

1987

G.G.A. Inc v. Toula K. Leventis : Brief of Respondent

Utah Court of Appeals

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Recommended Citation

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UTAH COURT OF APPEALS
BRIEF

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DOCKET NO. 870546 CA IN THE COURT OF APPEALS

STATE OF UTAH

G.G.A., INC., an Indiana
corporation,

Plaintiff-Respondent,

-vs-

TOULA K. LEVENTIS,

Defendant-Appellant.

:

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:

:

Case No. 87-0546 C A

146

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE
THIRD JUDICIAL DISTRICT FOR SALT LAKE COUNTY

STATE OF UTAH

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STATE OF UTAH

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-vs-	:	
TOULA K. LEVENTIS,	:	
Defendant-Appellant.	:	

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STATUTES:

There are no Utah or Federal statutes applicable to this case.

OTHER AUTHORITIES:

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References are as follows:

Index pp. _____: refers to the pages of the original record as paginated by the Salt Lake County Clerk's Office in accordance with Rule 24(e) of the Rules of the Utah Court of Appeals

Addendum, Ex. _____: refers to the exhibits attached in the Addendum of Respondent's Brief in accordance with Rule 24(f) of the Rules of the Utah Court of Appeals.

TABLE OF EXHIBITS
FOUND IN ADDENDUM

1)	Order appealed from	Exhibit "A"
2)	Affidavit of Phillip M. Arlt	Exhibit "B"
3)	Real Estate Ground Lease (the "Lease")	Exhibit "C"
4)	Letter dated September 15, 1986 from Leventis to G.G.A.	Exhibit "D"
5)	Answer to Amended Complaint	Exhibit "E"
6)	Letter dated October 28, 1986 from Leventis to G.G.A.	Exhibit "F"
7)	Letter dated November 21, 1986 from Leventis to G.G.A.	Exhibit "G"
8)	Letter dated December 6, 1986 from G.G.A.'s counsel to Leventis	Exhibit "H"
9)	Letter dated December 29, 1986 from G.G.A.'s counsel to Leventis and Janus Associates	Exhibit "I"
10)	Letter dated February 17, 1987 from G.G.A.'s counsel to Leventis and Leventis' attorney	Exhibit "J"
11)	Letter dated February 27, 1987 from G.G.A.'s counsel to Leventis' attorney	Exhibit "K"
12)	Warranty Deed from Leventis to G.G.A.	Exhibit "L"
13)	Amended Complaint	Exhibit "M"

IN THE COURT OF APPEALS

STATE OF UTAH

G.G.A. INC., an Indiana Corporation,	:	
Plaintiff-Respondent,	:	BRIEF OF RESPONDENT
-vs-	:	
	:	Case No. 87-0546 C A
TOULA K. LEVENTIS,	:	
Defendant-Appellant.	:	

JURISDICTION

Jurisdiction upon the Utah Court of Appeals is pursuant to an Order of the Supreme Court of the State of Utah dated December 3, 1987.

NATURE OF THE PROCEEDINGS IN TRIAL COURT

This is a civil action arising out of the breach of a real estate lease agreement between Plaintiff-Respondent G.G.A. Inc. (hereinafter generally referred to as "G.G.A."), as Lessee and Defendant-Appellant Toula K. Leventis (hereinafter generally referred to as "Leventis"), as Lessor. The trial court after review of extensive memoranda and affidavits from both parties and after hearing oral argument granted G.G.A.'s motion for summary judgment and entered it's Order and a judgment in accordance therewith. (Addendum Ex. A.) Leventis appeals from and seeks reversal of that final order of the trial court.

STATEMENT OF THE ISSUES
PRESENTED FOR REVIEW

The issues presented for review are as follows:

1. Did G.G.A. have an irrevocable option to purchase the subject property for ninety days under the terms of the Lease Agreement when Leventis advised G.G.A. of her intent to sell the property?
2. Did G.G.A. in any way waive its option right by paying under protest an amount in excess of the option amount in order to insure the property containing G.G.A.'s valuable improvements was not conveyed to a third party, while reserving G.G.A.'s rights to recover the protest payment?
3. Was the trial court correct in determining that Leventis was in breach of the Lease Agreement entitling G.G.A. to recover it's attorneys' fees and costs?

STATEMENT OF THE CASE

(A) NATURE OF THE CASE:

This is a civil action which involves the review of the trial court's Order and Judgment in favor of G.G.A. The dispute arises out of a breach of a Real Estate Ground Lease (hereinafter "Lease") between G.G.A. and Leventis. Said Lease contained a provision entitled "Option to Purchase and Right to First Refusal". The issues in this case relate to the legal meaning of that provision.

(B) COURSE OF PROCEEDING AND DISPOSITION IN THE TRIAL COURT:

G.G.A.'s Complaint seeking specific performance of its option to purchase was amended asking recovery of \$40,000 paid under protest to Leventis to purchase the subject real property. G.G.A. moved for an order granting summary judgment supporting its motion by appropriate affidavits. Leventis made a motion for judgment on the pleadings, or in the alternative, a motion for summary judgment supported by affidavits.

The trial court held a hearing upon the respective motions of the parties and after having heard oral argument and having considered the respective affidavits, motions and memoranda entered an order granting G.G.A.'s motion for summary judgment and denying Defendant's motion. Accordingly, an Order was entered by the trial court dated August 31, 1987. (Index at pp. 372-373, Addendum, Ex. A).

Leventis appeals from that Order.

STATEMENT OF FACTS

1. Plaintiff-Respondent G.G.A., is an Indiana corporation with its principal place of business in Salt Lake County, State of Utah, and doing business as Wendy's Old Fashioned Hamburgers. (Index at p. 195, Addendum, Ex. "B").

2. On or about September 9, 1976, G.G.A. as Lessee entered into the Lease with Defendant Leventis as Lessor for a parcel of real property located at approximately 550 East 400

South and 418 South 600 East, Salt Lake City, State of Utah (hereinafter "the property"). (Index at pp. 196, 200, Addendum, Ex. B & C).

3. G.G.A. constructed at its own significant cost a Wendy's Old Fashioned Hamburgers Restaurant and commenced doing business on the property. G.G.A. has since that time, continually operated the Wendy's restaurant on the property and has developed a substantial business and good will at that location. (Index at p. 196, Addendum, Ex. B).

4. G.G.A. at all times fully performed each and every obligation required of it under the terms of the Lease. Leventis has never contended or alleged in the court below or in her appeal brief that G.G.A. was in default of any provision of the Lease.

5. By letter dated September 15, 1986, Leventis advised G.G.A. of a "bona fide offer" for the purchase of the property by a Mr. Jimmy P. Brown (hereinafter "first offer") for the amount of \$210,000.00. (Index at p. 266, Addendum, Ex. D).

6. During early October and prior to October 28, 1986, Phillip M. Arlt on behalf of G.G.A. orally advised Leventis by telephone that G.G.A. would exercise its option to purchase the premises by matching the offer of \$210,000.00. Leventis has admitted in her Answer that G.G.A.'s oral acceptance occurred

before the alleged withdrawal of the option. (Index at pp. 178, 197, Addendum, Ex. B & E).

7. Notwithstanding this oral acceptance, by letter dated October 28, 1986, Leventis advised G.G.A. that Brown had allegedly withdrawn the first offer, that for some inexplicable reason Leventis had allegedly returned the earnest money deposit, and that Leventis did not consider herself bound to sell the property to Plaintiff at a price equivalent to the first offer of \$210,000.00. (Index at p. 270, Addendum, Ex. F).

8. By letter dated November 21, 1986, Leventis advised G.G.A. that she had received a "bona fide offer" from a Mr. James P. Pappas dba Janus Associates (hereinafter "second offer") in the amount of \$250,000.00 for the purchase of the property. (Index at p. 271, Addendum, Ex. G).

9. In Leventis' letter dated November 21, 1986, Leventis acknowledged that she understood G.G.A. had an option to purchase, which option extended for ninety days, and, that the lease/option rights of G.G.A. were "continuing" in nature. In that letter she stated:

My advisors tell me the buyers understand your continuing rights as lessees of the property and your interest in the improvements thereon as well as your option to purchase detailed in Article XIV of our lease . . . It would be a real courtesy to me and greatly appreciated if you could respond to this communication within a

maximum of thirty days rather than the
ninety days provided for in Article XIV
of our lease agreement.

(Index at p. 271) (emphasis added).

10. It is undisputed that within ninety (90) days after receiving notice of the first offer from Leventis, G.G.A. advised Leventis by letter dated December 6, 1986, that G.G.A. was exercising its right to match the first offer and purchase the property at the option price of \$210,000.00. (Index at pp. 274-275. Addendum, Ex. H).

11. Notwithstanding G.G.A.'s timely exercise of its option, Leventis refused to sell G.G.A. the property for the option amount of \$210,000.00. (Index at p. 198, Addendum, Ex. B).

12. By letter dated December 29, 1986 G.G.A. informed both Leventis and Janus Associates (purported second offeror) of G.G.A.'s intention to enforce its option under the terms of the Lease. (Index at pp. 276-277. Addendum, Ex. I).

13. Subsequently, in order to protect its interest in the property, G.G.A. (by letters dated February 17, 1987 and February 27, 1987 from G.G.A.'s counsel), with full reservation of its rights under the Lease paid \$250,000.00 to Leventis, \$40,000.00 of which was clearly identified as paid under protest. (Index at pp. 227, 228, 229, Addendum, Ex. J & K).

14. Thereafter, Leventis conveyed her interest in the property to G.G.A. . (Index at pp. 290-291, Addendum, Ex. L).

15. Subsequent to the conveyance of the property to G.G.A., Leventis assigned her rights in the Lease to G.G.A. See "Assignment of Lease" included as Addendum Exhibit "N" of Appellant's Brief and set forth as a fact by Appellant in her brief at p. 7).

16. Subsequent to the purchase of the property, Plaintiff G.G.A. amended its Complaint against Defendant Leventis to enforce the option purchase price and recover the amount of the \$40,000 paid under protest. (Index at p. 136. Addendum, Ex. M).

17. The Honorable J. Dennis Frederick of the Third Judicial District Court in and for Salt Lake County, State of Utah, granted G.G.A.'s motion for summary judgment and awarded judgment in favor of G.G.A. and against Leventis for the amount of \$40,000 plus G.G.A.'s costs and attorney's fees as provided for in the Lease. (Index at pp. 372-373. Addendum, Ex. A).

SUMMARY OF ARGUMENT

Once Leventis notified G.G.A., in writing, of her intention to sell the property for \$210,000.00, G.G.A. had a vested irrevocable option for ninety (90) days to purchase the property on similar terms. Leventis could not rescind or refuse G.G.A.'s option rights during the ninety (90) day period. When

Leventis refused to sell the property to G.G.A. for \$210,000.00 after G.G.A. had properly exercised its option, Leventis was in breach of the Lease. G.G.A. was forced to pay \$210,000.00 plus an additional \$40,000.00 paid under protest to obtain the property. G.G.A. is entitled to recover the \$40,000.00 paid under protest plus its attorney's fees and costs.

The defenses of merger, waiver or release do not apply to the facts and law of this case. The option price of \$210,000.00 is not merged or extinguished by the warranty deed in this case. G.G.A. has not waived its rights and Leventis is not released under the provisions of the Lease. The Lease provisions related to attorney's fees are not merged and extinguished by deed.

Therefore, G.G.A. is entitled to recover the difference between \$250,000.00 which it was required to pay to obtain the property and the Lease option price of \$210,000.00 or the \$40,000.00 paid under protest, plus interest, costs and attorney's fees.

The holding of the trial court must be affirmed and G.G.A. should be awarded its costs and attorney's fees on appeal.

ARGUMENT

POINT I

G.G.A. HAD A CONTRACTUAL OPTION TO PURCHASE THE SUBJECT PROPERTY

(A) THE LEASE EXPRESSLY PROVIDED G.G.A. AN IRREVOCABLE
OPTION.

The Lease between G.G.A. as Lessee and Leventis as Lessor contained a provision in Article XIV entitled "Option to Purchase and Right to First Refusal". The language of Article XIV is clear and unmistakable. It is the language of an "option" and not the language of a mere "offer" as contended by Leventis. Article XIV contains two paragraphs, the first paragraph applies only after the first twenty-five years of the Lease. At the time of this dispute, the Lease was approximately ten years old. Therefore, those provisions which discuss the selection of a board of three appraisers as a means for determining market value are inapplicable to the case at bar. However, the second paragraph regarding G.G.A.'s right to purchase the subject property at any time during the term of the Lease in the event Leventis places the property for sale does apply.

The relevant second paragraph of the option provision of the Lease states in pertinent part:

Landlords further covenant and agree that
in case landlords shall at anytime during

the term of this lease . . . receive a bona fide offer to purchase said demised premises, landlords shall first notify tenant of such desire and intent or of such offer and the price at which and the terms upon which landlords are willing to sell such estate. Thereupon, tenant shall have the option, to be exercised within ninety days after receipt by tenant of written notice from the landlords to elect to purchase the demised premises and all of the landlords' right, title and interest therein for such price and upon such stated terms and conditions. If tenant exercises said option within said ninety-day period of time, the closing of the purchase and sale shall be consummated with reasonable promptness thereafter. If tenant shall not exercise said option, landlords shall have the right to conclude a sale of their interest in the demised premises for a price not less than and upon terms not more favorable than the price and terms stated in such notice.

(Index at p. 214, Addendum, Ex. C) (emphasis added).

It is absolutely clear that the right bargained and negotiated for in the Lease between G.G.A. and Leventis was an irrevocable option and not merely a right on the part of G.G.A. to be informed of Leventis' intent to sell the land.

(B) THE OPTION PROVISION OF THE LEASE DOES NOT REQUIRE
SEPARATE CONSIDERATION

The cases cited by Leventis do not support her position that the option required separate consideration. Leventis argues that, notwithstanding the clear and unmistakable language of the Lease, G.G.A. did not have an option to purchase. Leventis asserts the option contained in the Lease was not supported by separate consideration and as a result, Leventis contends the option was simply a revocable offer (See generally, Appellant's brief at pp. 18-25). Leventis does this by taking issue with cases cited by G.G.A. in the trial court without identifying either the context or the principles for which G.G.A. used the cases cited.

Leventis contends that the case of J.R. Stone Co., Inc. v. Keate, 576 P.2d 1285 (Utah 1987) supports Leventis' argument that an option contained in a lease requires separate consideration. However, in Stone, unlike the case at bar, the lease and option were separate agreements. Id. at 1287. In the instant case, the Lease and option are contained in one contract and require no separate consideration. In addition, the Court in Stone determined that the option had not been properly exercised. Id. at 1288. In the instant case, G.G.A. fully complied with the requirements of the Lease in order to exercise its option. Although Stone is distinguishable from the case

at bar, the Stone case is relevant to the instant case because of the Court declaration that "the rule that a rejection of the offer terminates the offerees power to accept is not applicable to an option contract." 576 P.2d at 1288 n.4. (emphasis added) (citations omitted). Leventis could not unilaterally terminate G.G.A.'s power to match the terms of the first offer. It follows that Leventis could not affect G.G.A.'s option rights by notifying G.G.A. that the first offer allegedly had been withdrawn. As is clear from Stone, option contracts are outside the scope of the law which governs "offer" and "acceptance".

Next, Leventis unsuccessfully tries to argue that the case of Russell v. Park City Utah Corporation, 548 P.2d 889 (Utah 1976) stands for the proposition that the option in the instant case requires consideration separate from the Lease. However, the Russell case clearly dealt with the issue of whether an option survived a Lease that had been terminated prior to the exercise of the option. The Russell Court determined that the option was an integral part of the Lease and that if the option were to survive termination of the Lease it would need independent consideration.

Defendant's position is that the covenant that the right of purchase shall exist "during the entire term of the lease" is a severable covenant, supported by separate consideration and exists independently of the other provisions of the lease for the entire ten-year term thereof. Whereas, Plaintiff contends to the contrary in that it was intended as an integral part of the total

composite of the lease; and when the lease was forfeited and terminated this covenant (the option) fell with it.

Id. at 892 (parenthetical and emphasis added). The Supreme Court affirmed the trial court's finding in accordance with the Plaintiff's position because of the lack of certainty in the language of the Lease that the option provision was a separate covenant of the Lease and because the Lease in Russell had already lapsed. However, the option to purchase provisions of the Lease in the instant case lack the language of severability. The option in the instant case is clearly not a separate covenant from the Lease but rather an integral part of the Lease and therefore does not need independent consideration.

In addition, the Lease in the instant case was in full force and effect at the time the option was exercised by G.G.A. Therefore, the option does not require separate consideration to support it since the underlying Lease was never terminated. These important factual distinctions preclude Russell from supporting Leventis' argument.

Leventis next contends that G.G.A.'s lower court use of Hoffmann v. Sullivan, 599 P.2d 505 (Utah 1979) is misplaced. (Appellant's Brief at p. 24). Hoffmann also dealt with the enforceability of an option provision in a lease agreement. Leventis argues that in Hoffmann, One Hundred Dollars (\$100) out of each Three Hundred and Seventy Five Dollars (\$375) monthly

Lease payment was somehow separate consideration for the purchase option. However, Leventis again misconstrues case law.

The facts of the Hoffmann case indicate that the agreement merely allowed One Hundred Dollars (\$100) out of the Three Hundred Seventy Five Dollars (\$375) Lease payment to be used as credit toward the purchase price if the option was exercised. This could not be construed as separate consideration since the Lease in Hoffmann required that Three Hundred Seventy Five Dollars (\$375) per month be paid regardless of whether the option was exercised. There is no indication in the Hoffmann decision that in the event that the tenant had not desired the option he could have paid a lesser rent. Indeed, the allowance of a portion of a Lease payment to be contributed towards the purchase price was merely an incentive for the purchaser to exercise the option rather than separate consideration to the owner to preserve the option on behalf of the lessee. Therefore, the Hoffmann case does not support Leventis' argument that the option was merely a revocable offer for lack of separate consideration.

The case of Ottesson v. Malone, 584 P.2d 878 (Utah 1978) further supports the argument that independent consideration is not needed to support an option to purchase contained in a lease. In Ottesson, the Utah Supreme Court again confronted the issue of whether to enforce the option provision of a ground

lease agreement. The option and the lease were contained in one agreement, supported by indivisible consideration. There was no independent consideration for the option identified in the court's opinion, however, the court enforced the option portion of the lease agreement in favor of the purchasers of the property and stated that "a written contract duly entered into should be regarded with some sanctity; and its commitments can only be overcome by clear and convincing evidence". Id. at 880. G.G.A. should be afforded similar treatment with the written Lease and option contract.

(C) THE OPTION TO PURCHASE IN THE INSTANT CASE WAS SUPPORTED BY CONSIDERATION.

1. The consideration of the Lease extends to the option provision.

The Lease, itself, identified the consideration for the entire contract. The option provisions of the Lease rest upon "a common and indivisible consideration" with the rest of the Lease. Gershenhorn v. Stutz, 72 Nev. 293, 304 P.2d 395, 400 (1956). That consideration included the Lease payments and the covenants of the contract. The Lease and its option to purchase provision was a single transaction reciting and referencing the same terms and parties and transcribed into a single cohesive document.

2. The covenants and conditions of the Lease and their performance by G.G.A. constituted additional consideration.

Approximately ten years of continuous performance by G.G.A. of the covenants and conditions of the Lease passed before the breach by Leventis herein. Article XIV was never treated as separable from the remainder of the Lease. Performance under the Lease is a condition precedent and consideration for the exercise of the option provisions. G.G.A. contends, and Leventis does not dispute, that G.G.A. had fully performed and was not in breach of any of the provisions of the Lease prior to the notification to Leventis of G.G.A.'s intent to exercise its option to purchase. The covenants and conditions and full performance of G.G.A. under the Lease were additional consideration for the option provisions.

3. Leventis is estopped from alleging a failure of consideration

The option provisions in the instant case are further supported by the equivalent of consideration by way of estoppel and detrimental reliance. Leventis treated G.G.A. as if the subject option provision was in full force and effect. The letter from Leventis to Phil Arlt of G.G.A. dated September 15, 1986, (Index at p. 266, Addendum Ex. D), clearly shows Leventis' intention to comply with and be bound by Article XIV of the Lease by notifying G.G.A. of a "bona fide" third-party offer to

purchase the property. Leventis now contends that the September 15, 1986 letter was merely an "offer" to G.G.A. subject to revocation. However, the subject letter is not in the language of an offer and references the relevant portion of Article XIV of the Lease which provides G.G.A. with its option to purchase.

G.G.A. relied to its detriment upon the ninety (90) day provisions of the option and did not immediately exercise its option before Leventis attempted to revoke what she claims was merely an "offer". Under Leventis' argument, G.G.A. could have purchased the property for \$210,000.00 and saved the trouble of this lawsuit if G.G.A. had accepted Leventis' "offer" prior to its revocation. However, the language of the Lease and Leventis' apparent acknowledgment of it, reasonably led G.G.A. to believe it had a full ninety (90) days in which to make its corporate decision to exercise its option by matching the terms of the first offer. This reliance was detrimental to the Plaintiff in that it was later forced to pay an additional \$40,000.00 under protest to purchase the property and enter into this lawsuit to enforce its option rights. Sections 90 and 129 of the Restatement (Second) of Contracts dealing with both promissory estoppel and detrimental reliance allow G.G.A. to substitute Leventis' actions and G.G.A.'s reasonable reliance thereon for consideration and allow enforcement of the option to prevent injustice against G.G.A.

§90. Promise Reasonably Inducing Action or
Forbearance

(1) A promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise. The remedy granted for breach may be limited as justice requires

Restatement (Second) of Contracts §90.

