ten (10) Lease Years (after which period this right shall automatically terminate); (ii) the total number of such sublettings by Tenant (inclusive of the Premises) does not exceed two (2) for those properties identified on Exhibit "B" attached hereto; and (iii) the use of the Premises is not "Noxious or Offensive," as

hereinafter defined. "Noxious or Offensive" shall be defined to mean a dance hall, off-track betting business, billiard or pool hall, bingo parlor, massage parlor, video game arcade, blood bank, night club, or adult book or adult video store (which are defined as stores in which any part of the inventory is not available for sale or rental to children under eighteen (18) years old, because such inventory explicitly deals with or depicts human sexuality).

No assignment or subletting shall operate to release Tenant from its obligations under the Lease unless Tenant is specifically released by virtue of a separate written instrument executed by Landlord, which may be withheld in Landlord's sole discretion.

Landlord's consent is not required for Tenant to assign this Lease or sublet the Premises to any entity which (i) is Tenant's parent organization, (ii) is any corporation a majority of whose voting stock is owned, directly or indirectly, by Tenant or Tenant's parent organization, (iii) as a result of consolidation, merger, or other reorganization with Tenant or Tenant's parent organization, will own all or substantially all of the voting stock of Tenant or Tenant's parent corporation, or (iv) acquires all or substantially all of the voting stock of Tenant or all or substantially all of the assets of Tenant; provided, however, that the Premises shall only be used as an Approved Concept (as defined above), and provided further that such assignee or sublessee shall execute and deliver to the Landlord a full and unconditional guaranty of the obligations of Tenant.

(b) In the event of the subletting or assignment of this Lease, any monetary consideration obtained from an assignee or transferee (excluding, however, any monetary consideration paid solely for Tenant's Property, as defined in paragraph 3(a)(i) of this Lease) upon such subletting or assignment shall be paid to Landlord. In the event of the subletting or assignment of this Lease, if Tenant derives funds or rental income greater than what it is paying to Landlord under this Lease, the Annual Rent provided for herein shall be increased to that amount received by Tenant from sublessee or assignee of this Lease. In the event of the cessation of any such subletting or assignment, Annual Rent shall return to the amount provided for in the Rent Addendum.

(c) Prior to any assignment allowed hereunder, Tenant shall deliver to Landlord (i) a copy of the assignment documents (including copies of any recorded documents), and (ii) the name, address and telephone number of such assignee and a designated contact person for such assignee, and (iii) a new insurance policy and binder complying with the terms of this Lease and naming such assignee as the tenant of the Premises. Notwithstanding anything herein to the contrary, in the event of any assignment of this Lease or subletting of the Premises, Tenant shall not be released from its obligations under this Lease unless specifically released by virtue of a separate written instrument executed by Landlord, which may be withheld in Landlord's sole discretion.

(d) The Landlord shall have the right without limitation (subject to paragraph 11 hereof) to sell, convey, transfer or assign its interest in the Premises or its interest in this Lease, and upon such conveyance being completed all covenants and obligations of Landlord under this Lease

accruing thereafter shall cease, but such covenants and obligations shall run with the land and shall be binding upon the subsequent landlord or owners of the Premises or of this Lease.

**18. SUBORDINATION, NON-DISTURBANCE, ATTORNMENT, ESTOPPEL CERTIFICATE.**

(a) Upon written request of the holder of any mortgage (which term "mortgage" shall also include deeds of trust) now or hereafter relating to the Premises, Tenant will subordinate its rights under this Lease to the lien thereof and to all advances made or hereafter to be made upon the security thereof, and Tenant shall execute, acknowledge and deliver an instrument in the form customarily used by such encumbrance holder to effect such subordination; provided, however, as a condition of all such subordinations, the holder of such mortgage shall be first required to agree with Tenant that notwithstanding the foreclosure or other exercise of rights under any such first or other mortgage, Tenant's possession and occupancy of the Premises and the improvements and its leasehold estate shall not be disturbed or interfered with nor shall Tenant's rights and obligations under this Lease be altered or adversely affected thereby so long as Tenant is not in default hereunder.