§129. Action in Reliance; Specific Performance

A contract for the transfer of an interest in land may be specifically enforced notwithstanding failure to comply with the Statute of Frauds if it is established that the party seeking enforcement, in reasonable reliance on the contract and on the continuing assent of the party against whom enforcement is sought, has so changed his position that injustice can be avoided only by specific enforcement.

Restatement (Second) of Contracts §129. Clearly, G.G.A. was induced by Leventis to forebear notifying Leventis of its exercise of the option based upon the Lease language allowing ninety (90) days for said notification.

(D) LEVENTIS ADMITS G.G.A. HAD A NINETY (90) DAY OPTION TO PURCHASE THE PROPERTY.

Further evidence that Leventis recognized the option contained in Article XIV of the Lease is shown in the letter dated November 21, 1986 from Leventis to Phil Arlt of G.G.A. (Index at p. 271, Addendum Ex. G). In that letter, Leventis refers to Article XIV of the Lease indicating that Leventis had

received a second "bona fide cash offer", outlines the offer and says that:

My advisors tell me the buyers understand your continuing rights as lessees of the property and your interest in the improvements thereon as well your option to purchase detailed in Article XIV of our Lease.

Id. (emphasis added). In addition, Leventis recognizes the ninety (90) day period of Article XIV stating:

It would be a real courtesy to me and greatly appreciated if you could respond to this communication within a maximum of thirty (30) days rather than the ninety (90) days provided for in Article XIV of our Lease Agreement.

Id. (emphasis added). Again, the evidence is clear and convincing that Leventis recognized the option of G.G.A. and the provisions allowing for ninety (90) days in which to exercise the option. That same ninety (90) day provision also applied to the first offer and did not expire until at least December 14, 1986, by which time G.G.A. had already exercised its option by informing Leventis orally and in writing of its intent to purchase the property for a price equivalent to the first offer.

(E) PUBLIC POLICY DEMANDS THAT G.G.A.'S CONTRACTUAL RIGHTS BE TREATED AS AN OPTION

Leventis' position is bad law. It effectively destroys an option by allowing a landlord, after having accepted an offer, to continue to shop for a better offer up until the minute before the closing of the transaction selling the property to the tenant. The ninety (90) day option period was

specifically negotiated for and essential for G.G.A. to make its corporate decision, obtain financing and take care of other details germane to the transaction. Without a known and fixed period of time within which to exercise the option, the option provisions become meaningless. "The sound and generally recognized rule is that a party to a contract is entitled to whatever rights are granted therein, including time limitations". See, Stone, supra., 576 P.2d at 1288.

Leventis tries to eliminate G.G.A.'s option by characterizing the written notice to G.G.A. of Leventis' intention to sell as a mere offer, subject to unilateral withdrawal. This mischaracterization confuses the distinction between an offer to sell and an option as discussed in Stone, supra, at 1288). The clear and unambiguous meaning of the ninety (90) day period repeatedly referred to in the Lease is that it was an option period not subject to withdrawal or revocation by Leventis. The subject Lease should be afforded the sanctity of enforcement of its plain terms.

POINT II.

ONCE G.G.A.'S RIGHTS OF FIRST REFUSAL RIPENED INTO AN
OPTION, IT WAS IRREVOCABLE FOR NINETY DAYS AND
COULD NOT BE RESCINDED OR UNREASONABLY
REFUSED BY LEVENTIS

Leventis' attempted withdrawal of the first offer did not affect G.G.A.'s option rights. Leventis contends that her written notification to G.G.A. of her receipt of the first offer

constituted merely an "offer" from her to G.G.A., and that such offer was subject to withdrawal by Leventis. (See Appellant's Brief, p. 17). Leventis tried to "withdraw" her "offer" prior to the expiration of ninety (90) days and contends that such efforts freed the property from the option created by the Lease and the notification to G.G.A. of Leventis' intention to sell the property pursuant to the first offer. However, G.G.A.'s right to match the first offer within ninety (90) days cannot be disposed of in this manner.

In Prince v. Elm Investment Co., Inc., 649 P.2d 820 (Utah 1982) the Utah Supreme Court outlined the steps necessary for Leventis to sell her property:

In sum, in order to sell property burdened with a right a first refusal a seller must (1) give the promisee of the right of first refusal notice of the third party's offer and his intention to accept that offer; (2) allow the promisee to submit a competing offer; and (3) reject the promisee's offer, if any, only on the basis of a reasonable justification.

Id. at 826. Although the Prince case dealt with a right of first refusal, there is only minor technical difference between that right and the option created in this case. A right of first refusal commences when the holder of the right is notified by the party granting it of an intention to sell and terminates after the holder of the right refuses to match the offer. An option preserves a set period of time in which the holder of the right may determine to match or decline to match the offer.

See, Russell v. Park City Utah Corporation, supra., 548 P.2d at 891.

In this case Leventis notified G.G.A. in writing of an offer by a third party and of her intention to accept that offer. That notification activated the option provision. However, Leventis failed to allow G.G.A. ninety (90) days to submit a competing offer. The right to ponder, consider and accept or reject the first offer for ninety (90) days is an express, specific right of the option provision of the Lease.

Once G.G.A. indicated it was willing to match the first offer, Leventis could only reject G.G.A.'s performance "on the basis of reasonable justification". If the first offer had consisted of some unique chattel as part of the consideration, perhaps G.G.A. would have been unable to match it and Leventis could have refused to sell to G.G.A. However, it did not. The first offer was purely a fungible, monetary offer which G.G.A. was willing and able to match. G.G.A. properly notified Leventis both orally and in writing of its intention to match the first offer. Accordingly, Leventis had no "reasonable justification" to reject G.G.A.'s exercise of its option and match the first offer. Therefore, G.G.A. was and is entitled to the benefit of its right under the Lease to purchase the property at the terms equivalent to the first offer of Two Hundred Ten Thousand Dollars (\$210,000).

POINT III

LEVENTIS HAS NO DEFENSES TO THE
EXERCISE OF G.G.A.'S OPTION

(A) THE DOCTRINE OF MERGER DOES NOT DEFEAT G.G.A.'S RIGHT TO ENFORCE THE TERMS OF THE OPTION.

(1) The Doctrine of Merger does not apply to the instant case.

Leventis contends that the doctrine of merger as expressed in Reese Howell Co. v. Brown, 48 Utah 142, 158 P. 684 (1916) and Dobrusky v. Isbell, 740 P.2d 1325 (Utah 1987) provides that all terms for the sale of the property to G.G.A. including the consideration paid, and all other documents including the Lease between the parties are merged into and controlled by the deed given by Leventis to G.G.A. and dated February 20, 1987. (Addendum Ex. L, see, Appellant's Brief pp. 9-13).

However both Reese and Dobrusky are distinguishable from the case at bar. Reese dealt with the merging of the description of an easement in an antecedent contract which contradicted the description expressed in the deed. 158 P.2d at 689. Dobrusky arose out of a dispute on the description of the subject property which differed between the underlying contract and the deed into which the contract was merged. 740 P.2d at 1326. In short, both cases dealt with conflicts in description of the title of property delivered to the buyer.

The doctrine of merger, which this Court recognizes, is applicable when the acts to be performed by the seller in a contract relate only to the delivery of title to the buyer. Execution and delivery of a deed by the seller then usually constitute full performance on his part, and acceptance of the deed by the buyer manifests his acceptance of that performance even though the estate conveyed may differ from that promised in the antecedent agreement.

Stubbs v. Hemmert, 567 P.2d 168, 169 (Utah 1977) (emphasis added) (footnotes omitted).

However, in the instant case there is no contradiction between the option and the warranty deed as to title or description of the property or interest conveyed. Furthermore, this action arises out of the enforcement of the option and specifically the price or consideration G.G.A. was required to pay for the purchase of the property. There is no contradiction between the deed and the option as to price. The option price that G.G.A. was entitled to purchase the property for was \$210,000. The deed merely recites consideration as "Ten dollars and other good and valuable consideration". Although the deed may be ambiguous as it relates to consideration, there is no contradiction here which requires the exercise of the doctrine of merger so as to make the deed controlling.

(2) The option price was collateral to the deed, and, therefore was not merged or extinguished by the deed.

The doctrine of merger does not apply to collateral terms where the intent of the parties was to treat a specific term of the Lease or contract as collateral to the deed.

There are, however, certain exceptions to this doctrine, including fraud, mistake, and the existence of collateral rights in the contract of sale. Annot. 38 A.L.R. 2d at 1315. In cases relating to collateral terms, courts generally find that the execution and delivery of a deed is not the intended performance of those specific terms and that therefore the terms are not extinguished by acceptance of the deed. . . intent may be an issue where a specific term in the original contract of sale is omitted in the deed, see Annot., 38 A.L.R.2d at 1313,

Secor v. Knight, 716 P.2d 790, 793 (Utah 1986) (emphasis added). The term of "price" for the property in the subject transaction is a collateral term that cannot be resolved by examining the deed from Leventis to G.G.A. alone. Although the subject deed, (Addendum Ex. L), is the final repository of the terms of title and property description, the phrase "Ten dollars and other good and valuable consideration" virtually omits the term of price from the deed. The phrase is at least sufficiently ambiguous so as to require examination of the intent of the parties as found in the other documents which give rise to the transaction, including the option provision of the Lease.

It was clearly the intent of the parties in the instant case, as evidenced by the uncontested facts, that the deed did

not merge with the provisions of the Lease. Even Leventis recognizes the absence of merger in at least three ways.

First, Leventis assigned the Lease to G.G.A. after delivery of the deed. (See "Assignment of Lease" included as Addendum Exhibit "N" of Appellant's Brief). Said Assignment of Lease is dated February 26, 1987 or six (6) days after the delivery of the deed. If the deed extinguished the Lease an assignment was not necessary.

Second, the option itself declares that its terms and provisions extend beyond the sale of the premises to any subsequent owner.

If Tenant exercises said option within said ninety (90) day period of time, the closing of the purchase and sale shall be consummated with reasonable promptness thereafter. If Tenant shall not exercise said option Landlords shall have the right to conclude a sale of their interest in the demised premises for a price not less than and upon terms not more favorable than the price and terms stated in such notice; provided, however, notwithstanding the failure of the Tenant to exercise such option after notice from the Landlords or any subsequent owner or owners of the demised premises, the Tenant's option to purchase aforesaid and Tenant's right of first refusal as herein contained shall remain in force and be binding upon any subsequent owner or owners of the demised premises to the same extent as if said subsequent owner or owners were the Landlords named herein.

(Addendum Ex. C at p. 15) (emphasis added). When the terms or conditions of an underlying contract are not fully performed upon delivery of a deed, the provisions are collateral to the

deed and not extinguished by the deed. Secor v. Knight 716 P.2d 790, 793 (Utah 1986). Here delivery of a deed does not extinguish the option provision of the Lease.

Third, Leventis seeks enforcement of the provisions of the Lease under Article XVIII related to exculpation and release. (See Appellant's Brief at pp. 26, 27). If the deed merged and controlled the terms of the Lease surely Leventis would not argue that the terms under Article XVIII of the Lease survive the deed. Yet, she has so argued.

It is abundantly clear that at the time of the delivery of the deed the intention of the parties was to dispute the issue of the price required under the option. The correspondence in the record and attached as Addendum exhibits to the undisputed facts of this case clearly show that on February 20, 1987 when the deed was delivered, G.G.A. protested the payment of the \$40,000 above the option price. In fact this lawsuit had already been commenced. Therefore, it is no wonder that the subject deed could not be anymore specific on the issue of price than to state "Ten dollars and other good and valuable consideration".

(3) The authority cited by Leventis holds, in actuality, contrary to her position.

Leventis represents to this Court that prevailing case authority from other jurisdictions supports her position. She asserts that the doctrine of merger should be applied in this case to prevent G.G.A. from enforcing its rights under the Lease to purchase the property for the consideration specified by the option. In fact, the very authority cited by Leventis holds to the contrary. At page 11 of her Brief, Leventis states:

The weight of authority throughout the jurisdictions, whenever similar issues were presented, are clearly in favor of the defendant. See cases and annotations in 84 ALR 980 (1933) and 38 ALR 2d 1313 (1954).

There is, in fact, an exhaustive treatment of the theory of merger of a contract into a deed in the ALR annotation cited by Leventis. To say that those annotations support Leventis' position is misleading. In dealing with the subject matter of consideration, the only term in dispute in the instant case, the commentators state:

However, matters of consideration do not always appear in deeds. At least, little more than a bare affirmance that there is a consideration seems to be common. While it is difficult to draw any conclusions from the few cases in scope (most questions of consideration being involved with the vendee's obligation in this respect), the better view appears to be that the consideration may be shown, even though it is not stated in the deed, since it cannot be

said that it was the intent of the parties that the deed merge provisions in the contract involving consideration.

38 ALR 2d 1313, 1314.

In no respect can it be said that the parties in this case intended the Lease provisions respecting the option price to be merged into the deed. The payment under protest, the letters setting forth G.G.A.'s reservation of rights and the deed reciting the consideration of "Ten dollars and other good and valuable consideration", are all clear evidence that the parties recognized that the dispute regarding the option price would survive the delivery of the deed.

(B) THE DEFENSE OF WAIVER IS NOT AVAILABLE TO LEVENTIS.

Leventis attempts to argue that G.G.A. extinguished its option rights by closing the sale and accepting the deed. (See Appellant's Brief pp. 13-16). However, what is described in that argument is confused.

Prior to delivery of the deed, Leventis knew full well the reservation of rights by G.G.A. and the conditions under which G.G.A. paid the \$210,000 plus \$40,000 paid under protest. Examination of the letter dated February 17, 1987 from David L. Bird, G.G.A.'s counsel, to the Defendant and her attorney, (Index at pp. 227, 228, Addendum Ex. J) states:

You are further notified that G.G.A. hereby specifically reserves all of its rights and remedies under the terms of that certain Real Estate Ground Lease, and specifically, but not by

way of limitation to the rights and remedies provided for in Article XIV and further reserves all of its rights and remedies under the September 15, 1986, option and G.G.A.'s timely exercise thereof.

This reservation made before the purchase was closed, can not be made more clear. G.G.A. waived nothing. If this reservation was unacceptable to Leventis, Leventis could have refused to close the sale of the premises to G.G.A. and instead sell the property to a buyer which did not include \$40,000 paid under protest. Instead, Leventis demonstrated the efficacy of the option provisions of the Lease by closing the sale to G.G.A. even after notification of the reservation of G.G.A.'s rights.

(C) THE DEFENSE OF RELEASE IS NOT AVAILABLE TO LEVENTIS.

Leventis contends that she is not liable to G.G.A. by virtue of Article XVIII of the Lease. That paragraph states as follows:

Any party hereto shall have the right at anytime to sell, transfer, assign or convey his or her interest (whether fee, leasehold, or otherwise) in the demised premises (but subject to the option to purchase and rights of first refusal herein above set forth) to any person, firm or corporation; and upon the making of any such sale, transfer, assignment or conveyance such party shall cease to be liable hereunder on account of any liability or obligation which would otherwise have accrued following the date of such sale, transfer, assignment or conveyance. . . .

(Index at p. 217, Addendum, Ex. C) (emphasis added). As argued above, there is an obvious inconsistency between the alleged survival of this provision after delivery of the deed as argued

by Leventis and the merger doctrine argued by Leventis. If this provision of the Lease survives delivery of the deed to G.G.A., then so does the option provision.

In addition, the sale, transfer or assignment discussed in Article XVIII of the Lease is subject to and expressly does not apply to the option to purchase and rights of first refusal of the contract.

Finally, the release of liability described in Article XVIII of the Lease applies only to liabilities which accrued "following the date of such sale". The obligation and liability of Leventis in this action occurred prior to the sale of this property to G.G.A. due to Leventis' breach of the Lease. G.G.A.'s cause of action first arose when Leventis refused to allow G.G.A. to purchase the property for Two Hundred Ten Thousand Dollars (\$210,000) matching the terms of the first offer. It was only after G.G.A.'s cause of action accrued that the property was sold or transferred to G.G.A. Leventis is therefore not released under Article XVIII of the Lease.

POINT IV

THE DISTRICT COURT WAS CORRECT IN AWARDING G.G.A. ITS ATTORNEY'S FEES AND COSTS

G.G.A. is entitled to its attorney's fees and costs. The last paragraph of Article XVII of the Lease clearly indicates that G.G.A. is entitled to its costs and attorney's fees for being required to bring this action.

In case tenants or landlords shall be required to resort to litigation on account of any breach or default in performance hereunder and shall be successful in such litigation that the judgment in such litigation shall include an allowance to the successful party or parties for all costs and expenses including reasonable attorney's fees paid or incurred by such party or parties in connection with such litigation.

(Index at p. 217, Addendum Ex. C). The trial court determined that the above attorney's fees provision of the Lease was valid and granted an award of attorney's fees to G.G.A. as the prevailing party in the litigation at the district court.

Leventis argues that if G.G.A. was granted a ninety (90) day option to purchase the property that option became the "contract" upon which G.G.A.'s attorney's fees, if any, could be awarded. According to Leventis, since this "contract" does not provide for an award of attorney's fees, G.G.A. is not entitled to its fees and costs. (Appellant's Brief p. 25). Leventis attempts to completely separate the Article XIV option from the rest of the Lease. The various provisions of the Lease are part and parcel of the entire contract. In addition, the doctrine of merger does not affect the award of attorney's fees since merger doesn't apply to this case and the underlying contract and its terms remain in effect to the extent of their required performance.

The provision relating to attorney's fees and costs is clear and unambiguous and the lower court was correct in its

award of those fees and costs. Likewise, since the Lease does not limit recovery of attorney's fees and costs to litigation at the trial court level, this Honorable Court should award G.G.A. its further attorney's fees and costs necessitated by this appeal.

CONCLUSION

G.G.A. respectfully submits that the trial court was correct in granting its Motion for Summary Judgment. There are no contested genuine triable issues of fact raised by Leventis, only issues of law. The issues of law clearly favor enforcement of the option rights of G.G.A.

This Court should enter its order affirming the judgment of the trial court which granted G.G.A.'s Motion for Summary Judgment and denied the motions of Leventis.

Additionally, G.G.A. should be awarded its costs and attorney's fees in connection with this appeal and such other and further relief as this Court deems proper in the premises.

DATED this 12th day of January, 1988.

McKAY, BURTON & THURMAN

By: 

David L. Bird

By: 

Bryan A. Larson

Attorneys for

Plaintiff-Respondent

G.G.A. Inc.

1200 Kennecott Building

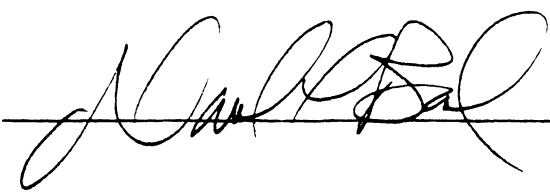
Salt Lake City, Utah 84133

Tele. No.: (801) 521-4135

CERTIFICATE OF SERVICE

I hereby certify that I served four (4) copies of the foregoing Brief of Respondent to Nick J. Colessides, Attorney for Defendant-Appellant Toula K. Leventis, 466 South 400 East Salt Lake City, Utah 84111-3300, Telephone No. 801-521-4441 on this 12th day of January, 1988, by hand-delivery.

BAL8



A D D E N D U M

Exhibit A

FILED IN OFFICE OF
CITY CLERK, L.A.

Bryan A. Larson (#4070)
McKAY, BURTON & THURMAN
1200 Kennecott Building
10 East South Temple Street
Salt Lake City, Utah 84133
Telephone: (801) 521-4135
Attorney for Plaintiff

Bk 213 NC 3863
9-2-87-828

ORDER

Civil No. C87-943

Judge Frederick

On August 10, 1987, Plaintiff brought its Motion for Summary Judgment before the Honorable J. Dennis Frederick of the above-entitled court. In addition, Defendant brought her Motion for Summary Judgment before the above-entitled court. After review of the written Memoranda on file with the court and hearing oral argument by Bryan A. Larson on behalf of the Plaintiff and Nick Colessides on behalf of the Defendant, the court granted Plaintiff's Motion and denied Defendant's Motion.

Based upon the foregoing and good cause appearing therefore, it is hereby

ORDERED, ADJUDGED, AND DECREED that Plaintiff's Motion for Summary Judgment plus costs and attorneys fees is hereby granted and judgment is hereby entered against Toula K. Leventis in the amount of:

\$ 40,000.00 principal;
\$ ~~5,556.50~~ attorneys fees;
\$ ~~101.33~~ in costs;

~~\$ 46,057.83~~ TOTAL JUDGMENT

44 70 75

with interest on the judgment at the legal rate of 12% per annum on the unpaid balance from the date of entry until paid, plus after accruing costs and attorneys fees.

It is further hereby ORDERED, ADJUDGED, AND DECREED that Defendant's Motion for Summary Judgment is hereby denied.

DATED this 31st day of Aug, 1987.


BY THE COURT


J. DENNIS FREDERICK

Approved as to form:

Nick Colessides

ATTEST
H. DIXON HINDLEY
Clerk

By  Deputy Clerk

BAL3/h1

Exhibit B

David L. Bird (0335)
Bryan A. Larson (4070)
McKAY, BURTON & THURMAN
Attorneys for Plaintiff
Suite 1200, Kennecott Building
10 East South Temple Street
Salt Lake City, Utah 84133
Telephone: (801) 521-4135

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

G.G.A., INC., an Indiana corporation,)	
)	AFFIDAVIT OF PHILLIP M. ARLT
)	
Plaintiff,)	
)	Civil No. C87-943
vs.)	
)	
TOULA K. LEVENTIS,)	Judge Frederick
)	
Defendant.)	

Phillip M. Arlt being first duly sworn deposes and says that:

1. Affiant is President of Plaintiff G.G.A., Inc.
2. As President of G.G.A., Inc. he has first-hand knowledge of the events surrounding the above-encaptioned lawsuit.
3. Plaintiff G.G.A., Inc. is an Indiana corporation with its principal place of business in Salt Lake County, State of Utah doing business as Wendy's Old Fashioned Hamburgers.

4. On or about September 9, 1976 G.G.A., Inc. entered into a Real Estate Ground Lease (hereinafter "Lease") with the Defendant Toula K. Leventis (hereinafter "Leventis") as landlord for a parcel of real property located at approximately 550 East 400 South and 418 South 600 East, Salt Lake County, State of Utah (hereinafter "the premises"). A true and correct copy of said Lease is attached hereto as Exhibit "A" and incorporated herein by reference.

5. The Lease was negotiated between Leventis and her attorney, and G.G.A., Inc. and its attorney.

6. Paragraph XIV of said Lease captioned "Option to Purchase and Right to First Refusal" was one of the provisions of the lease specifically negotiated between the parties and a material consideration for G.G.A., Inc. in entering into the Lease.

7. G.G.A., Inc. constructed at its own cost a Wendy's Old Fashioned Hamburger Restaurant and commenced doing business on the premises. G.G.A., Inc. has continually operated the Wendy's Restaurant on the premises since that time.

8. By letter dated September 15, 1986 Leventis advised G.G.A. Inc. of a "bonafide offer" for the purchase of the premises from a Mr. Jimmy P. Brown (hereinafter "Brown") for the amount of \$210,000.00. A true and correct copy of said letter is attached hereto as Exhibit "B" and incorporated herein by

reference. In addition, a true and correct copy of the Earnest Money Sales Agreement between Leventis and Brown as it was represented to G.G.A., Inc. is attached hereto as Exhibit "C" and incorporated herein by reference.

9. Some time during early October and prior to October 28, 1986 Affiant orally advised Leventis by telephone that G.G.A., Inc. would exercise its option to purchase and right to first refusal by matching the bonafide offer of \$210,000.00.

10. Notwithstanding this oral notification, by letter dated October 28, 1986 Leventis advised G.G.A., Inc. that Brown had allegedly withdrawn his offer and that Leventis did not consider herself bound to sell the property to Plaintiff at a price of \$210,000.00. A true and correct copy of said letter is attached hereto as Exhibit "D" and incorporated herein by reference.

11. By letter dated November 21, 1986 Leventis advised G.G.A., Inc. that she had received a bonafide cash offer from Mr. James P. Pappas, d/b/a Janus Associates (hereinafter "Pappas") in the amount of \$250,000.00 for the purchase of the premises. A true and correct copy of that letter is attached hereto as Exhibit "E" and incorporated herein by reference.

12. By letter dated December 6, 1986 G.G.A., Inc. advised Leventis that G.G.A., Inc. was exercising its option to match the offer of Brown and purchase the premises at the price

of \$210,000.00. A true and correct copy of said December 6, 1986 letter is attached hereto as Exhibit "F" and incorporated herein by reference.

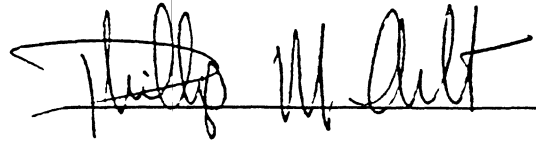
13. Leventis refused to sell to G.G.A., Inc. the property for \$210,000.00.

14. Subsequently, in order to protect its interest in the property, G.G.A., Inc. agreed under protest with full reservation of rights under the Lease to match the alleged offer of Pappas, and purchase the premises.

15. G.G.A., Inc. paid \$250,000.00 to Leventis, \$40,000.00 of which was paid under protest. A true and correct copy of a letter dated February 17, 1987 from David L. Bird and a letter dated February 27, 1987 from Barrie G. McKay, attorney for G.G.A., Inc. to Nick J. Colessides reflects the purchase conditions and a reservation of the rights of G.G.A., Inc. against Leventis are attached hereto as Exhibit "G" and "H"

respectivley and are incorporated herein by reference.

DATED this 20TH day of JULY, 1987.



Phillip M. Arlt

Subscribed and Sworn to before me this 20th day of

July, 1987.



My Commission Expires:



Notary Public

Residing at: Salt Lake City Utah

REAL ESTATE GROUND LEASE

THIS INDENTURE OF LEASE, made and entered into this 9th day of September, 1976, by and between TOULA K. LEVENTIS, of Salt Lake county, Utah, hereinafter referred to as "Landlords", whether one or more, and G.G.A., Inc., an Indiana corporation, with its principal office and place of business in the City of Evansville, Vanderburgh County, Indiana, hereinafter referred to as "Tenant", WITNESSETH THAT:

Landlords, for and in consideration of the covenants and agreements herein contained and set forth to be kept and performed by Tenant and subject to and upon the terms and conditions hereinafter set forth, do hereby lease, let and demise unto Tenant, and Tenant does hereby take and hire of and from Landlords the following described real estate situated in the City of Salt Lake, Salt Lake County, State of Utah, to-wit:

A certain tract or parcel of real estate containing Thirty-six Thousand Eight Hundred Seventy-two (36,872) square feet, more or less, said tract or parcel being more commonly known and referred to as 550 East 4th South and 418 South 6th East, Salt Lake City, Utah, and said real estate being more particularly described in Exhibit A attached hereto and made a part hereof,

which real estate is hereinafter referred to as the "demised premises:.

TO HAVE AND TO HOLD said demised premises unto Tenant for the period commencing as of the date hereof and extending to the first day of February, 1977, (said latter date being the "commencement date") plus a term of twenty-five (25) years commencing on said commencement date, with the right to extend said term as hereinafter set forth, all upon and subject to the limitations, terms, covenants, provisions and conditions hereof as hereinafter set forth.

I.

RENTAL

Tenant covenants and agrees to pay to Landlords, without demand, at such place as Landlords may, from time to time,

EXHIBIT A

designate in writing, and Landlords agree to accept, as rental for the demised premises during the term of this lease the sums set forth in the following schedule:

- A. For a period of four (4) months after the execution of this lease, no rental has to be payable by the Tenant hereunder and the Landlords will make monthly payments to ~~XXLTY~~ Tenant ~~XXXK~~ of Nine Hundred Dollars (\$900.00) per month for said period of four (4) months.
- B. The sum of Twelve Thousand Dollars (\$12,000.00) per year, net rental, payable at the rate of One Thousand Dollars (\$1,000.00) per month in advance on the first day of each calendar month for the first five (5) years of said term.
- C. The sum of Thirteen Thousand Two Hundred Dollars (\$13,200.00) per year, net rental, payable at the rate of One Thousand One Hundred Dollars (\$1,100.00) per month in advance on the first day of each calendar month during the 6th through the 10th years of said term.
- D. The sum of Fourteen Thousand Four Hundred Dollars (\$14,400.00) per year, net rental, payable at the rate of One Thousand Two Hundred Dollars (\$1,200.00) per month in advance on the first day of each calendar month during the 11th through the 15th years of said term.
- E. The sum of Fifteen Thousand Six Hundred Dollars (\$15,600.00) per year, net rental, payable at the rate of One Thousand Three Hundred Dollars (\$1,300.00) per month in advance on the first day of each calendar month during the 16th through the 25th years of said term.
- F. The sum of Sixteen Thousand Eight Hundred Dollars (\$16,800.00) per year, net rental, payable at the rate of One Thousand Four Hundred Dollars (\$1,400.00) per month in advance on the first day of each calendar month during the 26th through the 35th years (the first two [2] extension terms) of said lease.
- G. The sum of Eighteen Thousand Dollars (\$18,000.00) per year, net rental, payable at the rate of One Thousand Five Hundred Dollars (\$1,500.00) per month in advance on the first day of each calendar month during the 36th through 45th years (the third and fourth extension terms) of said lease.

H. The sum of Nineteen Thousand Two Hundred Dollars (\$19,200.00) per year, net rental, payable at the rate of One Thousand Six Hundred Dollars (\$1,600.00) per month in advance on the first day of each calendar month during the 46th through 55th years (the fifth and sixth extension terms) of said lease.

The term "year" or "lease year" as used herein shall be construed as meaning and referring to a period of one (1) year commencing on the first day of the twenty-five (25) year term of this lease or the anniversary of such date.

Rental not paid within ten (10) days from and after the due date thereof shall be payable together with a delinquency charge in the amount of five percent (5%) of the delinquent rental.

Notwithstanding the provisions of the proceeding subparagraphs F, G, and H with respect to the rental payable following the expiration of the initial twenty-five (25) year term hereof, Landlords at their option may request that the rental for each or any of said ten (10) year periods specified in said paragraphs F, G, and H be determined by a board of appraisers each of whom shall be realtors or real estate appraisers engaged in business in the City of Salt Lake, Utah. One of said appraisers shall be selected by Landlords, one by Tenant and the third by the two thus first selected. The cost of such appraisal shall be borne by Landlords. Following the rental determination by such board of appraisers, Tenant shall have the right at its option, for a period of thirty (30) days following the receipt of written notification of such rental determination, by written notice to Landlords to elect to terminate this lease regardless of whether the term thereof shall have been otherwise extended.

As additional consideration for this lease, Tenant undertakes and agrees to secure the release of Landlords and the above described real estate from any further liability under or by virtue of that certain mortgage indebtedness in favor of Valley Bank and Trust Company covering the above described premises, the unpaid principal balance of which is currently in the approximate amount of Forty-seven Thousand Dollars (\$47,000.00), and which said indebtedness is payable in monthly installments of Nine Hundred Dollars (\$900.00) per month. In furtherance thereof, Tenant covenants and agrees to pay, as rental, the sums required to amortize said mortgage indebtedness in accordance with its present terms and from the commencement date hereof until the due date of the last installment of said mortgage indebtedness on April 1, 1981, Landlords shall credit Tenant with the sum of Nine Hundred Dollars (\$900.00) per month against the monthly rental payments otherwise payable hereunder and the balance, if any, of said monthly rental payments shall be paid to Landlords.

As hereinafter more particularly provided, all ad valorem taxes due and payable commencing with the installment of taxes due November, 1977 with respect to the above described real estate, all ad valorem taxes payable with respect to the buildings and improvements erected or placed upon said real estate by Tenant, and all costs of insurance and repairs with respect to the demised premises and improvements, payable during the term of this lease shall be paid by Tenant and the aforesaid rentals payable to Landlords shall therefore be net rentals to Landlords.

II.

LANDLORDS' TITLE AND TENANT'S POSSESSION

Landlords represent and warrant unto Tenant that Landlords are the owners of a merchantable record title in fee simple to the demised premises subject only to existing easements, highways and rights of way, and the mortgagee indebtedness aforesaid, and the lien of current taxes, and that subject to the terms and provisions of this lease, Tenant shall have and enjoy the quiet and peaceful possession of the demised premises during the entire term of this lease. Landlords shall contemporaneously with the execution of this lease furnish to Tenant a standard policy of title insurance showing the demised premises to be free and clear of all liens and encumbrances except as aforesaid.

The right to possession of the demised premises is hereby vested in Tenant effective as of the date of execution hereof if, as of said date, Tenant shall have secured a release of Landlords and the demised premises from any liability under the real estate mortgage in favor of Valley Bank and Trust Company and Tenant has secured a commitment from the City of Salt Lake, Utah, that all permits necessary or required to construct the proposed improvements upon the demised premises will be issued and granted.

III.

TAXES AND ASSESSMENTS

Tenant shall pay before any fine, penalty, interest or cost may be added thereto for the nonpayment thereof, all real estate taxes, assessments, water charges, sewer charges, and other governmental levies and charges, general and special, ordinary and extraordinary, unforeseen as well as foreseen, of any kind and nature whatsoever which are assessed, levied, confirmed, imposed or become a lien upon the demised premises

or any part thereof, including, but not limited to, all ad valorem property taxes payable upon and with respect to the demised premises during the term of this lease, commencing with the ----- installment of 1977 taxes, due and payable in November, 1977, and all such ad valorem taxes payable during the term of this lease with respect to any buildings and improvements erected or placed upon said real estate by Tenant."

To the extent permitted by law and not inconsistent with the requirements of any existing or future mortgage affecting the demised premises, Tenant shall have the right to apply for the conversion of any special assessment for local improvements in order to cause the special assessment payable in installments. Tenant shall have the right to execute in the name of Landlords and as attorney in fact for Landlords (if Landlords after reasonable demand fail to do so) such agreement or agreements or other instruments as may be required or necessary to enable payment of any such special assessments in installments. In case any such assessments are payable and paid in installments as provided or permitted by law, then, Tenant shall not be liable for payment of any installments of such special assessments payable following the expiration of the term or extension of the term of this lease if such installments are on an equal or other periodic basis so that the total payment made by the respective parties toward such special assessment is proportionate to their respective periods of occupancy of the premises.

Tenant or Landlords shall have the right to contest or review by legal proceedings or in such other manner as may be deemed suitable in a tax assessment, rate or charge or other governmental imposition or charge herein previously mentioned. If the proceeding is instituted by Tenant, Tenant shall conduct the contest promptly at the Tenant's own expense. If required for the proceeding brought by Tenant, the contest may be brought in Landlords' name. Tenant may defer payment of a contested item upon condition that before instituting the proceeding Tenant shall furnish to Landlords and to any mortgagee, a surety company bond, cash deposit or other security reasonably satisfactory to Landlords and the mortgagee which is sufficient to cover the amount of the contested items together with interest and penalties for the period which such proceedings may be expected to take in securing payment of the contested items, interest and penalties and all costs in connection therewith. Notwithstanding the furnishing by Tenant of such bond or security other than a cash deposit, Tenant shall promptly pay the contested items if at any time all or any part of the demised premises are in danger of being sold, forfeited or otherwise lost. The

contest referred to shall include appropriate proceedings to review tax assessments, appeal from tax assessments, orders and appeals from any judgments, decrees or orders. All proceedings taken by Tenant shall be commenced as soon as possible after the imposition or assessment of the contested item and shall be prosecuted by Tenant to final adjudication with dispatch. If there is a refund with respect to any contested item based on the payment by Tenant, Tenant shall be entitled to the refund.

Nothing contained in this lease shall require that Tenant pay any inheritance, estate, succession, gift, franchise, gross receipts, income, profit, or excess profit, capital stock, corporate or other similar taxes or capital levy that may be imposed upon Landlords or upon the rent payable by Tenant hereunder, unless the taxes levied upon the rent reserved are in lieu of or as a substitute for a real estate tax upon the demised premises and then only to the extent that it relieves or reduces Tenant's obligation to pay real estate taxes; provided, however, that Tenant shall not be obligated to pay any amount greater than would have been payable by Landlords had the rent upon which the substitute tax was levied been the sole taxable income of Landlords for the relevant tax year in question.

IV.

BUILDING AND IMPROVEMENTS

Tenant shall have the right to remove from the demised premises all buildings and improvements now situated thereon; provided, however, that the removal or demolition of such buildings and improvements shall be at Tenant's sole cost and expense and Tenant shall indemnify and hold Landlords harmless of and from any and all cost, expense or liability incurred in connection with or arising in any manner out of the removal or demolition of said existing building and improvements; provided, however, that the exercise of said right shall be conditioned upon release of Landlords and the demised premises from the mortgage obligation aforesaid and the issuance by the City of Salt Lake of all necessary permits required for the construction of the improvements proposed by Tenant.

Within a reasonable time following the release of the aforesaid mortgage indebtedness and the issuance of all necessary permits by the City of Salt Lake, Tenant at its sole cost and expense and in compliance with all applicable laws, regulations and ordinances shall construct, erect and install upon the demised premises a restaurant building at a cost of not less than Eighty Thousand Dollars (\$80,000.00) and Tenant may, in like manner, remove or demolish any such building, structures or other improvements which Tenant determines to be delapidated, deteriorated, outmoded or otherwise inadequate, provided that in the event of any such removal or demolition Tenant shall promptly thereafter erect, construct

or install upon the demised premises a restaurant building or other similar improvements having a value substantially equal to the value (at the time of removal or demolition) of any such building, structure or other improvement which shall be removed or demolished. Prior to the commencement of the construction of any such buildings or improvements upon the demised premises, Tenant shall furnish Landlords with the plans and specifications for such proposed improvements and the estimated cost thereof. Tenant shall also have the right, at Tenant's cost and expense, to make alterations to and additions to such improvements, provided, however, that the making of such alterations or additions shall not cause any default in any then existing mortgage upon the premises. Prior to the commencement of construction of any such buildings or improvements upon the demised premises by Tenant, Tenant shall furnish to Landlords a good and sufficient corporate performance or surety bond naming both Landlords and Tenant as obligees conditioned that Tenant and/or Tenant's contractors will indemnify and save Landlords and the demised premises harmless of and from any claims for labor or materials furnished in the erection or construction of said building and improvements.

Neither Tenant nor any subtenant shall cause or permit any mechanic's lien to be suffered or imposed upon the title to the demised premises on account of or by reason of the erection, construction, installation, alteration, removal or demolition of any such building, structure or other improvement. In case of the filing of any such lien on account of any work, labor or material caused to be performed or furnished by Tenant, Tenant shall, promptly after receipt from Landlords of notice of such filing, either pay or sufficiently bond the same or procure the discharge thereof and Tenant shall also defend on behalf of Landlords and at Tenant's sole cost and expense any action, suit, or proceeding which may be brought for the enforcement of any such lien and Tenant shall pay any damage and discharge any judgment entered therein and save Landlords of and from any claim, loss, damage or expense on account thereof.

During the term of this lease Tenant shall own all improvements placed upon the demised premises. Upon the termination or expiration of this lease Tenant shall have no right to remove any of said buildings or improvements and all such buildings and improvements then located upon the demised premises shall thereupon be and become exclusively the property of Landlords. However, trade fixtures installed or located upon the demised premises by Tenant or any subtenant shall remain the property of Tenant or any such subtenant and may be removed from the premises; provided, however, that any damage to the premises caused by such removal shall be promptly repaired at the cost and expense of Tenant or any such subtenant who caused such damage.

V.

EMINENT DOMAIN

In case the demised premises or any part thereof shall be appropriated by exercise of the power of eminent domain or conveyed under threat of condemnation by public authority, Landlords shall be entitled to receive, and shall be paid, such award as is provided by law with respect to the appropriation or such conveyance of the land (as distinguished from the buildings and improvements). The entire award with respect to buildings and improvements shall be made available to Tenant for the purpose of paying the cost of repairing, remodeling or altering existing buildings or improvements upon said land or constructing new buildings or improvements thereon, provided, however, that in case this lease is terminated on account of such condemnation or conveyance under threat of such condemnation or in case Tenant shall not expend such funds for one or more of said purposes with reasonable promptness following such taking or conveyance, the amount of such award or portion thereof not so expended shall be divided between Landlords and Tenant in such manner that Landlords shall receive that proportion of such funds equal to the portion of the period of the then current term or extended term of this lease remaining at the time construction of such buildings or improvements was completed which elapsed between the date of such completion and the date of such taking or conveyance and Tenant shall receive that proportion of such funds equal to the portion of such period of time which is subsequent to the date of such taking or conveyance.

In case all of the demised premises shall be appropriated by the exercise of the power of eminent domain or conveyance by reason of threat of condemnation, this lease and the respective obligations of the parties shall terminate except that Tenant shall thereupon be entitled to a pro rata refund of any prepaid rental as of the date of such taking of said premises pursuant to the power of eminent domain.

In case a part of the demised premises shall be appropriated by the exercise of the power of eminent domain and by reason of such appropriation the use thereof shall be materially, substantially and adversely affected, Tenant shall have the right to terminate this lease by the giving of notice to that effect to Landlords; but if Tenant does not exercise such right of termination within six (6) months following the date of such partial appropriation this lease shall continue in full force and effect as to all of the real estate covered hereby which has not been appropriated, and following such taking fixed rental payable hereunder shall be reduced in proportion to the area so appropriated.

Landlords and Tenant each acknowledge that amounts received or receivable on account of or by reason of condemnation of all or any part of the demised premises shall be subject to the prior rights of any mortgagee of the premises in accordance with the terms and provisions of the mortgage held by any such mortgagee.

VI.

DEFAULT

In case Tenant defaults in respect to its covenants to pay rent or in respect to any other of its obligations hereunder and if Tenant fails to cure such default within sixty (60) days after written notice of the existence of such default has been given in writing by Landlords, Landlords may thereupon take possession of the demised premises and terminate this lease; provided, however, that if such default is of a character or kind that it would not be possible for Tenant to cure the same within a period of sixty (60) days this lease shall not be terminated if Tenant shall within said sixty (60) day period of time commence in good faith to cure such default and shall thereafter prosecute the matter of curing such default with reasonable diligence; and provided further, that if at the time of any such default the leasehold estate hereby created is subject to a mortgage lien of record in Salt Lake County, Utah, of which Landlords shall have been notified, or if at the time of any such default the premises are subject to one or more subleases of which Landlords have been notified, Landlords shall not have the right to and may not exercise such option or privilege of termination unless and until like notice of such default shall have been given and afforded to such mortgagee or subtenant or subtenants, which notice may be given at the same time as notice to Tenant.

In the event Tenant shall fail to cure any such default or to commence in good faith to cure such default within the period specified above, and Landlords shall give notice of intent to terminate, then any leasehold mortgagee or subtenant shall have an additional period of sixty (60) days following the expiration of the aforesaid initial sixty (60) day period within which to notify Landlords that it elects to remedy the default and to void the election of Landlords to terminate.