(b) Notwithstanding anything set out in subparagraph (a) above to the contrary, in the event the holder of any such mortgage elects to have this Lease be superior to its mortgage, then upon Tenant's being notified to that effect by such encumbrance holder, this Lease shall be deemed prior to the lien of said mortgage, whether this Lease is dated prior or subsequent to the date of said mortgage, and Tenant shall execute, acknowledge and deliver an instrument, in the form customarily used by such encumbrance holder, effecting such priority.

(c) In the event proceedings are brought for the foreclosure of, or in the event of the exercise of the power of sale under any mortgage made by Landlord covering the Premises, or in the event of delivery of a deed in lieu of foreclosure under such a mortgage Tenant will attorn to the purchaser upon any such foreclosure or sale and recognize such purchaser as Landlord under this Lease, and upon the request of the purchaser, Tenant shall execute, acknowledge and deliver an instrument, in form and substance satisfactory to such purchaser, evidencing such attornment.

(d) Each party agrees, within fourteen (14) days after written request by the other, to execute, acknowledge and deliver to and in favor of any proposed mortgagee or purchaser of the Premises, an estoppel certificate, in the form customarily used by such proposed mortgagee or purchaser, stating, among other things (i) whether this Lease is in full force and effect, (ii) whether this Lease has been modified or amended and, if so, identifying and describing any such modification or amendment, (iii) the date to which Rent and other charges have been paid, and (iv) whether the party furnishing such certificate knows of any default on the part of the other party or has any claim against such party and, if so, specifying the nature of such default or claim.



(e) Upon written demand by the holder of any mortgage covering the Premises, Tenant shall forthwith execute, acknowledge and deliver an agreement in favor of and in the form customarily used by such encumbrance holder, by the terms of which Tenant will agree to give prompt written notice to such encumbrance holder in the event of any casualty damage to the Premises or in the event of any default on the part of Landlord under this Lease, and will agree to allow such encumbrance holder a reasonable length of time after notice to cure or cause the curing of such default before exercising Tenant's rights under this Lease, or terminating or declaring a default under this Lease.

## 19. COOPERATION

(a) Landlord shall fully cooperate with Tenant throughout the term of this Lease to secure or maintain proper zoning, building and other permits and compliance with all applicable laws. Landlord shall execute any petitions, requests, applications and the like as Tenant shall reasonably request in order to obtain any permit, license, variances and approvals which, in the reasonable judgment of Tenant, are necessary for the lawful construction and/or operation of Tenant's business on the Premises, provided, however, that Tenant shall indemnify and save Landlord harmless from any and all expenses, costs, charges, liabilities, losses, obligations, damages and claims of any type which may be imposed upon, asserted against or incurred by Landlord by reason of same.

(b) In the event that Tenant elects to purchase the Premises pursuant to the terms and conditions of paragraph 11 hereof, Landlord shall have the right, in Landlord's sole discretion, to enter into an exchange agreement (the "Exchange Agreement") with a qualified intermediary (the "Intermediary") in order to effectuate a like-kind exchange of the Premises for one or more other properties (the "Replacement Property"). In that event, Landlord shall assign to the Intermediary all of Landlord's right, title and interest in the written contract for purchase and sale of the Premises entered into between Landlord and Tenant as required by paragraph 11 hereof (the "Purchase Contract"), and any deposit paid by Tenant in connection with the purchase of the Premises shall be placed directly with the Intermediary, subject to the terms and conditions of the Purchase Contract and the Exchange Agreement. Landlord and Tenant agree that, at Landlord's option (provided that Tenant shall incur no expense and that there shall be no adverse effect upon the interest in the Premises being purchased by Tenant), Tenant shall cooperate with Landlord in effecting a like-kind exchange of the Premises by Landlord pursuant to and in accordance with the provisions of Section 1031 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations promulgated thereunder, which cooperation shall include, without limitation, Tenant's consent to Landlord's assignment of its interest in the Purchase Contract to the Intermediary and Tenant receiving or taking title to the Premises from the Intermediary or another third party utilized in the transaction in order to facilitate the like-kind exchange on behalf of Landlord.