In the event of termination by Landlords, any leasehold mortgagee shall have a period of six (6) months following termination within which to elect to obtain a new lease upon all of the same terms and condition of the original lease upon payment to Landlords of the full amount of all unpaid rental pursuant to the terms of the original lease. In the event of such election by any leasehold mortgagee, Landlords covenant and agree to enter into a new lease with said lease-

hold mortgagee upon written request therefor and the payment of unpaid back rental as aforesaid, which such lease shall have equal priority with the original lease. In addition, Landlords agree to modify said lease upon request by any leasehold mortgagee, provided that any such modifications shall not result in any decrease in rentals or of the Tenant's obligations, nor any decrease in Landlords rights.

Any leasehold mortgagee shall not be required to cure any default resulting from any act of bankruptcy, insolvency or similar act on the part of Tenant.

The failure of Landlords to exercise any such option or privilege of termination at any time shall not be deemed a waiver of the right of termination in the event of any subsequent default.

If Tenant shall be in default in performance of any of the terms or provisions of this lease (other than the payment of rental) Landlords, after thirty (30) days' written notice to Tenant may at any time thereafter perform the same for the account of Tenant at the cost and expense of Tenant, and Tenant shall pay to Landlords on demand any amount properly paid by Landlords in connection with the curing of such default.

Notwithstanding any termination of this lease by reason of Tenant's default or otherwise, if at the time of such termination the premises are occupied by one or more subtenants, and if such subtenant or subtenants shall, after notice, fail to remedy such default, such subtenant or subtenants and each of them shall be entitled to continue in the exercise of all rights and privileges granted them by their respective subleases in accordance with the terms and tenor thereof (including, without limitation, any and all rights or privileges to renew or extend the terms of said sublease or subleases), so long as they shall keep and perform their respective obligations thereunder. Any such sublease or subleases effected by Tenant prior to termination of this lease shall survive termination and shall continue in full force and effect subject to the terms and provisions thereof and after such termination Landlords shall be substituted for Tenant in such subleases and shall be entitled to exercise all rights of Tenant in and under said subleases and to collect all rentals and other payments falling due under such subleases. Any and all such subleases shall continue to be binding upon Landlords and said sublessees, respectively, as though Landlords herein had been the lessors in each of such subleases.

LANDLORDS' RIGHT TO MORTGAGE DEMISED PREMISES

Landlords reserve the right to mortgage the demised premises; provided, however, that the monthly installment payments required to amortize any such mortgage indebtedness shall in no event exceed the rental payable pursuant to the terms and provisions hereof and provided further that Landlords shall secure and deliver to Tenant from any such mortgagee a written non-disturbance agreement providing that the holder of such mortgage will recognize Tenant or any subtenant's lease of the demised premises and will not disturb the Tenant or any subtenant's quiet possession of the premises for so long as Tenant or any subtenant is not in default of any of the terms and provisions of this lease.

VIII.

ADDITIONAL COVENANTS OF TENANT

Tenant agrees that Landlords shall have no obligation of any kind or character to maintain or repair any of the buildings or other improvements which Tenant shall cause to be constructed upon the demised premises.

Tenant further agrees that Landlords shall have no obligation to pay for or furnish gas, electricity, water or other utility services furnished during the principal term hereof in connection with the demised premises and Tenant covenants and agrees to hold Landlords harmless of and from any and all claims on account of charges for such utility services.

Tenant covenants and agrees to pay when due all mortgage payments required to be paid in connection with any mortgage loan upon the leasehold estate and any buildings or improvements constructed by Tenant. If Tenant shall fail to pay any such mortgage payments, Landlords may pay, but shall not be obligated to pay the same; and Tenant shall repay to Landlords upon demand the full amount of any such payments made by Landlords, together with interest at the rate hereinafter specified.

IX.

LIABILITY INSURANCE

Tenant covenants and agrees that it will, at its sole cost and expense, during the entire term of this lease, keep and maintain in full force and effect public liability insurance with respect to the use and occupancy of the above described premises, providing insurance with respect to such claims for injuries to or death of persons or damage or destruction of property arising out of or by reason of the use and occupancy of the premises and with limits of not less than Fifty Thousand Dollars (\$50,000.00) with respect to claims for to property, Three Hundred Thousand Dollars (\$300,000.00) with respect to claims on account of injuries

or death of more than one person arising out of any one accident or occurrence and which insurance shall name and designate Tenant or assigns and Landlords or their successors as insureds. In case Tenant shall at any time fail to procure such insurance Landlords, after thirty (30) days' written notice to Tenant, may procure the same and any and all sums paid for such insurance by Landlords shall be and become immediately due and payable by Tenant upon demand. Tenant agrees that the amounts and limits of the above described liability insurance shall be reviewed with Landlords at least once each five (5) years during the term or extension of the term of this lease, and that upon review the amounts of such limits shall be increased or decreased, in the light of then existing circumstances, to amounts and limits which are comparable to amounts and limits of such insurance then being maintained by reasonably prudent owners of comparable premises.

X.

NOTICES

Any notice required or permitted pursuant to the terms and provisions of this lease shall be deemed fully given or served if transmitted by registered or certified mail with return receipt requested, addressed to Tenant at 4300 East Morgan Avenue, Evansville, Indiana 47715, and to Landlords at the address then fixed by Landlords for the payment of rent. Either party may by like written notice at any time and from time to time designate a different address to which notices shall subsequently be transmitted to him, her or it.

XI.

DESTRUCTION OF IMPROVEMENTS -
MAINTENANCE OF HAZARD INSURANCE

During the term of this lease, Tenant at its sole cost and expense shall keep and maintain in full force and effect fire and extended coverage insurance with respect to the improvements situated upon the above described premises in an amount not less than the value, from time to time, of the destructible improvements situated upon the demised premises; and Tenant shall furnish to Landlords copies of policies or certificates with respect thereto evidencing the procurement and maintenance of such insurance. Any such fire and extended coverage insurance shall name any leasehold mortgagee as an additional insured and Tenant shall furnish to any such leasehold mortgagee similar copies of policies or certificates with respect thereto evidencing the procurement and maintenance of such insurance.

In case of damage to or destruction of any improvements, the proceeds of such insurance shall be used and applied to repair, restore or rebuild (subject to Tenant's option to terminate as set forth below), as the case may require, such improvements.

The occurrence of damage to such improvements by fire or other casualty shall not be cause for termination of this lease (subject to Tenant's option to terminate as set forth below in the event of total or substantial destruction) nor shall there be any abatement of rent on account of any such damage. In case such improvements are totally or substantially destroyed by fire or other casualty, and if the leasehold estate shall be subject to no unpaid mortgage indebtedness, Tenant at its option may terminate this lease by notice in writing given within sixty (60) days following the occurrence of such destruction and in such case Tenant shall be released and discharged of and from any and all liability with respect to the payment of rental or other obligations hereunder accruing subsequent to such destruction; provided, however, that in case of such termination (by reason of Tenant's exercise of its option so to do) all proceeds of hazard insurance with respect to the improvements upon said premises which shall have been constructed or installed by Tenant shall be payable to and be the sole property of Landlords.

XII.

ASSIGNMENT, SUBLETTING AND ATTORNMEN

Tenant shall have the right to sublet any part or parts or all of the demised premises for use and occupancy for any lawful purpose; but the term or terms of any such sublease or subleases shall not extend beyond the term of this lease. The interest and estate of any such sublessee shall not terminate by reason of Tenant's default hereunder.

The leasehold estate hereby created shall be freely assignable by Tenant and its assigns and no holder of the leasehold estate hereby created shall be liable for payment of rent or performance of any other obligation hereunder which accrues after the period of time during which such holder was vested with title to the leasehold estate hereby created. Tenant may from time to time without consent of Landlords assign its interest hereunder, either in whole or in part, by way of mortgage to any bank, insurance company or any other lending institution as mortgagee or otherwise. Any mortgagee acquiring the leasehold estate as provided above shall be liable for the performance of the obligation imposed upon Tenant by this lease only during the periods such mortgagee has ownership of the leasehold estate or possession of the premises subject thereto. Nothing contained in any such mortgage shall release or be deemed to release Tenant from the full and faithful observance or performance of any covenant and condition in this lease contained and on its part to be observed and performed or from any liability for the nonobservance or nonperformance thereof or be deemed to constitute the waiver of any rights of Landlords hereunder.

Landlords agree that their fee title in the premises shall be subject and subordinate to any subleases made between Tenant and subtenants occupying space in the demised premises and to any renewals, modifications, replacements and extensions of said subleases with said subtenants. Landlords agree to execute any further documents necessary to ratify the said subordination.

XIII.

OPTIONS TO EXTEND

So long as Tenant is not in default hereunder, Tenant shall have and is hereby granted options to extend the term of this lease for six (6) additional periods of five (5) years each, upon the terms, provisions and conditions contained and set forth in this lease. The first of said extended terms shall commence on the day following the expiration of the initial twenty-five (25) year term of this lease. Said options to extend shall be automatically exercised and the term extended without notice to Landlords from Tenant. In the event Tenant does not desire to extend this lease after the initial term or any extended term, Tenant shall give written notice to Landlords of its election not to extend this lease, which notice shall be given not less than one hundred eighty (180) days prior to the expiration of the initial term or the then extended term.

XIV.

OPTION TO PURCHASE
AND RIGHT TO FIRST REFUSAL

At any time following the expiration of the initial twenty-five (25) year term hereof, and so long as Tenant is not in default in performance hereunder, Tenant shall have and Landlords do hereby grant unto Tenant, an option to purchase the above described premises upon the terms and conditions herein set forth. In the event Tenant shall notify Landlords of its intent to exercise such option to purchase, and if Landlords and Tenant shall be unable to agree upon a purchase price, then the fair market value of the above described real estate hereby demised shall be determined by a board of three (3) appraisers, each of whom shall be licensed realtors or real estate appraisers engaged in business in Salt Lake City, Utah. One of said appraisers shall be selected by Landlords, one by Tenant and the third by the two so selected. The decision of a majority of any such board of appraisers shall be binding and conclusive upon the parties and the cost of such appraisal shall be borne equally by Landlords and Tenant. Following the determination of the fair market value of the demised premises as aforesaid, Tenant shall have the option for a period of sixty (60) days by written notice to Landlords following the determination of the fair market value to elect to purchase

the above described premises. In the event of the exercise of such option, the purchase price shall be an amount equal to the appraised fair market value of the above described real estate hereby demised. Said purchase price shall be payable in cash on the closing date as hereinafter set forth. In the event of the exercise of said option by Tenant, the closing of the purchase and sale shall be consummated with reasonable promptness thereafter by the payment of the purchase price to Landlords and the conveyance by Landlords of said real estate to Tenant by good and sufficient warranty deed whereby said real estate shall be conveyed to Tenant free and clear of and from any and all liens and encumbrances except building and use restrictions of record, roadways, easements and rights of way, if any, affecting title to said real estate, all nondelinquent real estate taxes which shall be a lien as of the date of closing, which said taxes Tenant shall assume and agree to pay and any liens and encumbrances suffered or imposed by Tenant. In the event of the exercise of such option and consummation of a sale of said premises pursuant thereto, rental hereunder shall be payable to the date of closing of said sale and any prepaid rental referable to the period of time following the date of the consummation of such sale shall be refunded by Landlords to Tenant.

Landlords further covenant and agree that in case Landlords shall at any time during the term of this lease as the same may be extended intend or desire to sell Landlords' estate in the demised premises, or if Landlords shall receive a bona fide offer to purchase said demised premises, Landlords shall first notify Tenant of such desire and intent or of such offer and the price at which and the terms upon which Landlords are willing to sell such estate. Thereupon, Tenant shall have the option, to be exercised within ninety (90) days after receipt by Tenant of written notice from the Landlords to elect to purchase the demised premises and all of Landlords' right, title and interest therein for such price and upon such stated terms and conditions. If Tenant exercises said option within said ninety (90) day period of time, the closing of the purchase and sale shall be consummated with reasonable promptness thereafter. If Tenant shall not exercise said option. Landlords shall have the right to conclude a sale of their interest in the demised premises for a price not less than and upon terms not more favorable than the price and terms stated in such notice; provided, however, notwithstanding the failure of the Tenant to exercise such option after notice from the Landlords or any subsequent owner or owners of the demised premises, the Tenant's option to purchase aforesaid and Tenant's right of first refusal as herein contained shall remain in force and be binding upon any subsequent owner or owners of the demised premises to the same extent as if said subsequent owner or owners were the Landlords named herein.

XV.

ZONING AND PERMITS

Landlords further covenant and agree that in the event Tenant is unable to secure all necessary permits required for the construction of the buildings and improvements proposed by Tenant within thirty (30) days following execution hereof, Tenant shall have the absolute right at its discretion to elect to terminate this lease in which event Tenant shall be released from any and all liability hereunder.

XVI.

SUPPLEMENTARY AGREEMENTS

Tenant agrees that at any time and from time to time upon not less than ten (10) days' prior written request by Landlords it will execute, acknowledge and deliver to Landlords, and Landlords agree that at any time and from time to time upon not less than ten (10) days' prior written request by Tenant they will execute, acknowledge and deliver to Tenant a statement in writing certifying that this lease is unmodified and in full force and effect (or if there have been modifications that the same is in full force and effect as modified and stating the modifications), and the dates to which the fixed rent and other charges have been paid in advance, if any, and whether or not there is any existing default by Tenant with respect to any sums of money required to be paid by Tenant under the terms of this lease, or notice of default served by Landlords, it being intended that any such statement delivered pursuant to this paragraph may be relied upon by any prospective purchaser of the fee or leasehold estate or by any prospective or existing mortgagee or assignee of any mortgagee of the leasehold estate. If any such certification by Landlords shall allege nonperformance by Tenant, the nature and extent of such nonperformance shall be summarized therein. In case either party shall fail to execute, acknowledge and deliver to the other such statement within ten (10) days after such request is made in writing it shall be conclusively presumed a certification that this lease is unmodified and in full force and effect and that all rental has been paid and that there is no existing default.

Landlords covenant and agree they they will execute any and all instruments which may be required of Landlords

in connection with the granting of easements (affecting the demised premises or any street adjacent thereto) in favor of utility companies for purposes of the installation of water, gas, steam, electricity, telephone, sewage or storm drainage serving or for the benefit of the demised premises.

XVII

MISCELLANEOUS PROVISIONS

Landlords and Tenant each hereby agree to execute and deliver upon demand any and all instruments which may be reasonably required or necessary to give further assurance of the covenants and agreements herein contained and set forth.

Notwithstanding any of the provisions hereof which might be construed to the contrary, this lease shall not be cancelled, surrendered, or any of the provisions thereof modified without the express written consent of any mortgagee of the leasehold estate of Tenant.

In case Tenant shall hold over after the expiration of the term of this lease such tenancy shall be deemed to be from month to month only but otherwise upon and subject to the terms, covenants and conditions herein contained.

The time or times herein specified within which Tenant is required to perform any act or to do any thing shall be and they are hereby extended for periods of time equal to the period of time during which performance is delayed directly by reason of strikes, lockouts, riots or insurrection, acts of God or other causes or conditions beyond Tenant's control.

Landlords shall have and are hereby given and granted the right to enter upon the demised premises at all reasonable times for the purposes of inspecting the condition thereof.

The parties agree that promptly following the execution and delivery of this agreement they will make and enter into a short form of lease for purposes of recording wherein there shall be set forth the legal description of the demised premises, the term of this lease and such other provisions hereof as shall be agreed upon by the parties.

In case of termination of this lease for any reason, Tenant covenants and agrees that it will promptly execute,

in recordable form, a release of this lease so as to provide to landlords record evidence of such termination.


In case Landlords or Tenant shall be required to resort to litigation on account of any breach or default in performance hereunder and shall be successful in such litigation the judgment in such litigation shall include an allowance to the successful party or parties for all costs and expenses including reasonable attorneys' fees paid or incurred by such party or parties in connection with such litigation.

XVIII.

SUCCESSORS AND ASSIGNS

The terms and provisions hereof shall be and constitute covenants running with the title to the real estate described above, and shall inure to the benefit of and be binding upon the respective successors and assigns of the parties. Any party hereto shall have the right at any time to sell, transfer, assign, or convey his, her or its interest (whether fee, leasehold, or otherwise) in the demised premises (but subject to the option to purchase and rights of first refusal hereinabove set forth) to any person, firm or corporation; and upon the making of any such sale, transfer, assignment or conveyance such party shall cease to be liable hereunder on account of any liability or obligation which would otherwise have accrued following the date of such sale, transfer, assignment, or conveyance; provided, however, that any such sale, transfer, assignment or conveyance shall be subject to the terms and provisions of this agreement which shall be binding upon any purchaser, transferee or assignee.

IN WITNESS WHEREOF, Landlords have hereunto set their hands and seals and Tenant has caused the execution hereof and the affixing hereto of its corporate seal by its duly authorized officers pursuant to authority of its Board of Directors as of the day and date first above written.

 (SEAL)
Toula K. Leventis

____ (SEAL)

"Landlords"

By A. Guagenti
its President

ATTEST:

Robert E. Griffin
Its Secretary

"Tenant"

STATE OF UTAH)
)SS:
COUNTY OF SALT LAKE)

Before me, the undersigned, a Notary Public, in and for said County and State, personally appeared the within named TOULA K. LEVENTIS and acknowledged the execution of the above and foregoing instrument.

WITNESS my hand and Notarial Seal this 9th day of September, 1976.

My Commission Expires:
October 5, 1979.

[Signature]
Notary Public
Residing in Salt Lake City, Utah.

STATE OF INDIANA)
)SS:
COUNTY OF VANDERBURGH)

Before me, the undersigned, a Notary Public, in and for said County and State, personally appeared the within named G.G.A., Inc., an Indiana corporation by Andrew Guagenti, its President and Robert E. Griffin, its Secretary who acknowledged the execution of the above and foregoing instrument pursuant to authority of its Board of Directors.

WITNESS my hand and Notarial Seal this 13th day of September, 1976.

My Commission Expires:
March 18, 1979

[Signature]
Notary Public

TOULA K. LEVENTIS

2875 Crestview Drive
Salt Lake City, Utah 84108

September 15, 1986

Mr. Phil Arlt
G.G.A. Incorporated
Wendy's Old Fashioned Hamburgers
232 South Main Street
Salt Lake City, Utah 84101

Re: Property located at 550 East 400 South and 418 South 600 East,
Salt Lake City, Utah 84102.

Dear Phil:

In compliance with the terms set forth in Article XIV of the "Real Estate Gound Lease" made and entered into on September 9, 1976, by and between G.G.A., Inc. as Tenant and Toula K. Leventis as Landlord, covering real property located at 550 East 400 South and 418 South 600 East, Salt Lake City, Utan, I am writing this to inform you that I have received a bona fide offer for the purchase of the above captioned property. Mr. Jimmy P. Brown, a reputable Salt Lake City businessman and close personal friend, has made an offer to purchase the property for \$210,000.00. I am enclosing a copy of the Earnest Money Agreement together with a copy of Mr. Brown's check for \$5,000.00 for your information.

Since a considerable amount of time has elapsed since we first discussed your interest in purchasing the above mentioned property, I would be most appreciative if you would kindly respond to this communication as soon as possible.

Thank you for your anticipated cooperation.

With kindest personal regards,

Sincerely yours,



Toula K. Leventis

cc: Mr. Andy Guagenti, Secretary, G.G.A., Inc.
Mr. Robert E. Griffin, Treasurer, G.G.A., Inc.

EXHIBIT B

EARNEST MONEY SALES AGREEMENT

EARNEST MONEY RECEIPT

Legend Yes(X) No(O)

DATE: Sept. 9, 1986

The undersigned Buyer JIMMY P. BROWN hereby deposits with Broker as EARNEST MONEY, the amount of Five Thousand Dollars Dollars (\$ 5,000.00) in the form of a check, which shall be deposited in accordance with applicable State

Brokerage _____ Phone Number _____ Received by _____

OFFER TO PURCHASE

1. PROPERTY DESCRIPTION The above stated EARNEST MONEY is given to secure and apply on the purchase of the property situated at 572 East Fourth South in the City of Salt Lake City County of Salt Lake subject to any restrictive covenants, zoning regulations, utility or other easements or rights of way, government patents or state deeds of record approved by in accordance with Section G. Said property is more particularly described as A parcel of land about 43,208 sq. ft. or 0.99+ acres on which a Wendy's fast food restaurant has been built. See attached Exhibit "A" for legal

CHECK APPLICABLE BOXES description.

☐ UNIMPROVED REAL PROPERTY ☐ Vacant Lot ☐ Vacant Acreage ☐ Other _____
☒ IMPROVED REAL PROPERTY ☒ Commercial ☐ Residential ☐ Condo ☐ Other _____

(a) Included items. Unless excluded below, this sale shall include all fixtures and any of the items shown in Section A if presently attached to the property. The following personal property shall also be included in this sale and conveyed under separate Bill of Sale with warranties as to title _____

(b) Excluded items. The following items are specifically excluded from this sale: No exclusions. Buyer acknowledges Real Estate Ground Lease dated September 9, 1976 by and between Seller and C.G.A., Inc. an Indian

(c) ~~Conveyances, easements and other rights~~ Seller represents that the property includes the following improvements in the purchase:
☒ public sewer ☒ connected ☒ well ☒ connected ☒ other ☒ electricity ☒ connected
☒ septic tank ☐ connected ☐ irrigation water ☐ secondary system ☐ ingress & egress by private easement:
☐ other sanitary system _____ = of shares _____ Company _____ ☒ dedicated road ☒ paved
☒ public water ☒ connected ☐ TV antenna ☐ master antenna ☐ prewired ☒ curb and gutter
☒ private water ☒ connected ☒ natural gas ☒ connected ☐ other rights _____

(d) Survey. A certified survey ☐ shall be furnished at the expense of _____ prior to closing. ☐ shall not be turned in.

(e) Buyer Inspection. Buyer has made a visual inspection of the property and subject to Section 1 (c) above and 6 below accepts it in its present physical condition, except: _____

2. PURCHASE PRICE AND FINANCING. The total purchase price for the property is Two Hundred Ten and No/100 Dollars (\$ 210,000.00) which shall be paid as follows:

\$ 5,000.00 which represents the aforesaid EARNEST MONEY DEPOSIT.
\$ 205,000.00 representing the approximate balance of CASH DOWN PAYMENT at closing.
\$ _____ representing the approximate balance of an existing mortgage, trust deed note, real estate contract or other encumbrance to be assumed by buyer, which obligation bears interest at N/A % per annum with monthly payments of \$ N/A which include ☐ principal ☐ interest ☐ taxes ☐ insurance ☐ condo fees ☐ other _____
\$ _____ representing the approximate balance of an additional existing mortgage, trust deed note, real estate contract or other encumbrances assumed by Buyer, which obligation bears interest at N/A % per annum with monthly payments of \$ _____ which include ☐ principal ☐ interest ☐ taxes ☐ insurance ☐ condo fees ☐ other _____
\$ _____ representing balance, if any, including proceeds from a new N/A loan, to be paid as follows as directed by Seller and approved by Buyer
\$ _____ Other N/A

\$ 210,000.00 TOTAL PURCHASE PRICE

If Buyer is required to assume an underlying obligation and/or obtain outside financing, Buyer agrees to use best efforts to assume and/or procure same and offer is made subject to Buyer qualifying for and lending institution granting said assumption and/or financing. Buyer agrees to make application within N/A days after Seller's acceptance of this Agreement to assume the underlying obligation and/or obtain the new financing at an interest rate not to exceed N/A. If Buyer does not qualify for the assumption and/or financing within N/A days after Seller's acceptance of this Agreement, this Agreement shall be void at the option of the Buyer or Seller upon written notice.

Seller agrees to pay \$ N/A towards Buyer's total financing and closing costs, including, but not limited to, loan discount points.

If this Agreement involves the assumption of an existing loan or obligation on the property, Section F shall apply.

EXHIBIT C

of title brought current, with an attorney's opinion. (See Section H) _____
_____ evidenced by _____ a current policy of insurance in the amount of purchase price _____ an at

4 INSPECTION OF TITLE. In accordance with Section G, Buyer shall have the opportunity to inspect the title to the subject property prior to closing. Buyer shall take title subject to any existing restrictive covenants, including condominium restrictions (CC & R's). Buyer ☐ has ☐ has not reviewed any minimum CC & R's prior to signing this Agreement.

5 VESTING OF TITLE. Title shall vest in Buyer as follows Jimmy P. Brown or affiliate designated at closing.

6. SELLER WARRANTIES In addition to warranties contained in Section C, the following items are also warranted z z None

Exceptions to the above and Section C shall be limited to the following: _____

7 SPECIAL CONSIDERATIONS AND CONTINGENCIES. This offer is made subject to the following special conditions and/or contingencies which be satisfied prior to closing Both parties shall be responsible for paying their own legal, consulting, or other fees in connection with this transaction. Also buyer shall pay real estate brokerage commission typically paid by seller.

8 CLOSING OF SALE. This Agreement shall be closed on or before **, 19 at a reasonable location to be designated by Seller subject to Section G. Upon demand Buyer shall deposit with the Escrow Closing Office all documents necessary to complete the purchase in accordance with this Agreement. Prorations set forth in Section R, shall be made as of ☐ date of possession ☒ date of closing ☐ other ** as mutually agree or before December 10, 1986. Closing to be done by Utah Title Company - 629 east 400 south

9 POSSESSION. Seller shall deliver possession to Buyer on closing unless extended by written agreement of parties slc, Ut

10 GENERAL PROVISIONS. Unless otherwise indicated above, the General Provision Sections on the reverse side hereof are incorporated into this Agreement by reference

11. AGREEMENT TO PURCHASE AND TIME LIMIT FOR ACCEPTANCE. Buyer offers to purchase the property on the above terms and conditions shall have until _____ (AM / PM) _____, 19 _____, to accept this offer. Unless accepted, this offer shall lapse and the Agent shall return EARNEST MONEY to the Buyer

Signature of Buyer

Date

Signature of Buyer

Jimmy P. Brown
Jimmy P. Brown

CHECK ONE

☐ ACCEPTANCE OF OFFER TO PURCHASE. Seller hereby ACCEPTS the foregoing offer on the terms and conditions specified above

☐ REJECTION. Seller hereby REJECTS the foregoing offer _____ (Seller's Initials)

☐ COUNTER OFFER. Seller hereby accepts the foregoing offer SUBJECT TO the exceptions or modifications as specified below or in the attached Addendum presents said COUNTER OFFER for Buyer's acceptance. Buyer shall have until _____ (A M / P M) _____, 19 _____ to accept the offer specified below

Date _____

Time _____ (AM-PM)

Signature of Seller

Toula K. Leventis
Toula K. Leventis

Signature of Seller

CHECK ONE

☐ Buyer accepts the counter offer

☐ Buyer accepts with modifications on attached addendum

Date _____

Time _____ (AM-PM)

Signature of Buyer

Signature of Buyer

COMMISSION The undersigned hereby agrees to pay to _____ (Broker) a commission of _____ as consideration for the efforts in procuring a buyer

Signature of Seller

Date

Signature of Seller

DOCUMENT RECEIPT

State Law requires Broker to furnish Buyer and Seller with copies of this Agreement bearing all signatures (One of the following alternatives must then be completed)

A ☐ I acknowledge receipt of a final copy of the foregoing Agreement bearing all signatures

SIGNATURE OF SELLER

SIGNATURE OF BUYER

Date

Date

Date

Date

B ☐ I personally caused a final copy of the foregoing Agreement bearing all signatures to be mailed on _____, 19 _____ Certified Mail and return receipt attached hereto to the ☐ Seller ☐ Buyer Sent by _____

Page three of a four page form Seller's Initials () () Date _____ Buyer's Initials () () Date _____

Iowa

EXHIBIT "A"

PARCEL 1:

Commencing at the NE corner of Lot 7, Block 33, Plat B, SLC Survey, thence West 2.5 Rods; thence South 20 Rods; thence East 2.5 Rods; thence North 198 feet; thence East 165 feet; thence North 79.25 feet; thence West 114.25 feet; thence North 52.75 feet; thence West 50.75 feet to beginning.

PARCEL 2:

Commencing 8 Rods from the Northeast Corner of Lot 8, Block 33, Plat B, SLC Survey; thence South 45.5 feet; thence West 10 Rods; thence North 45.5 feet; thence East 10 Rods to beginning.

TOULA K. LEVENTIS
2875 Crestview Drive
Salt Lake City, Utah 84108

October 28, 1986

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Phil Arlt
G.G.A. Incorporated
Wendy's Old Fashioned Hamburgers
232 South Main Street
Salt Lake City, Utah 84101

Re: Rescission of offer to purchase the property located at 550 East 400 South
and 418 South 600 East, Salt Lake City, Utah 84102

Dear Phil:

I have been informed by Mr. Jimmy Brown, the prospective buyer of the property at 572 East 400 South, Salt Lake City, Utah (see my earlier letter of September 15, 1986), that his offer has been rescinded and withdrawn; accordingly I have returned the earnest money deposit to Mr. Brown.

I do want to sell my property and will entertain new offer(s) to sell it; accordingly I do not consider myself bound to sell at the price of \$210,000.00. Thank you for your consideration.

Sincerely yours,



Toula K. Leventis

cc: Mr. Andy Guagenti, Secretary, G.G.A., Inc.
Mr. Robert E. Griffin, Treasurer, G.G.A., Inc.

EXHIBIT D

LAW OFFICES OF

BAMBERGER, FOREMAN, OSWALD AND HAHN

708 HULMAN BUILDING
P O BOX 657

EVANSVILLE, INDIANA 47704

December 6, 1986

TELEPHONE (812) 423-1591
TELECOPIER (812) 463-4041

FREDERICK P BAMBERGER
(1903-1983)
WILLIAM P FOREMAN
C E OSWALD JR
ROBERT H HAHN
JOHN R BURKE JR
JEFFREY R KINNEY
GEORGE A PORCH
ROBERT M BECKER
FRED S WHITE
ROBERT T BODKIN
GEORGE MONTGOMERY
TERRY G FARMER
KAROL M KROHN
MARK E MILLER
RODERICK W CLUTTER JR
KEVIN J MESSMER

Toula K. Leventis
2875 Crestview Drive
Salt Lake City, UT 84108

Re: Real Estate Situated at 550 East 400 South and
418 South 600 East, Salt Lake City, Utah

Dear Mrs. Leventis:

C At the request of our client, the tenant under the Lease Agreement with you dated September 9, 1976, we have reviewed the applicable provisions of the Lease Agreement, particularly the provisions of Article XIV thereof, and your correspondence of September 15, 1986; October 28, 1986; and November 21, 1986.

O As you are aware and indicated in your September 15, 1986, letter, that Article of the Lease Agreement specifically provides, in the event of your intent or desire to sell your interest in the above-described real estate or the receipt of an offer to purchase the same upon terms acceptable to you, that you are required to first notify the tenant of such intent and such offer and, thereupon, the tenant has the option, exercisable within ninety (90) days after receipt of such written notice from you, to elect to purchase the premises and all of your interest therein upon the terms set forth in such offer.

P As you know, the provisions of Article XIV of the lease in question were specifically negotiated for and constituted a material part of the consideration for the execution of said lease by our client.

Y In your letter of September 15, 1986, you offered to sell the real estate in question to our client for a purchase price of \$210,000.00.

By your subsequent letter of October 28, 1986, you purported to rescind that offer, and by your subsequent letter of November 21, 1986, you purported to make a new and different offer to our client, as tenant.

Based upon our research, and after consultation with our local counsel, McKay, Burton and Thurman of Salt Lake City, it is our opinion that the making of the initial offer by you on September 15, 1986, created in our client a valid and effective option

EXHIBIT F

Toula K. Leventis
Re: G.G.A. II, Inc.
Page 2

to purchase, supported by a good and valuable consideration, the real estate in question at the price specified in that offer, which would remain in effect for the contractually stipulated period of ninety (90) days and would not be subject in any way to rescission, revocation or alteration by you during the option period.

Consequently, it is our further opinion that the purported rescissions set forth in your letters of October 28, 1986, and November 21, 1986, are not legally effective and would not deprive our client of the right to exercise its contractual option rights to purchase upon the terms initially offered.

Consequently, you are hereby notified and advised, on behalf of our client, G.G.A. Incorporated, d/b/a Wendy's Old-Fashioned Hamburgers, of its election to exercise its option, which option is hereby exercised, to purchase the above-described premises and all of your right, title and interest therein in accordance with the provisions of Article XIV of the Lease Agreement of September 9, 1976, for the purchase price of \$210,000.00 set forth in your initial offer of September 15, 1986.

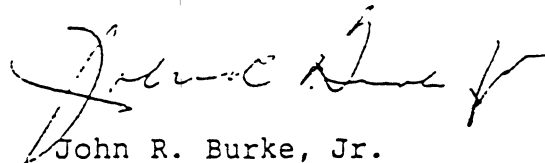
As an accommodation to you, I have been authorized to advise you, on behalf of my client, that since it apparently would be to your benefit for income tax purposes, that it is agreeable to concluding its purchase of the subject real estate on a cash basis prior to the year-end.

To that end, the purchase of the real estate in question will be handled by our local counsel, McKay, Burton and Thurman, to expedite the matter.

As noted, our client intends to enforce its contractual rights under the terms of the Lease Agreement and to take any action required in connection therewith, and should any such action be necessary, it will, similarly, be handled by McKay, Burton and Thurman.

Yours very truly,

BAMBERGER, FOREMAN, OSWALD AND HAHN



John R. Burke, Jr.

JRB:kol

cc: Phillip M. Arlt
Andrew Guagenti
Robert E. Griffin
Barrie G. McKay, Esq.

CERTIFIED MAIL NO. P 261 314 870
Return Receipt Requested

McKAY, BURTON & THURMAN

A PROFESSIONAL CORPORATION

WILFORD M. BURTON
BARRIE G. MCKAY
WILLIAM T. THURMAN
DAVID P. BROWN
WILLIAM THOMAS THURMAN
PETER STIRBA
DAVID L. BIRD
REID TATEOKA
STEPHEN W. RUPP
SCOTT C. PIERCE
JOEL T. MARKER
BENSON L. HATHAWAY JR.

ATTORNEYS AND COUNSELORS AT LAW

SUITE 1200 KENNECOTT BUILDING

10 EAST SOUTH TEMPLE STREET

SALT LAKE CITY, UTAH 84133

(801) 521-4135

OF COUNSEL
DAVID L. MCKAY

February 17, 1987

Toula K. Leventis
2875 Crestview Drive
Salt Lake City, Utah 84108

Nick J. Colessides, Esq.
466 South 400 East
Salt Lake City, Utah 84111

HAND DELIVERED AND
CERTIFIED MAIL

Re: Property located at 550 East 400 South and 418 South
600 East, Salt Lake City, Utah 84102

Dear Ms. Leventis and Mr. Colessides:

As you are both aware, this firm represents GGA, Inc. ("GGA") doing business as Wendy's Old Fashioned Hamburgers, the lessee under that certain Real Estate Ground Lease dated September 9, 1976 by and between Toula K. Leventis as Landlord and GGA as Tenant. GGA is in receipt of your letter dated November 21, 1986 addressed to Mr. Phil Arlt advising GGA of an offer to purchase the above described property for the amount of \$250,000.00. This, notwithstanding your previous notification on September 15, 1986 of an option to purchase the property for the amount of \$210,000.00, which option was timely exercised by GGA.

You are hereby notified on behalf of our client, GGA of its election to exercise its Option to Purchase the above described property as set forth in Article XIV of the Real Estate Ground Lease in response to the Notice in your November 21, 1986 letter. This notification constitutes an unequivocal exercise of GGA's Option to Purchase the demised premises and all of your right, title and interest therein, for the price and upon the stated terms and conditions contained in your notice. This letter will further advise you that GGA is ready, willing and able to close the purchase and sell of the above described property with reasonable promptness at a date, place and time acceptable to both parties.

You are further notified that GGA hereby specifically reserves all of its rights and remedies under the terms of that certain Real Estate Ground Lease and specifically, but not by way of limitation to, the rights and remedies provided for in Article

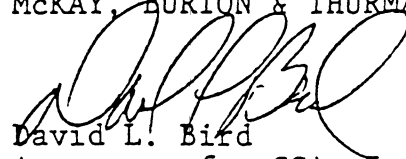
EXHIBIT G

Toula K. Leventis
Nick J. Colessides
February 17, 1987
Page 2

XIV and further reserves all of its rights and remedies under the September 15, 1986 option and GGA's timely exercise thereof. Please advise this office at your earliest convenience of date, time and place for the closing of this transaction.

Sincerely,

McKAY, BURTON & THURMAN

A handwritten signature in dark ink, appearing to read "DLB", is written over the typed name "David L. Bird".

David L. Bird
Attorneys for GGA, Inc.

DLB05:ls
CC: Phil Arlt
Andrew Guagenti
Robert E. Griffith
John R. Burke, Jr.

MCKAY, BURTON & THURMAN

A PROFESSIONAL CORPORATION

ATTORNEYS AND COUNSELORS AT LAW

SUITE 1200 KENNECOTT BUILDING

10 EAST SOUTH TEMPLE STREET

SALT LAKE CITY, UTAH 84133

(801) 521-4135

OF COUNSEL
DAVID L. MCKAY

WILFORD M. BURTON
BARRIE G. MCKAY
WILLIAM T. THURMAN
DAVID P. BROWN
WILLIAM THOMAS THURMAN
PETER STIRBA
DAVID L. BIRD
REID TATEOKA
STEPHEN W. RUPP
SCOTT C. PIERCE
JOEL T. MARKER
BENSON L. HATHAWAY, JR.

February 27, 1987

HAND DELIVERED

Nick J. Colessides, Esq.
Attorney at Law
466 South 400 East
Salt Lake City, Utah 84111

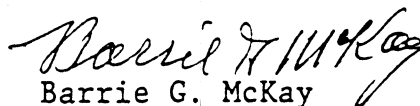
Re: Closing of Purchase of Fourth South Property
by G.G.A. II, Inc. from Leventis

Dear Nick:

I understand from our conference call with Mr. Jensen of Western States Title Company that all differences you had regarding my letter of instructions have been resolved except you object to my instruction to have Western States Title Company deliver to Mrs. Leventis my letter dated February 24, 1987, with the payment of the purchase price because you felt that by her receiving the letter with the payment it might be construed that she was agreeing with some of the statements in the letter.

As we agreed over the telephone, Mrs. Leventis is reserving all of her claims and rights, including defenses against the lawsuit of G.G.A. II, Inc., and nothing in the closing is to be interpreted as her waiving any of her claims or defenses. Likewise, nothing in the closing is to be interpreted or construed as a waiver or a relinquishment by G.G.A. II, Inc. of its claim that it had a right to purchase the property for \$210,000.00 rather than the \$250,000.00 demanded. In other words, the closing is not a waiver, a consent or an accord and satisfaction of any of the claims, rights or defenses of either party. We agreed to that in our conference call; therefore, a copy of this letter delivered to Western States Title Company is its authority to deliver the net amount of the purchase price to Toula K. Leventis without my letter dated February 24, 1987.

Very truly yours,


Barrie G. McKay

BGM:sjl

cc: Western States Title Company

EXHIBIT H

Exhibit C

REAL ESTATE GROUND LEASE

THIS INDENTURE OF LEASE, made and entered into this 9th day of September, 1976, by and between TOULA K. LEVENTIS, of Salt Lake county, Utah, hereinafter referred to as "Landlords", whether one or more, and G.G.A., Inc., an Indiana corporation, with its principal office and place of business in the City of Evansville, Vanderburgh County, Indiana, hereinafter referred to as "Tenant", WITNESSETH THAT:

Landlords, for and in consideration of the covenants and agreements herein contained and set forth to be kept and performed by Tenant and subject to and upon the terms and conditions hereinafter set forth, do hereby lease, let and demise unto Tenant, and Tenant does hereby take and hire of and from Landlords the following described real estate situated in the City of Salt Lake, Salt Lake County, State of Utah, to-wit:

A certain tract or parcel of real estate containing Thirty-six Thousand Eight Hundred Seventy-two (36,872) square feet, more or less, said tract or parcel being more commonly known and referred to as 550 East 4th South and 418 South 6th East, Salt Lake City, Utah, and said real estate being more particularly described in Exhibit A attached hereto and made a part hereof,

which real estate is hereinafter referred to as the "demised premises:.

TO HAVE AND TO HOLD said demised premises unto Tenant for the period commencing as of the date hereof and extending to the first day of February, 1977, (said latter date being the "commencement date") plus a term of twenty-five (25) years commencing on said commencement date, with the right to extend said term as hereinafter set forth, all upon and subject to the limitations, terms, covenants, provisions and conditions hereof as hereinafter set forth.

I.

RENTAL

Tenant covenants and agrees to pay to Landlords, without demand, at such place as Landlords may, from time to time,

designate in writing, and Landlords agree to accept, as rental for the demised premises during the term of this lease the sums set forth in the following schedule:

- A. For a period of four (4) months after the execution of this lease, no rental has to be payable by the Tenant hereunder and the Landlords will make monthly payments to ~~XXXX~~ Tenant ~~XXXX~~ of Nine Hundred Dollars (\$900.00) per month for said period of four (4) months.
- B. The sum of Twelve Thousand Dollars (\$12,000.00) per year, net rental, payable at the rate of One Thousand Dollars (\$1,000.00) per month in advance on the first day of each calendar month for the first five (5) years of said term.
- C. The sum of Thirteen Thousand Two Hundred Dollars (\$13,200.00) per year, net rental, payable at the rate of One Thousand One Hundred Dollars (\$1,100.00) per month in advance on the first day of each calendar month during the 6th through the 10th years of said term.
- D. The sum of Fourteen Thousand Four Hundred Dollars (\$14,400.00) per year, net rental, payable at the rate of One Thousand Two Hundred Dollars (\$1,200.00) per month in advance on the first day of each calendar month during the 11th through the 15th years of said term.
- E. The sum of Fifteen Thousand Six Hundred Dollars (\$15,600.00) per year, net rental, payable at the rate of One Thousand Three Hundred Dollars (\$1,300.00) per month in advance on the first day of each calendar month during the 16th through the 25th years of said term.
- F. The sum of Sixteen Thousand Eight Hundred Dollars (\$16,800.00) per year, net rental, payable at the rate of One Thousand Four Hundred Dollars (\$1,400.00) per month in advance on the first day of each calendar month during the 26th through the 35th years (the first two (2) extension terms) of said lease.
- G. The sum of Eighteen Thousand Dollars (\$18,000.00) per year, net rental, payable at the rate of One Thousand Five Hundred Dollars (\$1,500.00) per month in advance on the first day of each calendar month during the 36th through 45th years (the third and fourth extension terms) of said lease.

H. The sum of Nineteen Thousand Two Hundred Dollars (\$19,200.00) per year, net rental, payable at the rate of One Thousand Six Hundred Dollars (\$1,600.00) per month in advance on the first day of each calendar month during the 46th through 55th years (the fifth and sixth extension terms) of said lease.

The term "year" or "lease year" as used herein shall be construed as meaning and referring to a period of one (1) year commencing on the first day of the twenty-five (25) year term of this lease or the anniversary of such date.

Rental not paid within ten (10) days from and after the due date thereof shall be payable together with a delinquency charge in the amount of five percent (5%) of the delinquent rental.