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## 20. NOTICES

All notices and other communications required or permitted to be given hereunder shall be in writing and shall be delivered by a nationally recognized overnight courier or mailed by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Landlord: CNL APF PARTNERS, LP  
400 East South Street  
Suite 500  
Orlando, Florida 32801

with copy to: Dale A. Burket, Esquire  
Lowndes, Drosdick, Doster, Kantor & Reed, P.A.  
215 North Eola Drive  
Post Office Box 2809  
Orlando, Florida 32802

If to Tenant: Stan Ereckson  
VICORP RESTAURANTS, INC., a Colorado corporation  
400 480 West 48th Avenue  
Denver, Colorado 80216

Any party may change its address for notices by written notice in like manner as provided in this paragraph and such change of address shall be effective seven (7) days after the date notice of such change of address is given. Notice for purposes of this Lease shall be deemed given at the date or time of receipt or attempted delivery, as indicated on the return receipt or the courier's records.

## 21. INDEMNIFICATION

Tenant does hereby indemnify and exonerate Landlord against and from all liabilities, losses, obligations, damages, penalties, claims, costs, charges and expenses, including reasonable architects' and attorneys' fees, which may be imposed upon or asserted against or incurred by Landlord by reason of any of the following occurring:

(a) any work or thing done in respect of construction of, in or to the Premises or any part of the improvements now or hereafter constructed on the Premises;

(b) any use, possession, occupation, operation, maintenance or management of the Premises or any part hereof;

- (c) any failure to, or to properly, use, possess, occupy, operate, maintain or manage the Premises or any part thereof;
- (d) the condition, including environmental conditions, of the Premises or any part thereof;
- (e) any negligence on the part of Tenant or any of its agents, contractors, servants, employees, licensees or invitees;
- (f) any accident, injury or damage to any person or property occurring in, on or about the Premises or any part thereof including any sidewalk adjacent thereto; or
- (g) any failure on the part of Tenant to perform or comply with any of the covenants, agreements, terms or conditions contained in this Lease on its part to be performed or complied with.

**22. HOLD HARMLESS**

Tenant agrees to hold Landlord harmless against any and all claims, damages, accidents and injuries to persons or property caused by or resulting from or in connection with anything in or pertaining to or upon the Premises during the term of this Lease or while Tenant is occupying the Premises, except if such claim, damage, accident or injury shall be caused by the negligence of Landlord or its agents. Landlord shall not be liable to Tenant, Tenant's employees, agents, invitees, licensees or any other person whomsoever for any injury to person or damage to property on or about the Premises caused by the negligence or misconduct of Tenant, its agents, servants or employees or of any other person entering the building under expressed or implied invitation by Tenant or due to any other cause whatsoever, unless caused by the negligence or neglect of Landlord, its employees or its authorized representatives.

**23. LANDLORD'S LIABILITIES**

The term "Landlord" as used in this Lease means the owner from time to time of the Premises. Neither Landlord nor any partner, shareholder or beneficiary thereof shall have any personal liability with respect to any of the provisions of this Lease and if Landlord is in default with respect to its obligations hereunder Tenant shall look solely to the equity of Landlord in the Premises.

**24. SUCCESSORS**

The covenants, conditions and agreements contained in this Lease shall bind and inure to the benefit of Landlord and Tenant and their respective heirs, legal representatives, successors and assigns.

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## 25. ENTIRE AGREEMENT/MEMORANDUM OF LEASE

This Lease contains the entire agreement between the parties hereto and may not be modified in any manner other than in writing signed by the parties hereto or their successors in interest. A memorandum of this Lease shall be executed by the parties and shall be recorded in the official records of the county where the Premises are located.

## 26. GENDER

Whenever the context hereof permits or requires, words in the singular may be regarded as in the plural and vice-versa, and personal pronouns may be read as masculine, feminine and neuter.

## 27. BROKERAGE FEES

It is understood and agreed that neither party has incurred any real estate brokerage fees or commissions arising out of this Lease and each party agrees to hold the other harmless from and against all such fees and commissions incurred, and costs related thereto including legal fees, as a result of its own conduct or alleged conduct.

## 28. CAPTIONS

The captions of this Lease are for convenience only, and do not in any way define, limit, disclose, or amplify terms or provisions of this Lease or the scope or intent thereof.

## 29. LANDLORD'S RIGHT TO CURE

In the event Tenant shall fail, refuse or neglect to perform, observe or comply with any term, condition, covenant, agreement or obligation contained in the Lease on its part to be performed or complied with, then Landlord may, at its sole option, after expiration of any applicable notice and cure period (except in case of an emergency) enter upon the Premises, if deemed necessary by Landlord in its reasonable discretion, and/or do whatever may be deemed necessary by Landlord in its reasonable discretion to cure such failure by Tenant. Tenant shall pay to Landlord within five (5) days of Landlord's request, all costs incurred by Landlord in connection with Landlord's curing of such failure by Tenant including, but not limited to, reasonable attorney and paralegal fees whether or not judicial proceedings are involved. In addition to the above costs, in the event Landlord does not receive payment from Tenant when due hereunder, interest at the rate of eighteen percent (18%) per annum or, if less, the highest rate allowable by law shall be due and payable with respect to such payment from the due date thereof until Landlord receives such payment.

## 30. COMMITMENT LETTER

[INTENTIONALLY DELETED]

## 31. NOT A SECURITY ARRANGEMENT

The parties hereto agree and acknowledge that this transaction is not intended as a security arrangement or financing secured by real property, but shall be construed for all purposes as a true lease.

## 32. NET LEASE

It is the intention of the parties hereto that this Lease is and shall be treated as a triple net lease. Any present or future law to the contrary notwithstanding, this Lease shall not terminate (except as expressly provided in paragraph 4(a)) nor shall Tenant be entitled to any abatement, suspension, deferment, reduction (except as expressly provided in paragraph 6(b) hereof), set-off, counterclaim, or defense with respect to the rent, nor shall the obligations of Tenant hereunder be affected by reason of: any damage to or destruction of the Premises or any part thereof; any taking of any Premises or any part thereof or interest therein by Condemnation or otherwise (except as expressly provided in paragraph 6(b) hereof); any prohibition, limitation, restriction or prevention of Tenant's use, occupancy or enjoyment of the Premises or any part thereof (except to the extent caused solely by the intentional wrongful conduct of Landlord), or any interference with such use, occupancy or enjoyment by any person or for any other reason; any title defect or encumbrance or any matter affecting title to the Premises or any part thereof; any eviction by paramount title or otherwise; any default by Landlord hereunder any proceeding relating to Landlord; the impossibility or illegality of performance by Landlord, Tenant or both; any action of governmental authority; any breach of warranty or misrepresentation; any defect in the condition, quality or fitness for use of the Premises or any part thereof; or any other cause whether similar or dissimilar to the foregoing and whether or not Tenant shall have notice or knowledge of any of the foregoing. The parties intend that the obligations of Tenant hereunder shall be separate and independent covenants and agreements and shall continue unaffected unless such obligations shall have been modified or terminated in accordance with an express provision of this Lease.

## 33. WAIVER

No waiver by Landlord of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by Tenant of the same or any other provision. Landlord's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Landlord's consent to or approval of any subsequent act by Tenant. The acceptance of rent hereunder by Landlord shall not be a waiver of any preceding breach by Tenant of any provision hereof, other than the failure of Tenant to pay the particular rent so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such rent.

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**34. TIME OF THE ESSENCE**

Landlord and Tenant agree that time shall be of the essence of all terms and provisions of this Lease.

**35. GOVERNING LAW**

This Lease shall be construed in accordance with the laws of the state in which the Premises is located.

**[Signatures on Next Page]**

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IN WITNESS WHEREOF, the parties hereto have caused this Lease Agreement to be executed the day and date first above written.

## "LANDLORD"

Signed, Sealed and Delivered  
in the presence of:

CNL APF PARTNERS, LP, a Delaware  
limited partnership

BY: CNL APF GP Corp., a Delaware  
corporation, as general partner

*Lisa M. Fannin*  
Name: Lisa M. Fannin

*Stephanie J. Newell*  
Name: Stephanie J. Newell

By: *John T. Walker*  
John T. Walker, as President

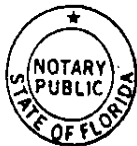
STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this 25 day of October, 1999, by John T. Walker, as President of CNL APF GP CORP., a Delaware corporation, as General Partner of CNL APF PARTNERS, LP, a Delaware limited partnership, on behalf of the corporation and limited partnership.