Notwithstanding the provisions of the proceeding subparagraphs F, G, and H with respect to the rental payable following the expiration of the initial twenty-five (25) year term hereof, Landlords at their option may request that the rental for each or any of said ten (10) year periods specified in said paragraphs F, G, and H be determined by a board of appraisers each of whom shall be realtors or real estate appraisers engaged in business in the City of Salt Lake, Utah. One of said appraisers shall be selected by Landlords, one by Tenant and the third by the two thus first selected. The cost of such appraisal shall be borne by Landlords. Following the rental determination by such board of appraisers, Tenant shall have the right at its option, for a period of thirty (30) days following the receipt of written notification of such rental determination, by written notice to Landlords to elect to terminate this lease regardless of whether the term thereof shall have been otherwise extended.

As additional consideration for this lease, Tenant undertakes and agrees to secure the release of Landlords and the above described real estate from any further liability under or by virtue of that certain mortgage indebtedness in favor of Valley Bank and Trust Company covering the above described premises, the unpaid principal balance of which is currently in the approximate amount of Forty-seven Thousand Dollars (\$47,000.00), and which said indebtedness is payable in monthly installments of Nine Hundred Dollars (\$900.00) per month. In furtherance thereof, Tenant covenants and agrees to pay, as rental, the sums required to amortize said mortgage indebtedness in accordance with its present terms and from the commencement date hereof until the due date of the last installment of said mortgage indebtedness on April 1, 1981, Landlords shall credit Tenant with the sum of Nine Hundred Dollars (\$900.00) per month against the monthly rental payments otherwise payable hereunder and the balance, if any, of said monthly rental payments shall be paid to Landlords.

As hereinafter more particularly provided, all ad valorem taxes due and payable commencing with the installment of taxes due November, 1977 with respect to the above described real estate, all ad valorem taxes payable with respect to the buildings and improvements erected or placed upon said real estate by Tenant, and all costs of insurance and repairs with respect to the demised premises and improvements, payable during the term of this lease shall be paid by Tenant and the aforesaid rentals payable to Landlords shall therefore be net rentals to Landlords.

II.

LANDLORDS' TITLE AND TENANT'S POSSESSION

Landlords represent and warrant unto Tenant that Landlords are the owners of a merchantable record title in fee simple to the demised premises subject only to existing easements, highways and rights of way, and the mortgagee indebtedness aforesaid, and the lien of current taxes, and that subject to the terms and provisions of this lease, Tenant shall have and enjoy the quiet and peaceful possession of the demised premises during the entire term of this lease. Landlords shall contemporaneously with the execution of this lease furnish to Tenant a standard policy of title insurance showing the demised premises to be free and clear of all liens and encumbrances except as aforesaid.

The right to possession of the demised premises is hereby vested in Tenant effective as of the date of execution hereof if, as of said date, Tenant shall have secured a release of Landlords and the demised premises from any liability under the real estate mortgage in favor of Valley Bank and Trust Company and Tenant has secured a commitment from the City of Salt Lake, Utah, that all permits necessary or required to construct the proposed improvements upon the demised premises will be issued and granted.

III.

TAXES AND ASSESSMENTS

Tenant shall pay before any fine, penalty, interest or cost may be added thereto for the nonpayment thereof, all real estate taxes, assessments, water charges, sewer charges, and other governmental levies and charges, general and special, ordinary and extraordinary, unforeseen as well as foreseen, of any kind and nature whatsoever which are assessed, levied, confirmed, imposed or become a lien upon the demised premises

or any part thereof, including, but not limited to, all ad valorem property taxes payable upon and with respect to the demised premises during the term of this lease, commencing with the ----- installment of 1977 taxes, due and payable in November, 1977, and all such ad valorem taxes payable during the term of this lease with respect to any buildings and improvements erected or placed upon said real estate by Tenant.

To the extent permitted by law and not inconsistent with the requirements of any existing or future mortgage affecting the demised premises, Tenant shall have the right to apply for the conversion of any special assessment for local improvements in order to cause the special assessment payable in installments. Tenant shall have the right to execute in the name of Landlords and as attorney in fact for Landlords (if Landlords after reasonable demand fail to do so) such agreement or agreements or other instruments as may be required or necessary to enable payment of any such special assessments in installments. In case any such assessments are payable and paid in installments as provided or permitted by law, then, Tenant shall not be liable for payment of any installments of such special assessments payable following the expiration of the term or extension of the term of this lease if such installments are on an equal or other periodic basis so that the total payment made by the respective parties toward such special assessment is proportionate to their respective periods of occupancy of the premises.

Tenant or Landlords shall have the right to contest or review by legal proceedings or in such other manner as may be deemed suitable in a tax assessment, rate or charge or other governmental imposition or charge herein previously mentioned. If the proceeding is instituted by Tenant, Tenant shall conduct the contest promptly at the Tenant's own expense. If required for the proceeding brought by Tenant, the contest may be brought in Landlords' name. Tenant may defer payment of a contested item upon condition that before instituting the proceeding Tenant shall furnish to Landlords and to any mortgagee, a surety company bond, cash deposit or other security reasonably satisfactory to Landlords and the mortgagee which is sufficient to cover the amount of the contested items together with interest and penalties for the period which such proceedings may be expected to take in securing payment of the contested items, interest and penalties and all costs in connection therewith. Notwithstanding the furnishing by Tenant of such bond or security other than a cash deposit, Tenant shall promptly pay the contested items if at any time all or any part of the demised premises are in danger of being sold, forfeited or otherwise lost. The

contest referred to shall include appropriate proceedings to review tax assessments, appeal from tax assessments, orders and appeals from any judgments, decrees or orders. All proceedings taken by Tenant shall be commenced as soon as possible after the imposition or assessment of the contested item and shall be prosecuted by Tenant to final adjudication with dispatch. If there is a refund with respect to any contested item based on the payment by Tenant, Tenant shall be entitled to the refund.

Nothing contained in this lease shall require that Tenant pay any inheritance, estate, succession, gift, franchise, gross receipts, income, profit, or excess profit, capital stock, corporate or other similar taxes or capital levy that may be imposed upon Landlords or upon the rent payable by Tenant hereunder, unless the taxes levied upon the rent reserved are in lieu of or as a substitute for a real estate tax upon the demised premises and then only to the extent that it relieves or reduces Tenant's obligation to pay real estate taxes; provided, however, that Tenant shall not be obligated to pay any amount greater than would have been payable by Landlords had the rent upon which the substitute tax was levied been the sole taxable income of Landlords for the relevant tax year in question.

IV.

BUILDING AND IMPROVEMENTS

Tenant shall have the right to remove from the demised premises all buildings and improvements now situated thereon; provided, however, that the removal or demolition of such buildings and improvements shall be at Tenant's sole cost and expense and Tenant shall indemnify and hold Landlords harmless of and from any and all cost, expense or liability incurred in connection with or arising in any manner out of the removal or demolition of said existing building and improvements; provided, however, that the exercise of said right shall be conditioned upon release of Landlords and the demised premises from the mortgage obligation aforesaid and the issuance by the City of Salt Lake of all necessary permits required for the construction of the improvements proposed by Tenant.

Within a reasonable time following the release of the aforesaid mortgage indebtedness and the issuance of all necessary permits by the City of Salt Lake, Tenant at its sole cost and expense and in compliance with all applicable laws, regulations and ordinances shall construct, erect and install upon the demised premises a restaurant building at a cost of not less than Eighty Thousand Dollars (\$80,000.00) and Tenant may, in like manner, remove or demolish any such building, structures or other improvements which Tenant determines to be delapidated, deteriorated, outmoded or otherwise inadequate, provided that in the event of any such removal or demolition Tenant shall promptly thereafter erect, construct

or install upon the demised premises a restaurant building or other similar improvements having a value substantially equal to the value (at the time of removal or demolition) of any such building, structure or other improvement which shall be removed or demolished. Prior to the commencement of the construction of any such buildings or improvements upon the demised premises, Tenant shall furnish Landlords with the plans and specifications for such proposed improvements and the estimated cost thereof. Tenant shall also have the right, at Tenant's cost and expense, to make alterations to and additions to such improvements, provided, however, that the making of such alterations or additions shall not cause any default in any then existing mortgage upon the premises. Prior to the commencement of construction of any such buildings or improvements upon the demised premises by Tenant, Tenant shall furnish to Landlords a good and sufficient corporate performance or surety bond naming both Landlords and Tenant as obligees conditioned that Tenant and/or Tenant's contractors will indemnify and save Landlords and the demised premises harmless of and from any claims for labor or materials furnished in the erection or construction of said building and improvements.

Neither Tenant nor any subtenant shall cause or permit any mechanic's lien to be suffered or imposed upon the title to the demised premises on account of or by reason of the erection, construction, installation, alteration, removal or demolition of any such building, structure or other improvement. In case of the filing of any such lien on account of any work, labor or material caused to be performed or furnished by Tenant, Tenant shall, promptly after receipt from Landlords of notice of such filing, either pay or sufficiently bond the same or procure the discharge thereof and Tenant shall also defend on behalf of Landlords and at Tenant's sole cost and expense any action, suit, or proceeding which may be brought for the enforcement of any such lien and Tenant shall pay any damage and discharge any judgment entered therein and save Landlords of and from any claim, loss, damage or expense on account thereof.

During the term of this lease Tenant shall own all improvements placed upon the demised premises. Upon the termination or expiration of this lease Tenant shall have no right to remove any of said buildings or improvements and all such buildings and improvements then located upon the demised premises shall thereupon be and become exclusively the property of Landlords. However, trade fixtures installed or located upon the demised premises by Tenant or any subtenant shall remain the property of Tenant or any such subtenant and may be removed from the premises; provided, however, that any damage to the premises caused by such removal shall be promptly repaired at the cost and expense of Tenant or any such subtenant who caused such damage.

EMINENT DOMAIN

In case the demised premises or any part thereof shall be appropriated by exercise of the power of eminent domain or conveyed under threat of condemnation by public authority, Landlords shall be entitled to receive, and shall be paid, such award as is provided by law with respect to the appropriation or such conveyance of the land (as distinguished from the buildings and improvements). The entire award with respect to buildings and improvements shall be made available to Tenant for the purpose of paying the cost of repairing, remodeling or altering existing buildings or improvements upon said land or constructing new buildings or improvements thereon, provided, however, that in case this lease is terminated on account of such condemnation or conveyance under threat of such condemnation or in case Tenant shall not expend such funds for one or more of said purposes with reasonable promptness following such taking or conveyance, the amount of such award or portion thereof not so expended shall be divided between Landlords and Tenant in such manner that Landlords shall receive that proportion of such funds equal to the portion of the period of the then current term or extended term of this lease remaining at the time construction of such buildings or improvements was completed which elapsed between the date of such completion and the date of such taking or conveyance and Tenant shall receive that proportion of such funds equal to the portion of such period of time which is subsequent to the date of such taking or conveyance.

In case all of the demised premises shall be appropriated by the exercise of the power of eminent domain or conveyance by reason of threat of condemnation, this lease and the respective obligations of the parties shall terminate except that Tenant shall thereupon be entitled to a pro rata refund of any prepaid rental as of the date of such taking of said premises pursuant to the power of eminent domain.

In case a part of the demised premises shall be appropriated by the exercise of the power of eminent domain and by reason of such appropriation the use thereof shall be materially, substantially and adversely affected, Tenant shall have the right to terminate this lease by the giving of notice to that effect to Landlords; but if Tenant does not exercise such right of termination within six (6) months following the date of such partial appropriation this lease shall continue in full force and effect as to all of the real estate covered hereby which has not been appropriated, and following such taking fixed rental payable hereunder shall be reduced in proportion to the area so appropriated.

Landlords and Tenant each acknowledge that amounts received or receivable on account of or by reason of condemnation of all or any part of the demised premises shall be subject to the prior rights of any mortgagee of the premises in accordance with the terms and provisions of the mortgage held by any such mortgagee.

VI.

DEFAULT

In case Tenant defaults in respect to its covenants to pay rent or in respect to any other of its obligations hereunder and if Tenant fails to cure such default within sixty (60) days after written notice of the existence of such default has been given in writing by Landlords, Landlords may thereupon take possession of the demised premises and terminate this lease; provided, however, that if such default is of a character or kind that it would not be possible for Tenant to cure the same within a period of sixty (60) days this lease shall not be terminated if Tenant shall within said sixty (60) day period of time commence in good faith to cure such default and shall thereafter prosecute the matter of curing such default with reasonable diligence; and provided further, that if at the time of any such default the leasehold estate hereby created is subject to a mortgage lien of record in Salt Lake County, Utah, of which Landlords shall have been notified, or if at the time of any such default the premises are subject to one or more subleases of which Landlords have been notified, Landlords shall not have the right to and may not exercise such option or privilege of termination unless and until like notice of such default shall have been given and afforded to such mortgagee or subtenant or subtenants, which notice may be given at the same time as notice to Tenant.

In the event Tenant shall fail to cure any such default or to commence in good faith to cure such default within the period specified above, and Landlords shall give notice of intent to terminate, then any leasehold mortgagee or subtenant shall have an additional period of sixty (60) days following the expiration of the aforesaid initial sixty (60) day period within which to notify Landlords that it elects to remedy the default and to void the election of Landlords to terminate.

In the event of termination by Landlords, any leasehold mortgagee shall have a period of six (6) months following termination within which to elect to obtain a new lease upon all of the same terms and condition of the original lease upon payment to Landlords of the full amount of all unpaid rental pursuant to the terms of the original lease. In the event of such election by any leasehold mortgagee, Landlords covenant and agree to enter into a new lease with said lease-

hold mortgagee upon written request therefor and the payment of unpaid back rental as aforesaid, which such lease shall have equal priority with the original lease. In addition, Landlords agree to modify said lease upon request by any leasehold mortgagee, provided that any such modifications shall not result in any decrease in rentals or of the Tenant's obligations, nor any decrease in Landlords rights.

Any leasehold mortgagee shall not be required to cure any default resulting from any act of bankruptcy, insolvency or similar act on the part of Tenant.

The failure of Landlords to exercise any such option or privilege of termination at any time shall not be deemed a waiver of the right of termination in the event of any subsequent default.

If Tenant shall be in default in performance of any of the terms or provisions of this lease (other than the payment of rental) Landlords, after thirty (30) days' written notice to Tenant may at any time thereafter perform the same for the account of Tenant at the cost and expense of Tenant, and Tenant shall pay to Landlords on demand any amount properly paid by Landlords in connection with the curing of such default.

Notwithstanding any termination of this lease by reason of Tenant's default or otherwise, if at the time of such termination the premises are occupied by one or more subtenants, and if such subtenant or subtenants shall, after notice, fail to remedy such default, such subtenant or subtenants and each of them shall be entitled to continue in the exercise of all rights and privileges granted them by their respective subleases in accordance with the terms and tenor thereof (including, without limitation, any and all rights or privileges to renew or extend the terms of said sublease or subleases), so long as they shall keep and perform their respective obligations thereunder. Any such sublease or subleases effected by Tenant prior to termination of this lease shall survive termination and shall continue in full force and effect subject to the terms and provisions thereof and after such termination Landlords shall be substituted for Tenant in such subleases and shall be entitled to exercise all rights of Tenant in and under said subleases and to collect all rentals and other payments falling due under such subleases. Any and all such subleases shall continue to be binding upon Landlords and said sublessors, respectively, as though Landlords herein had been the lessors in each of such subleases.

LANDLORDS' RIGHT TO MORTGAGE DEMISED PREMISES

Landlords reserve the right to mortgage the demised premises; provided, however, that the monthly installment payments required to amortize any such mortgage indebtedness shall in no event exceed the rental payable pursuant to the terms and provisions hereof and provided further that Landlords shall secure and deliver to Tenant from any such mortgagee a written non-disturbance agreement providing that the holder of such mortgage will recognize Tenant or any subtenant's lease of the demised premises and will not disturb the Tenant or any subtenant's quiet possession of the premises for so long as Tenant or any subtenant is not in default of any of the terms and provisions of this lease.

VIII.

ADDITIONAL COVENANTS OF TENANT

Tenant agrees that Landlords shall have no obligation of any kind or character to maintain or repair any of the buildings or other improvements which Tenant shall cause to be constructed upon the demised premises.

Tenant further agrees that Landlords shall have no obligation to pay for or furnish gas, electricity, water or other utility services furnished during the principal term hereof in connection with the demised premises and Tenant covenants and agrees to hold Landlords harmless of and from any and all claims on account of charges for such utility services.

Tenant covenants and agrees to pay when due all mortgage payments required to be paid in connection with any mortgage loan upon the leasehold estate and any buildings or improvements constructed by Tenant. If Tenant shall fail to pay any such mortgage payments, Landlords may pay, but shall not be obligated to pay the same; and Tenant shall repay to Landlords upon demand the full amount of any such payments made by Landlords, together with interest at the rate hereinafter specified.

IX.

LIABILITY INSURANCE

Tenant covenants and agrees that it will, at its sole cost and expense, during the entire term of this lease, keep and maintain in full force and effect public liability insurance with respect to the use and occupancy of the above described premises, providing insurance with respect to such claims for injuries to or death of persons or damage or destruction of property arising out of or by reason of the use and occupancy of the premises and with limits of not less than Fifty Thousand Dollars (\$50,000.00) with respect to claims for to property, Three Hundred Thousand Dollars (\$300,000.00) with respect to claims on account of injuries

or death of more than one person arising out of any one accident or occurrence and which insurance shall name and designate Tenant or assigns and Landlords or their successors as insureds. In case Tenant shall at any time fail to procure such insurance Landlords, after thirty (30) days' written notice to Tenant, may procure the same and any and all sums paid for such insurance by Landlords shall be and become immediately due and payable by Tenant upon demand. Tenant agrees that the amounts and limits of the above described liability insurance shall be reviewed with Landlords at least once each five (5) years during the term or extension of the term of this lease, and that upon review the amounts of such limits shall be increased or decreased, in the light of then existing circumstances, to amounts and limits which are comparable to amounts and limits of such insurance then being maintained by reasonably prudent owners of comparable premises.

X.

NOTICES

Any notice required or permitted pursuant to the terms and provisions of this lease shall be deemed fully given or served if transmitted by registered or certified mail with return receipt requested, addressed to Tenant at 4300 East Morgan Avenue, Evansville, Indiana 47715, and to Landlords at the address then fixed by Landlords for the payment of rent. Either party may by like written notice at any time and from time to time designate a different address to which notices shall subsequently be transmitted to him, her or it.

XI.

DESTRUCTION OF IMPROVEMENTS -
MAINTENANCE OF HAZARD INSURANCE

During the term of this lease, Tenant at its sole cost and expense shall keep and maintain in full force and effect fire and extended coverage insurance with respect to the improvements situated upon the above described premises in an amount not less than the value, from time to time, of the destructible improvements situated upon the demised premises; and Tenant shall furnish to Landlords copies of policies or certificates with respect thereto evidencing the procurement and maintenance of such insurance. Any such fire and extended coverage insurance shall name any leasehold mortgagee as an additional insured and Tenant shall furnish to any such leasehold mortgagee similar copies of policies or certificates with respect thereto evidencing the procurement and maintenance of such insurance.

In case of damage to or destruction of any improvements, the proceeds of such insurance shall be used and applied to repair, restore or rebuild (subject to Tenant's option to terminate as set forth below), as the case may require, such improvements.

the occurrence or damage to such improvements by fire or other casualty shall not be cause for termination of this lease (subject to Tenant's option to terminate as set forth below in the event of total or substantial destruction) nor shall there be any abatement of rent on account of any such damage. In case such improvements are totally or substantially destroyed by fire or other casualty, and if the leasehold estate shall be subject to no unpaid mortgage indebtedness, Tenant at its option may terminate this lease by notice in writing given within sixty (60) days following the occurrence of such destruction and in such case Tenant shall be released and discharged of and from any and all liability with respect to the payment of rental or other obligations hereunder accruing subsequent to such destruction; provided, however, that in case of such termination (by reason of Tenant's exercise of its option so to do) all proceeds of hazard insurance with respect to the improvements upon said premises which shall have been constructed or installed by Tenant shall be payable to and be the sole property of Landlords.

XII.

ASSIGNMENT, SUBLETTING AND ATTORNMENT

Tenant shall have the right to sublet any part or parts or all of the demised premises for use and occupancy for any lawful purpose; but the term or terms of any such sublease or subleases shall not extend beyond the term of this lease. The interest and estate of any such sublessee shall not terminate by reason of Tenant's default hereunder.

The leasehold estate hereby created shall be freely assignable by Tenant and its assigns and no holder of the leasehold estate hereby created shall be liable for payment of rent or performance of any other obligation hereunder which accrues after the period of time during which such holder was vested with title to the leasehold estate hereby created. Tenant may from time to time without consent of Landlords assign its interest hereunder, either in whole or in part, by way of mortgage to any bank, insurance company or any other lending institution as mortgagee or otherwise. Any mortgagee acquiring the leasehold estate as provided above shall be liable for the performance of the obligation imposed upon Tenant by this lease only during the periods such mortgagee has ownership of the leasehold estate or possession of the premises subject thereto. Nothing contained in any such mortgage shall release or be deemed to release Tenant from the full and faithful observance or performance of any covenant and condition in this lease contained and on its part to be observed and performed or from any liability for the nonobservance or nonperformance thereof or be deemed to constitute the waiver of any rights of Landlords hereunder.

Landlords agree that their fee title in the premises shall be subject and subordinate to any subleases made between Tenant and subtenants occupying space in the demised premises and to any renewals, modifications, replacements and extensions of said sublease with said subtenants. Landlords agree to execute any further documents necessary to ratify the said subordination.

XIII.