(NOTARY SEAL)

*Kay Cooksey*  
Notary Public, State of Florida

Printed Name: \_\_\_\_\_  
Notary Commission No. \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_



KAY COOKSEY  
My Commission  
CC816930  
Expires Mar. 26, 2003



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"TENANT"

VICORP RESTAURANTS, INC., a  
Colorado corporation

*Stanley Ereckson, Jr.*  
Name: Stanley Ereckson, Jr.

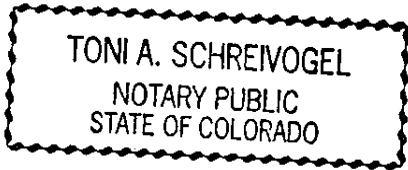
By: *Charles R. Frederickson*  
Name: Charles R. Frederickson  
As Its: President

*Gary F. Burke*  
Name: Gary F. Burke

STATE OF COLORADO  
COUNTY OF DENVER

The foregoing instrument was acknowledged before me this 25th day of October, 1999, by Charles R. Frederickson as President of VICORP RESTAURANTS, INC., a Colorado corporation, on behalf of the corporation.

(NOTARY SEAL)



*Toni A. Schreivogel*  
Notary Public, State of Colorado

Printed Name: Toni A. Schreivogel  
Notary Commission No. n/a  
My Commission Expires: 8/25/2002

Exhibit "A" - Legal Description  
Exhibit "B" - List of Properties for Cross-Default



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## EXHIBIT "A"

### Legal Description of the Premises

Bakers Square #20199/Lansing, Cook County, Illinois

LOTS 21, 22, 23 AND 24 IN AXTELL'S ADDITION TO LANSING, A SUBDIVISION OF THE EAST 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 32, TOWNSHIP 36 NORTH, RANGE 15, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

3545 RIDGE ROAD  
LANSING, IL.

30-32-307-006

-007

-008

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## EXHIBIT "B"

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### List of Properties for Cross-Default

<b>Unit No.</b>	<b>City/State</b>
20211	Alsip, Illinois
20200	Burbank, Illinois
20228	Cherry Valley, Illinois
20711	Coon Rapids, Minnesota
20186	Deerfield, Illinois
20216	Downers Grove, Illinois
20215	Homewood, Illinois
20206	LaGrange, Illinois
20199	Lansing, Illinois
20188	Libertyville, Illinois
20714	Mankato, Minnesota
20226	Matteson, Illinois
20208	Merrillville, Indiana
20180	Niles, Illinois
20209	Palatine, Illinois
20204	Palos Heights, Illinois
20210	St. Charles, Illinois
20180	Westmont, Illinois
20187	Willowbrook, Illinois
20194	Wilmette, Illinois
10131	Omaha, Nebraska

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Bakers Square #20199/Lansing, Cook County, Illinois

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## RENT ADDENDUM to LEASE AGREEMENT

THIS RENT ADDENDUM dated October 28, 1999, by and between CNL APF PARTNERS, LP, a Delaware limited partnership as "Landlord", and VICORP RESTAURANTS, INC., a Colorado corporation, as "Tenant", for Bakers Square #20199, Lansing, Cook County, Illinois, is attached to and made a part of that certain Lease Agreement by and between Landlord and Tenant of even date herewith (the "Lease"). Notwithstanding any other provision to the contrary which may be contained in said Lease, it is specifically agreed by and between Landlord and Tenant as follows:

(a) Commencement of Rent. On the date hereof, Landlord has simultaneously entered into the Lease with Tenant pursuant to which Tenant has agreed to lease from Landlord the Premises and all improvements now or hereafter constructed thereon. Payment of Interim Rent (if applicable), and Annual Rent shall commence as of the Effective Date as provided herein, notwithstanding that the improvements may not be constructed or complete at that time.

(b) Interim Rent.

[INTENTIONALLY DELETED]

(c) Annual Rent.

(i) Beginning on the Effective Date, Tenant covenants and agrees to pay to Landlord annual rent ("Annual Rent") in the annual amount of ONE HUNDRED FORTY EIGHT THOUSAND FOUR HUNDRED SIXTY FIVE AND 88/DOLLARS (\$148,465.88), payable to Landlord in equal monthly installments in the amount of TWELVE THOUSAND THREE HUNDRED SEVENTY TWO AND 16/DOLLARS (\$12,372.16) monthly in advance, on the first (1st) day of each month.