OPTIONS TO EXTEND

So long as Tenant is not in default hereunder, Tenant shall have and is hereby granted options to extend the term of this lease for six (6) additional periods of five (5) years each, upon the terms, provisions and conditions contained and set forth in this lease. The first of said extended terms shall commence on the day following the expiration of the initial twenty-five (25) year term of this lease. Said options to extend shall be automatically exercised and the term extended without notice to Landlords from Tenant. In the event Tenant does not desire to extend this lease after the initial term or any extended term, Tenant shall give written notice to Landlords of its election not to extend this lease, which notice shall be given not less than one hundred eighty (180) days prior to the expiration of the initial term or the then extended term.

XIV.

OPTION TO PURCHASE AND RIGHT TO FIRST REFUSAL

At any time following the expiration of the initial twenty-five (25) year term hereof, and so long as Tenant is not in default in performance hereunder, Tenant shall have and Landlords do hereby grant unto Tenant, an option to purchase the above described premises upon the terms and conditions herein set forth. In the event Tenant shall notify Landlords of its intent to exercise such option to purchase, and if Landlords and Tenant shall be unable to agree upon a purchase price, then the fair market value of the above described real estate hereby demised shall be determined by a board of three (3) appraisers, each of whom shall be licensed realtors or real estate appraisers engaged in business in Salt Lake City, Utah. One of said appraisers shall be selected by Landlords, one by Tenant and the third by the two so selected. The decision of a majority of any such board of appraisers shall be binding and conclusive upon the parties and the cost of such appraisal shall be borne equally by Landlords and Tenant. Following the determination of the fair market value of the demised premises as aforesaid, Tenant shall have the option for a period of sixty (60) days by written notice to Landlords following the determination of the fair market value to elect to purchase

the above described premises. In the event of the exercise of such option, the purchase price shall be an amount equal to the appraised fair market value of the above described real estate hereby demised. Said purchase price shall be payable in cash on the closing date as hereinafter set forth. In the event of the exercise of said option by Tenant, the closing of the purchase and sale shall be consummated with reasonable promptness thereafter by the payment of the purchase price to Landlords and the conveyance by Landlords of said real estate to Tenant by good and sufficient warranty deed whereby said real estate shall be conveyed to Tenant free and clear of and from any and all liens and encumbrances except building and use restrictions of record, roadways, easements and rights of way, if any, affecting title to said real estate, all nondelinquent real estate taxes which shall be a lien as of the date of closing, which said taxes Tenant shall assume and agree to pay and any liens and encumbrances suffered or imposed by Tenant. In the event of the exercise of such option and consummation of a sale of said premises pursuant thereto, rental hereunder shall be payable to the date of closing of said sale and any prepaid rental referable to the period of time following the date of the consummation of such sale shall be refunded by Landlords to Tenant.

Landlords further covenant and agree that in case Landlords shall at any time during the term of this lease as the same may be extended intend or desire to sell Landlords' estate in the demised premises, or if Landlords shall receive a bona fide offer to purchase said demised premises, Landlords shall first notify Tenant of such desire and intent or of such offer and the price at which and the terms upon which Landlords are willing to sell such estate. Thereupon, Tenant shall have the option, to be exercised within ninety (90) days after receipt by Tenant of written notice from the Landlords to elect to purchase the demised premises and all of Landlords' right, title and interest therein for such price and upon such stated terms and conditions. If Tenant exercises said option within said ninety (90) day period of time, the closing of the purchase and sale shall be consummated with reasonable promptness thereafter. If Tenant shall not exercise said option, Landlords shall have the right to conclude a sale of their interest in the demised premises for a price not less than and upon terms not more favorable than the price and terms stated in such notice; provided, however, notwithstanding the failure of the Tenant to exercise such option after notice from the Landlords or any subsequent owner or owners of the demised premises, the Tenant's option to purchase aforesaid and Tenant's right of first refusal as herein contained shall remain in force and be binding upon any subsequent owner or owners of the demised premises to the same extent as if said subsequent owner or owners were the Landlords named herein.

XV.

ZONING AND PERMITS

Landlords further covenant and agree that in the event Tenant is unable to secure all necessary permits required for the construction of the buildings and improvements proposed by Tenant within thirty (30) days following execution hereof, Tenant shall have the absolute right at its discretion to elect to terminate this lease in which event Tenant shall be released from any and all liability hereunder.

XVI.

SUPPLEMENTARY AGREEMENTS

Tenant agrees that at any time and from time to time upon not less than ten (10) days' prior written request by Landlords it will execute, acknowledge and deliver to Landlords, and Landlords agree that at any time and from time to time upon not less than ten (10) days' prior written request by Tenant they will execute, acknowledge and deliver to Tenant a statement in writing certifying that this lease is unmodified and in full force and effect (or if there have been modifications that the same is in full force and effect as modified and stating the modifications), and the dates to which the fixed rent and other charges have been paid in advance, if any, and whether or not there is any existing default by Tenant with respect to any sums of money required to be paid by Tenant under the terms of this lease, or notice of default served by Landlords, it being intended that any such statement delivered pursuant to this paragraph may be relied upon by any prospective purchaser of the fee or leasehold estate or by any prospective or existing mortgagee or assignee of any mortgagee of the leasehold estate. If any such certification by Landlords shall allege nonperformance by Tenant, the nature and extent of such nonperformance shall be summarized therein. In case either party shall fail to execute, acknowledge and deliver to the other such statement within ten (10) days after such request is made in writing it shall be conclusively presumed a certification that this lease is unmodified and in full force and effect and that all rental has been paid and that there is no existing default.

Landlords covenant and agree they will execute any and all instruments which may be required of Landlords

in connection with the granting of easements (affecting the demised premises or any street adjacent thereto) in favor of utility companies for purposes of the installation of water, gas, steam, electricity, telephone, sewage or storm drainage serving or for the benefit of the demised premises.

XVII,

MISCELLANEOUS PROVISIONS

Landlords and Tenant each hereby agree to execute and deliver upon demand any and all instruments which may be reasonably required or necessary to give further assurance of the covenants and agreements herein contained and set forth.

Notwithstanding any of the provisions hereof which might be construed to the contrary, this lease shall not be cancelled, surrendered, or any of the provisions thereof modified without the express written consent of any mortgagee of the leasehold estate of Tenant.

In case Tenant shall hold over after the expiration of the term of this lease such tenancy shall be deemed to be from month to month only but otherwise upon and subject to the terms, covenants and conditions herein contained.

The time or times herein specified within which Tenant is required to perform any act or to do any thing shall be and they are hereby extended for periods of time equal to the period of time during which performance is delayed directly by reason of strikes, lockouts, riots or insurrection, acts of God or other causes or conditions beyond Tenant's control.

Landlords shall have and are hereby given and granted the right to enter upon the demised premises at all reasonable times for the purposes of inspecting the condition thereof.

The parties agree that promptly following the execution and delivery of this agreement they will make and enter into a short form of lease for purposes of recording wherein there shall be set forth the legal description of the demised premises, the term of this lease and such other provisions hereof as shall be agreed upon by the parties.

In case of termination of this lease for any reason, Tenant covenants and agrees that it will promptly execute,

in recordable form, a release of this lease so as to provide to Landlords record evidence of such termination.


In case Landlords or Tenant shall be required to resort to litigation on account of any breach or default in performance hereunder and shall be successful in such litigation the judgment in such litigation shall include an allowance to the successful party or parties for all costs and expenses including reasonable attorneys' fees paid or incurred by such party or parties in connection with such litigation.

XVIII.

SUCCESSORS AND ASSIGNS

The terms and provisions hereof shall be and constitute covenants running with the title to the real estate described above, and shall inure to the benefit of and be binding upon the respective successors and assigns of the parties. Any party hereto shall have the right at any time to sell, transfer, assign, or convey his, her or its interest (whether fee, leasehold, or otherwise) in the demised premises (but subject to the option to purchase and rights of first refusal hereinabove set forth) to any person, firm or corporation; and upon the making of any such sale, transfer, assignment or conveyance such party shall cease to be liable hereunder on account of any liability or obligation which would otherwise have accrued following the date of such sale, transfer, assignment, or conveyance; provided, however, that any such sale, transfer, assignment or conveyance shall be subject to the terms and provisions of this agreement which shall be binding upon any purchaser, transferee or assignee.

IN WITNESS WHEREOF, Landlords have hereunto set their hands and seals and Tenant has caused the execution hereof and the affixing hereto of its corporate seal by its duly authorized officers pursuant to authority of its Board of Directors as of the day and date first above written.

 (SEAL)
Toulia K. Leventis

(SEAL)

"Landlords"

By A. Guagenti
its President

ATTEST:

Robert E. Griffin
Its Secretary

"Tenant"

STATE OF UTAH)
)SS:
COUNTY OF SALT LAKE)

Before me, the undersigned, a Notary Public, in and for said County and State, personally appeared the within named TOULA K. LEVENTIS and acknowledged the execution of the above and foregoing instrument.

WITNESS my hand and Notarial Seal this 9th day of September, 1976.

My Commission Expires:

October 5, 1979.

[Signature]
Notary Public
Residing in Salt Lake City, Utah.

STATE OF INDIANA)
)SS:
COUNTY OF VANDERBURGH)

Before me, the undersigned, a Notary Public, in and for said County and State, personally appeared the within named G.G.A., Inc., an Indiana corporation by Andrew Guagenti, its President and Robert E. Griffin, its Secretary who acknowledged the execution of the above and foregoing instrument pursuant to authority of its Board of Directors.

WITNESS my hand and Notarial Seal this 13th day of September, 1976.

My Commission Expires:

March 18, 1979

[Signature]
Notary Public

Exhibit D

TOULA K. LEVENTIS

2875 Crestview Drive
Salt Lake City, Utah 84108

September 15, 1986

Mr. Phil Arlt
G.G.A. Incorporated
Wendy's Old Fashioned Hamburgers
232 South Main Street
Salt Lake City, Utah 84101

Re: Property located at 550 East 400 South and 418 South 600 East,
Salt Lake City, Utah 84102.

Dear Phil:

In compliance with the terms set forth in Article XIV of the "Real Estate Ground Lease" made and entered into on September 9, 1976, by and between G.G.A., Inc. as Tenant and Toula K. Leventis as Landlord, covering real property located at 550 East 400 South and 418 South 600 East, Salt Lake City, Utah, I am writing this to inform you that I have received a bona fide offer for the purchase of the above captioned property. Mr. Jimmy P. Brown, a reputable Salt Lake City businessman and close personal friend, has made an offer to purchase the property for \$210,000.00. I am enclosing a copy of the Earnest Money Agreement together with a copy of Mr. Brown's check for \$5,000.00 for your information.

Since a considerable amount of time has elapsed since we first discussed your interest in purchasing the above mentioned property, I would be most appreciative if you would kindly respond to this communication as soon as possible.

Thank you for your anticipated cooperation.

With kindest personal regards,

Sincerely yours,



Toula K. Leventis

cc: Mr. Andy Guagenti, Secretary, G.G.A., Inc.
Mr. Robert E. Griffin, Treasurer, G.G.A., Inc.

Exhibit E

FILMED

FILED IN CIVIL OFFICE
SALT LAKE COUNTY, UTAH

JUL 17 8 10 AM '87

Louisa Linggi

NICK J. COLESSIDES (#696)
Attorney for Defendant
466 South 400 East
Salt Lake City, Utah 84111-3303
Tele: (801) 521-4441

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

G. G. A., INC., an Indiana corporation,	:	ANSWER TO AMENDED COMPLAINT
Plaintiff,	:	
vs.	:	Civil No. C87-943
TOULA K. LEVENTIS,	:	
Defendant.	:	Judge Frederick

Defendant TOULA K. LEVENTIS, by and through her attorney of record Nick J. Colessides, in answer to plaintiff's amended complaint admits, denies and alleges as follows:

1. In answering paragraph 1, plaintiff is without sufficient information to form a belief as to the truth of the allegations stated therein and therefore denies the same.
2. Admits paragraph 2.
3. Admits paragraph 3 and affirmatively alleges

600277

that said Lease speaks for itself.

4. Admits paragraph 4.

5. In answering paragraph 5, answering defendant admits the payment of rents required under the Lease and for lack of information denies all other allegations therein.

6. In answering paragraph 6, answering defendant admits provision XIV of the Lease and affirmatively alleges that said provision speaks for itself.

7. Admits paragraph 7, and affirmatively alleges that the said Exhibit B and C speak for themselves.

8. In answering paragraph 8, answering defendant admits that a telephone conversation occurred in early October 1986, and affirmatively alleges that the said Philip M. Artl, stated that a written notice verifying the exercise of the right of first refusal would be mailed to the answering defendant within one week; answering defendant further affirmatively alleges that on an occasion prior to September 15, 1986, the same Philip M. Artl orally informed answering defendant that plaintiff would purchase the said Premises for \$ 130,000.00; answering defendant denies all other allegations of paragraph 8.

9. Except as to the phrase "Notwithstanding this conversation" defendant admits the balance of the allegations asserted in paragraph 10 of the complaint and

affirmatively alleges that said Exhibit "D" speaks for itself.

10. In answering paragraph 10, defendant admits that she had advised on November 21, 1986, plaintiff of the offer of Janus Associates for \$ 250,000.00 to purchase the Premises and further admits Exhibit "E", and affirmatively alleges that said Exhibit "E" speaks for itself and denies all other allegations therein.

11. In answering paragraph 11, answering defendant admits the receipt of the letter dated December 6, 1986, from plaintiff's counsel and affirmatively alleges that said Exhibit "F" speaks for itself and denies all other allegations therein.

12. In answering paragraph 12, defendant admits that certain offers were made both before and after the filing of this action and denies all other allegations therein.

13. In answering paragraph 13, defendant admits receipt of Exhibit G, affirmatively alleges that said Exhibit speaks for itself and denies all other allegations contained therein.

14. In answering paragraph 14, defendant affirmatively alleges that the letter dated February 17, 1987, speaks for itself and denies all other allegations

therein.

15. In answering paragraph 15, defendant admits the allegations contained therein and affirmatively alleges that said Exhibit H speaks for itself.

16. In answering paragraph 16, with the exception of the allegation "... \$40,000.00 of which was paid under protest ..." which allegation is denied, defendant admits paragraph 16.

17. Answering defendant incorporates herein by reference the answers contained in paragraphs 1 through 16 above, the same as if each such paragraphs were set forth here in its entirety.

18. Denies paragraph 18.

19. Denies paragraph 19.

20. Denies paragraph 20.

21. Denies paragraph 21.

22. Denies paragraph 22.

23. Denies paragraph 23.

24. Denies paragraph 24.

25. Denies paragraph 25.

26. Defendant denies each and every allegation contained in the Complaint that is not specifically admitted herein.

27. Plaintiff's complaint fails to state a cause

of action against defendant upon which relief may be granted.

28. Plaintiff is in material breach under the terms of the agreements made between the parties and the documents entered into, to-wit the Lease, and as result some or all of plaintiff's claims and remedies are barred or diminished.

29. Some or all of plaintiff's claims are barred by plaintiff's failure to give required notices to defendant.

30. Any notices claimed to have been given by plaintiff to defendant were defectively submitted.

31. Defendant affirmatively alleges that plaintiff had a duty to deal with defendant fairly and in good faith, and plaintiff had breached that duty, and is precluded from maintaining this action.

32. Some or all of plaintiff's claims are barred by plaintiff's failure to comply with requirements of applicable law relating to transacting business under an assumed name and/or accomplishing filings regarding the use of the name GGA, Inc..

33. Some or all of plaintiff's claims are barred by the doctrine of unclean hands.

34. Plaintiff has waived and/or is estopped to assert and maintain its claims asserted in the Complaint.

35. Plaintiff has elected to exercise its right of

first refusal under the terms of the Lease and in fact purchased the Premises for the sum of \$ 250,000.00.

36. Defendant conveyed the Premises to Plaintiff by a good and sufficient Warranty Deed in accordance with paragraph XIV of the Lease.

37. Plaintiff's election to purchase the Premises by exercising its right of first refusal and answering defendant's conveyance of the Premises is accord and satisfaction of any claims which plaintiff may have.

38. Plaintiff's claims are barred by the doctrine of waiver in that plaintiff elected to exercise its right of first refusal and consummated the purchase of the Premises, thus waiving any claims it may have had.

39. By Plaintiff electing to exercise its right of first refusal under the terms of the Lease and to purchase the Premises, Plaintiff consented to abandon its claims asserted in the Complaint.

40. By Plaintiff electing to exercise its right of first refusal under the terms of the Lease and to purchase the Premises, plaintiff released defendant from defendant's obligations, and thus plaintiff can not assert or maintain its claims in the Complaint.

41. Plaintiff and defendant have closed the transaction subject matter of the complaint herein, and

answering defendant passed title of the real property subject matter of this action, and the closing constitutes accord and satisfaction of all issues in this action.

42. Answering defendant having passed title of the real property to plaintiff on February 27, 1987, and plaintiff having accepted title of the same precludes any relief to plaintiff.

43. Any damages suffered by plaintiff if any, were the result of plaintiff's own conduct over which defendant had no control.

44. Plaintiff has failed to mitigate its damages.

45. Plaintiff's claims are barred in that plaintiff had nothing to exercise when it purported to exercise its right of first refusal on December 6, 1986 relating to the offer to purchase dated September 26, 1987, for the reason that said offer to purchase was rescinded on October 28, 1986, and notice thereof was given to plaintiff.

46. Plaintiff's action as filed herein is retaliatory in nature and its purpose is to force and coerce defendant to submit to the demands of the plaintiff and to accept a lower price from plaintiff.


47. Defendant expressly reserves her right pursuant to Rule 12 of the Utah Rules of Civil Procedure and requests that plaintiff be required to furnish security for

costs in accordance with and pursuant to the said rule.

48. Plaintiff's complaint is without merit and is not brought and asserted in good faith and defendant is entitled, pursuant to § 78-27-56 Utah Code Annotated, 1953 as amended, to an award of his attorney's fees in connection with the defense of Plaintiff's Complaint.

WHEREFORE, defendant having answered plaintiff's complaint herein, prays that the same be dismissed, no cause of action, and that defendant recovers her costs and attorney's fees and for such other and further relief as the Court deems proper in the premises.

DATED this 16th day of July, 1987.


NICK J. COLESSIDES
Attorney for Defendant
Toula K. Leventis

MAILING CERTIFICATE

Mailed a copy of the foregoing Answer of Defendant Toula K. Leventis, to Bryan A. Larson, attorney for Plaintiff, 1200 Kennecott Building, Salt Lake City, Utah 84133, postage prepaid, this 16th day of July 1987.

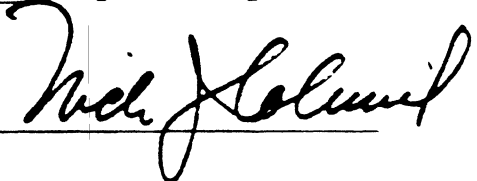


Exhibit F

TOULA K. LEVENTIS
2875 Crestview Drive
Salt Lake City, Utah 84108

October 28, 1986

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Phil Arlt
G.G.A. Incorporated
Wendy's Old Fashioned Hamburgers
232 South Main Street
Salt Lake City, Utah 84101

Re: Rescission of offer to purchase the property located at 550 East 400 South
and 416 South 600 East, Salt Lake City, Utah 84102

Dear Phil:

I have been informed by Mr. Jimmy Brown, the prospective buyer of the property at 572 East 400 South, Salt Lake City, Utah (see my earlier letter of September 15, 1986), that his offer has been rescinded and withdrawn; accordingly I have returned the earnest money deposit to Mr. Brown.

I do want to sell my property and will entertain new offer(s) to sell it; accordingly I do not consider myself bound to sell at the price of \$210,000.00. Thank you for your consideration.

Sincerely yours,

Toula K. Leventis

cc: Mr. Andy Guagenti, Secretary, G.G.A., Inc.
Mr. Robert E. Griffin, Treasurer, G.G.A., Inc.

Exhibit G

TOULA K. LEVENTIS
2875 Crestview Drive
Salt Lake City, Utah 84108

November 21, 1986

Mr. Phil Arlt
G.G.A., Incorporated
Wendy's Old Fashioned Hamburgers
232 South Main Street
Salt Lake City, Utah 84101

CERTIFIED - RETURN RECEIPT REQUESTED

Re: Property located at 550 East 400 South and 418 South 600 East, Salt Lake City, Utah 84102 -- Receipt of \$250,000 offer to purchase this property

Dear Phil:

In compliance with the terms set forth in Article XIV of the "Real Estate Ground Lease" made and entered into on September 9, 1976 by and between G.G.A., Inc. as Tenant and Toula K. Leventis as Landlord, covering real property located at 550 East 400 South and 418 South 600 East, Salt Lake City, Utah, I am writing this letter to inform you that I have received a bona fide cash offer of \$250,000 for the purchase of the above-captioned property. Janus Associates is a Salt Lake City based investment group headed by Dr. James P. Pappas and I have been assured that the transaction can be closed on a cash basis before the end of this year which is important to me because of the change in the tax laws covering capital gains which I understand will be in effect as of January 1, 1987. Enclosed is a copy of the Earnest Money Agreement covering this transaction for your information.

My advisers tell me the buyers understand your continuing rights as lessees of the property and your interest in the improvements thereon as well as your option to purchase detailed in Article XIV of our lease. The nominal \$1,100 per month rent you are now paying me under the lease underscores the importance to me and my family of closing this transaction at the earliest possible date that we might benefit from much needed improved financial circumstances from this property.

As you know, I have been desirous of selling this property for a long time and know that you and your associates, Mr. Guagenti and Mr. Griffin, have discussed your possible interest in purchasing the subject property on various occasions in the past. Because of previous evaluations by you, I would hope that you could make your decision within two or three weeks. It would be a real courtesy to me and greatly appreciated if you could respond to this communication within a maximum of thirty days rather than the ninety days provided for in Article XIV of our Lease Agreement.