(ii) Increases in Annual Rent. Commencing at the end of the fifth (5th) Lease Year after the Effective Date, and on each fifth (5th) anniversary of such date thereafter during the term of this Lease (and any extension thereof), Annual Rent shall be increased by an amount equal to ten percent (10%) of the Annual Rent payable during the immediately preceding Lease Year.

(iii) Partial Months. If the date on which Annual Rent shall be first due and payable shall fall on a day other than the first day of a calendar month, then rent for the partial rental

month shall be prorated on a per diem basis on the first Annual Rent payment and shall be paid by Tenant to Landlord for such month.

(c) Percentage Rent.

[INTENTIONALLY DELETED]

(d) Reporting. Tenant shall, during the term of this Lease and any extensions thereto:

(i) keep books and records reflecting its financial condition including, but not limited to, the operation of the Premises in accordance with generally accepted accounting principles consistently applied. Tenant shall provide Landlord with unaudited year end financial statements including operating statements and balance sheets and Form 10 K's and Form 10 Q's within ten (10) days after they are generated for Tenant. Landlord shall have the right, at its sole cost and expense, from time to time during normal business hours and at times reasonably convenient to Tenant, to examine such books, records and accounts at the offices of Tenant or other entity as is maintaining such books, records and accounts, and to make such copies or extracts thereof as Landlord shall desire.

(e) Sales/Use Tax. Tenant shall also pay to Landlord any sales and use tax imposed on any Rents payable hereunder from time to time by state law or any other governmental entity, which sums are due monthly as to monthly rent payments on the due date of the rent payment under this Lease.

(f) Late Charges. In the event any installment of rent due hereunder (including Interim Rent and Annual Rent) is not received by Landlord within ten (10) days of its respective due date, there shall be an automatic late charge due to Landlord from Tenant in the amount of five percent (5%) of such delinquent installment of rent. All such late charges due hereunder shall be deemed additional Rent, and are not penalties but rather are charges attributable to administrative and collection costs arising out of such delinquency. In addition to such late charge, in the event Landlord does not receive Rent within ten (10) days after the due date, interest shall be due at the lesser of eighteen percent (18%) per annum or the maximum rate allowable by law with respect to such payment from the due date thereof until Landlord receives such payment.

(g) Payments of Rents. Except as provided in the following sentence, all Rent payments shall be made by check payable to the order of Landlord and shall be sent to 400 East South Street, Suite 500, Orlando, Florida 32801, or to such other place or places as Landlord or its successors or assigns, respectively, may from time to time designate in writing. In the event Tenant is late in the payment of Interim or Annual Rent on three (3) or more occasions, and if Landlord shall so request, Tenant shall establish arrangements whereby Rent is transferred by wire or other means directly from Tenant's bank account to such account as Landlord may designate.

(h) No Abatement. Unless otherwise stated in the Lease, no abatement, offset, diminution or reduction (a) of Rent, charges or other compensation, or (b) of Tenant's other

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obligations under this Lease shall be allowed to Tenant or any person claiming under Tenant, under any circumstances or for any reason whatsoever.

**Initialed for Identification:**

By Landlord



By Tenant

Property of Cook County Clerk's Office

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obligations under this Lease shall be allowed to Tenant or any person claiming under Tenant, under any circumstances or for any reason whatsoever.

**Initialed for Identification:**

\_\_\_\_\_  
By Landlord

  
\_\_\_\_\_  
By Tenant

Property of Cook County Clerk's Office

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## EXHIBIT "B"

The Collateral means the following owned by Tenant, or in which Tenant has an interest (but only to the extent of such interest): all furniture, trade fixtures, equipment and other items of personal property now owned, acquired, held or used by Tenant in its operation of a Bakers Square restaurant and all additions to, substitutions for and replacements of the foregoing, but does not mean and specifically excludes all lighting, electrical, heating, air cooling and air conditioning apparatus, gas, electric and power equipment, pipes, pumps, tanks, conduits, switchboards, plumbing, lifting, cleaning, fire prevention, fire extinguishing, ventilating and communications apparatus, drapes, attached floor coverings, including carpeting, storm doors and windows, toilets and sinks, ducts and compressors, walk-in coolers, walk-in boxes, refrigerators and related machinery and equipment including but not limited to compressors, regardless of whether any of the foregoing are affixed or attached to the Premises.