Thank you in advance for your anticipated cooperation in this matter.

Sincerely yours,

Toula K. Leventis

cc: Mr. Andy Guagenti, Secretary, G.G.A., Inc.
Mr. Robert E. Griffin, Treasurer, G.G.A., Inc.

Exhibit H

LAW OFFICES OF

RAMBERGER, FOREMAN, OSWALD AND HAHN

708 HULMAN BUILDING

P O BOX 887

EVANSVILLE INDIANA 47704

December 6, 1986

TELEPHONE (812) 425-1891
TELECOPIER (812) 465-4041

FREDERICK P. RAMBERGER
(1903-1983)
WILLIAM A. FOREMAN
C. E. OSWALD JR.
ROBERT A. HAHN
JOHN A. BURTON JR.
JEFFREY A. THURMAN
GEORGE A. MCKAY
ROBERT A. DECKER
FRED B. WHITE
ROBERT T. BODIN
GEORGE L. SCHNEIDER
VICTOR B. FARMER
AROLD W. BROWN
MARK E. MILLER
RODERICK W. CLAYTON JR.
KEVIN J. WEBSTER

Toula K. Leventis
2875 Crestview Drive
Salt Lake City, UT 84108

Re: Real Estate Situated at 550 East 400 South and
418 South 600 East, Salt Lake City, Utah

Dear Mrs. Leventis:

At the request of our client, the tenant under the Lease Agreement with you dated September 9, 1976, we have reviewed the applicable provisions of the Lease Agreement, particularly the provisions of Article XIV thereof, and your correspondence of September 15, 1986; October 28, 1986; and November 21, 1986.

As you are aware and indicated in your September 15, 1986, letter, that Article of the Lease Agreement specifically provides, in the event of your intent or desire to sell your interest in the above-described real estate or the receipt of an offer to purchase the same upon terms acceptable to you, that you are required to first notify the tenant of such intent and such offer and, thereupon, the tenant has the option, exercisable within ninety (90) days after receipt of such written notice from you, to elect to purchase the premises and all of your interest therein upon the terms set forth in such offer.

As you know, the provisions of Article XIV of the lease in question were specifically negotiated for and constituted a material part of the consideration for the execution of said lease by our client.

In your letter of September 15, 1986, you offered to sell the real estate in question to our client for a purchase price of \$210,000.00.

By your subsequent letter of October 28, 1986, you purported to rescind that offer, and by your subsequent letter of November 21, 1986, you purported to make a new and different offer to our client, as tenant.

Based upon our research, and after consultation with our local counsel, McKay, Burton and Thurman of Salt Lake City, it is our opinion that the making of the initial offer by you on September 15, 1986, created in our client a valid and effective option

Toula K. Leventis
Re: G.G.A. II, Inc.
Page 2

to purchase, supported by a good and valuable consideration, the real estate in question at the price specified in that offer, which would remain in effect for the contractually stipulated period of ninety (90) days and would not be subject in any way to rescission, revocation or alteration by you during the option period.

Consequently, it is our further opinion that the purported rescissions set forth in your letters of October 28, 1986, and November 21, 1986, are not legally effective and would not deprive our client of the right to exercise its contractual option rights to purchase upon the terms initially offered.

Consequently, you are hereby notified and advised, on behalf of our client, G.G.A. Incorporated, d/b/a Wendy's Old-Fashioned Hamburgers, of its election to exercise its option, which option is hereby exercised, to purchase the above-described premises and all of your right, title and interest therein in accordance with the provisions of Article XIV of the Lease Agreement of September 9, 1976, for the purchase price of \$210,000.00 set forth in your initial offer of September 15, 1986.

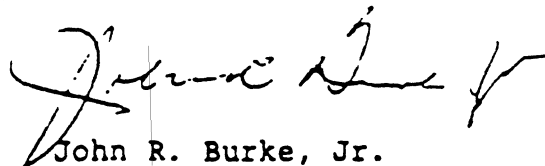
As an accommodation to you, I have been authorized to advise you, on behalf of my client, that since it apparently would be to your benefit for income tax purposes, that it is agreeable to concluding its purchase of the subject real estate on a cash basis prior to the year-end.

To that end, the purchase of the real estate in question will be handled by our local counsel, McKay, Burton and Thurman, to expedite the matter.

As noted, our client intends to enforce its contractual rights under the terms of the Lease Agreement and to take any action required in connection therewith, and should any such action be necessary, it will, similarly, be handled by McKay, Burton and Thurman.

Yours very truly,

BAMBERGER, FOREMAN, OSWALD AND HAHN



John R. Burke, Jr.

JRB:kol
cc: Phillip M. Arlt
Andrew Guagenti
Robert E. Griffin
Barrie G. McKay, Esq.

CERTIFIED MAIL NO. P 261 314 870
Return Receipt Requested

Exhibit I

MCKAY, BURTON & THURMAN

A PROFESSIONAL CORPORATION

ATTORNEYS AND COUNSELORS AT LAW

SUITE 200 KENNEDY BUILDING

10 EAST SOUTH TEMPLE STREET

SALT LAKE CITY UTAH 84133

(801) 521-4335

December 29, 1986

Janus Associates
c/o Dr. James P. Pappas
2449 Russell Circle
Holladay, Utah 84117

Four Star Realty
455 East 500 South
Salt Lake City, Utah 84111
Attn: J. Rees Jensen, Principal Broker

Toula K. Leventis
2875 Crestview Drive
Salt Lake City, Utah 84108

HAND DELIVERED and
CERTIFIED MAIL

Re: 562 East 400 South Property

Dear Sirs and Madam:

This firm represents G.G.A., Inc. doing business as Wendy's Old Fashioned Hamburgers at 562 East 4th South, pursuant to a Peel Estate Ground Lease ("Lease") dated September 9, 1976 by and between Toula K. Leventis as Lessor and G.G.A., Inc. as Lessee. Article XIV of that certain Lease contains an Option to Purchase and Right of First Refusal granted to Lessee, G.G.A., Inc., by the Lessor.

By letter dated September 15, 1986, Toula K. Leventis, the Lessor, advised G.G.A., Inc. of an offer which she had received to purchase the real property. Thereafter, by letter dated December 6, 1986 from John R. Burke, Jr. of Bamberger, Foreman, Oswald and Hahn, General Counsel for G.G.A., Inc., in full compliance with the provisions of Article XIV of the Lease, G.G.A., Inc. notified Toula K. Leventis of its election to exercise its option and the exercise of its option to purchase the real property for the purchase price contained in the September 15, 1986 offer of \$210,000.00.

Notwithstanding G.G.A., Inc.'s contractually agreed upon option to purchase and its timely exercise of that option, our

Janus Associates, et al.
December 29, 1986
Page 2

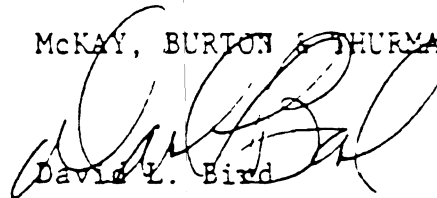
client is advised by Toula K. Leventis that she now proposes to sell to a third party, Janus Associates, in complete dereliction of the rights of G.G.A., Inc.

Notice is hereby given to each of the parties to this contemplated transaction, of G.G.A., Inc.'s contractual interest in the above- described property and its intention to purchase the property pursuant to its existing option. As local counsel for G.G.A., Inc., this firm will vigorously enforce all rights and remedies of G.G.A., Inc. under the Real Estate Ground Lease, including but not limited to G.G.A., Inc.'s right to specific performance of its Option to Purchase and recovery of any damages occasioned by breach of the Real Estate Ground Lease..

Please govern yourselves accordingly.

Sincerely,

McKAY, BURTON & THURMAN



David L. Bird

DLB05-1s
CC: Phil Arlt
John R. Burke, Jr.

Exhibit J

MCKAY, BURTON & THURMAN

A PROFESSIONAL CORPORATION

ATTORNEYS AND COUNSELORS AT LAW

SUITE 200 KENNEDY BUILDING

10 EAST SOUTH TEMPLE STREET

SALT LAKE CITY UTAH 84133

801 521 4135

February 17, 1987

Toula K. Leventis
2875 Crestview Drive
Salt Lake City, Utah 84108

Nick J. Colessides, Esq.
466 South 400 East
Salt Lake City, Utah 84111

HAND DELIVERED AND
CERTIFIED MAIL

Re: Property located at 550 East 400 South and 418 South
600 East, Salt Lake City, Utah 84102

Dear Ms. Leventis and Mr. Colessides:

As you are both aware, this firm represents GGA, Inc. ("GGA") doing business as Wendy's Old Fashioned Hamburgers, the lessee under that certain Real Estate Ground Lease dated September 9, 1976 by and between Toula K. Leventis as Landlord and GGA as Tenant. GGA is in receipt of your letter dated November 21, 1986 addressed to Mr. Phil Arit advising GGA of an offer to purchase the above described property for the amount of \$250,000.00. This, notwithstanding your previous notification on September 15, 1986 of an option to purchase the property for the amount of \$210,000.00, which option was timely exercised by GGA.

You are hereby notified on behalf of our client, GGA of its election to exercise its Option to Purchase the above described property as set forth in Article XIV of the Real Estate Ground Lease in response to the Notice in your November 21, 1986 letter. This notification constitutes an unequivocal exercise of GGA's Option to Purchase the demised premises and all of your right, title and interest therein, for the price and upon the stated terms and conditions contained in your notice. This letter will further advise you that GGA is ready, willing and able to close the purchase and sell of the above described property with reasonable promptness at a date, place and time acceptable to both parties.

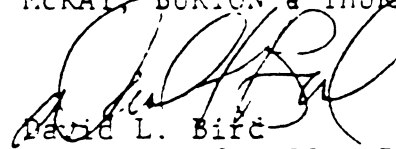
You are further notified that GGA hereby specifically reserves all of its rights and remedies under the terms of that certain Real Estate Ground Lease and specifically, but not by way of limitation to, the rights and remedies provided for in Article

Toula K. Leventis
Nick J. Colessides
February 17, 1987
Page 2

XIV and further reserves all of its rights and remedies under the September 15, 1986 option and GGA's timely exercise thereof. Please advise this office at your earliest convenience of date, time and place for the closing of this transaction.

Sincerely,

McKAY, BURTON & THURMAN


David L. Birc
Attorneys for GGA, Inc.

DLB05:ls
CC: Phil Arlt
Andrew Guagenti
Robert E. Griffith
John R. Burke, Jr.

000003

Exhibit K

MCKAY, BURTON & THURMAN

A PROFESSIONAL CORPORATION

WILFORD M. BURTON
BARRIE G. MCKAY
WILLIAM T. THURMAN
DAVID P. BROWN
WILLIAM THOMAS THURMAN
PETER STIRBA
DAVID L. BIRD
REID TATEOKA
STEPHEN W. RUPP
SCOTT C. PIERCE
JOEL T. MARKER
BENSON L. HATHAWAY JR.

ATTORNEYS AND COUNSELORS AT LAW
SUITE 1200 KENNECOTT BUILDING
10 EAST SOUTH TEMPLE STREET
SALT LAKE CITY, UTAH 84133

(801) 521-4135

OF COUNSEL
DAVID L. MCKAY

February 27, 1987

HAND DELIVERED

Nick J. Colessides, Esq.
Attorney at Law
466 South 400 East
Salt Lake City, Utah 84111

Re: Closing of Purchase of Fourth South Property
by G.G.A. II, Inc. from Leventis

Dear Nick:

I understand from our conference call with Mr. Jensen of Western States Title Company that all differences you had regarding my letter of instructions have been resolved except you object to my instruction to have Western States Title Company deliver to Mrs. Leventis my letter dated February 24, 1987, with the payment of the purchase price because you felt that by her receiving the letter with the payment it might be construed that she was agreeing with some of the statements in the letter.

As we agreed over the telephone, Mrs. Leventis is reserving all of her claims and rights, including defenses against the lawsuit of G.G.A. II, Inc., and nothing in the closing is to be interpreted as her waiving any of her claims or defenses. Likewise, nothing in the closing is to be interpreted or construed as a waiver or a relinquishment by G.G.A. II, Inc. of its claim that it had a right to purchase the property for \$210,000.00 rather than the \$250,000.00 demanded. In other words, the closing is not a waiver, a consent or an accord and satisfaction of any of the claims, rights or defenses of either party. We agreed to that in our conference call; therefore, a copy of this letter delivered to Western States Title Company is its authority to deliver the net amount of the purchase price to Toula K. Leventis without my letter dated February 24, 1987.

Very truly yours,


Barrie G. McKay

BGM:sjl

cc: Western States Title Company

Exhibit L

WHEN RECORDED, MAIL TO:
GGA, INC.
4300 East Morgan Avenue
Evansville, Indiana 47715

WARRANTY DEED

TOULA K. LEVENTIS, 2875 Crestview Drive, Salt Lake City, Utah 84108, grantor, hereby CONVEYS and WARRANTS to:

GGA, INC., a Indiana Corporation
4300 East Morgan Avenue
Evansville, Indiana 47715

of Evansville, Vanderburgh County, State of Indiana, for the sum of TEN Dollars and other good and valuable consideration the following described tract of land in Salt Lake County, State of Utah, to-wit:

PARCEL No. 1: Commencing at a point 114.25 feet West of the Northeast corner of Lot 8, Block 33, Plat "B", Salt Lake City Survey, and running thence South 52.75 feet; thence East 114.25 feet; thence South 79.25 feet; thence West 165 feet; thence South 198 feet; thence West 41.25 feet; thence North 330 feet; thence East 92 feet to the place of beginning.

PARCEL NO. 2: Commencing at a point 8 rods South from the Northeast corner of Lot 8, Block 33, Plat "B", Salt Lake City Survey, and running thence South 45 1/2 feet; thence West 10 rods; thence North 45 1/2 feet; thence East 10 rods to the place of beginning.

Both parcels 1 and 2 being subject to current general taxes, other assessments, easements, restrictions and rights of way of record or enforceable in law or equity.

WITNESS the hand of said grantor, this 20th day of February, 1987.

Toula K. Leventis
TOULA K. LEVENTIS

STATE OF UTAH)
 : SS
COUNTY OF SALT LAKE)

On the 20th day of February, 1987, personally appeared before me TOULA K. LEVENTIS, the signer of the above instrument, who duly acknowledged to me that she executed the same.

My Commission Expires:

2-23-87

Nick J. Colessidico
NOTARY PUBLIC, Residing in
Salt Lake County, Utah

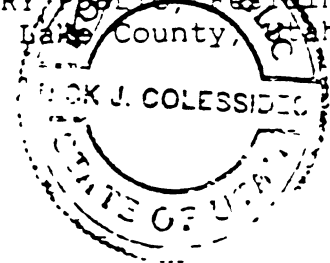


Exhibit M

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Salt Lake City, Utah 84133
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IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

G.G.A., INC., an Indiana corporation,)	
)	AMENDED COMPLAINT
)	
Plaintiff,)	
)	Civil No. C87-943
vs.)	
)	
TOULA K. LEVENTIS)	Judge Frederick
)	
Defendants.)	

Plaintiff G.G.A., Inc. complains of Defendant Toula K. Leventis as follows:

1. Plaintiff G.G.A., Inc. (hereinafter "G.G.A.") is an Indiana corporation with its principal place of business in Salt Lake County, State of Utah doing business as Wendy's Old Fashioned Hamburgers.

2. Defendant Toula K. Leventis (hereinafter "Leventis") is a resident of Salt Lake County, State of Utah.

GENERAL ALLEGATIONS

3. On or about September 9, 1976, Plaintiff as tenant entered into a Real Estate Ground Lease (hereinafter "Lease") with Leventis as landlord for a parcel of real property located at approximately 550 East 400 South and 418 South 600 East, Salt Lake City, Utah (hereinafter "the premises"). A true and correct copy of said lease is attached hereto as Exhibit "A" and incorporated herein by reference.

4. Plaintiff constructed at Plaintiff's cost a Wendy's Old Fashioned Hamburger restaurant and commenced doing business. For in excess of 10 years, Plaintiff has continually operated the Wendy's restaurant on the premises.

5. Plaintiff has fully and completely performed each and every covenant, condition and term of the lease by it required to be performed, including specifically but not by way of limitation to, payment of all rental income required under the terms of the lease.

6. Article XIV of the lease provides that landlord, Leventis, grants to tenant, G.G.A. an "Option To Purchase and Right To First Refusal."

7. By letter dated September 15, 1986, Leventis advised G.G.A. of a "bonafide offer" for the purchase of the premises from a Mr. Jimmy P. Brown for the amount of \$210,000.00. A true and correct copy of said letter is attached hereto as Exhibit

"B" and incorporated herein by reference. A true and correct copy of the Earnest Money Sales Agreement between Leventis and Jimmy P. Brown is attached hereto as Exhibit "C" and incorporated herein by reference.

8. Sometime during early October and prior to October 28, 1986 Mr. Phillip M. Arlt, an officer of G.G.A., orally advised Leventis by telephone that G.G.A. would exercise its Option To Purchase And Right To First Refusal by matching the bonafide offer of \$210,000.00.

9. Notwithstanding this conversation, by letter dated October 28, 1986 Leventis advised Plaintiff that Mr. Jimmy P. Brown, the prospective buyer of the property, had rescinded and withdrawn his offer. The letter further advised Plaintiff that Leventis did not consider herself bound to sell the property to Plaintiff at the price of \$210,000.00. A true and correct copy of said letter is attached hereto as Exhibit "D" and incorporated herein by reference.

10. By letter dated November 21, 1986 Leventis advised Plaintiff that she had purportedly received a bonafide cash offer from James P. Pappas doing business as Janus Associates of \$250,000.00 for the purchase of the premises. A true and correct copy of said November 21, 1986 letter is attached hereto as Exhibit "E" and incorporated herein by reference.

11. By letter dated December 6, 1986, Plaintiff, by and through their respective attorneys Bamberger, Foreman, Oswald and Hahn advised Leventis that Plaintiff was exercising its option to purchase the premises at the price of \$210,000.00. A true and correct copy of said December 6, 1986 letter is attached hereto as Exhibit "F" and incorporated herein by reference.

12. Following the alleged offer of James P. Pappas, dba Janus Associates, Plaintiff made several attempts at negotiation to enforce its option right to purchase the property for \$210,000.00.

13. Leventis continued to refuse to allow Plaintiff to purchase the property for \$210,000.00 and insisted on selling the property to James P. Pappas, dba Janus Associates. In order to prevent Defendant from selling the property to James P. Pappas, dba Janus Associates, Plaintiff, on February 17, 1987 tendered a second notification of intent to exercise its Option To Purchase by delivering a letter notifying Defendant of such. A true and correct copy of that letter is attached hereto as Exhibit "G" and incorporated herein by reference.

14. That letter dated February 17, 1987 specifically reserved all of Plaintiff's rights and remedies to enforce its option to purchase the property for \$210,000.00 as previously demanded pursuant to Article XIV of the lease agreement.

15. On February 17, 1987 counsel for Defendant hand delivered an acceptance of Plaintiff's notice of exercise of option to purchase. A true and correct copy of said letter is attached hereto as Exhibit "H" and incorporated herein by reference.

16. Subsequent transactions transferred title in the property to Plaintiff after the payment of \$250,000.00, \$40,000.00 of which was paid under protest, by the Plaintiff.

CAUSE OF ACTION

(Breach of Contract)

17. Plaintiff realleges and incorporates herein all allegations contained in paragraphs 1 through 16 above.

18. The Option To Purchase And Right To First Refusal contained in Article XIV of the Lease was specifically bargained for and constituted a material part of the consideration for the execution of the Lease by Plaintiff.

19. Plaintiff timely exercised within the ninety (90) days provided for in Article XIV its option to purchase the property for the purchase price of \$210,000.00.

20. Having granted Plaintiff an option to be exercised within ninety (90) days after receipt by Plaintiff of written notice from Leventis of a bonafide offer to purchase the property, Leventis' notice of purported rescission of the bonafide offer by the offeror Jimmy P. Brown does not extinguish

Plaintiff's option to purchase on the same terms and conditions as Leventis was willing to sell to the offeror, Jimmy P. Brown, those terms including a sales price of \$210,000.00.

21. Plaintiff, having constructed a Wendy's Old Fashioned Hamburger restaurant on the premises and having established a viable business at the location could not adequately be compensated by damages for the breach of the Lease on the part of Leventis in refusing to sell the property to Plaintiff at the option price of \$210,000.00.

22. Refusal on the part of Leventis to allow Plaintiff herein to exercise its option to purchase the property for \$210,000.00 constituted a repudiation and breach of the Lease agreement.

23. Plaintiff was justified in making its election to match with full reservation of rights the alleged bid of James P. Pappas, dba Janus Associates in order to mitigate its damages under the breach by Leventis.

24. Plaintiff is therefore entitled to judgment against Defendant for the principal amount of \$40,000.00 which represents the difference between the forced purchase price of \$250,000.00 and the price of \$210,000.00 to which Plaintiff was entitled under the proper exercise of its purchase option pursuant to its letter to Defendant dated December 6, 1986.

25. In addition, pursuant to the provisions of Article XVII, Plaintiff is entitled to an award for its costs and

CERTIFICATE OF MAILING

I hereby certify that I sent a true and correct copy of
the foregoing Amended Complaint, postage prepaid, on the 19th
day of June, 1987 to the following:

Nick J. Colessides
466 South 400 East
Salt Lake City, Utah 84111-3303
Attorney for Toula K. Leventis

Diana Barwald

REAL ESTATE GROUND LEASE

THIS INDENTURE OF LEASE, made and entered into this 9th day of September, 1976, by and between TOULA K. LEVENTIS, of Salt Lake county, Utah, hereinafter referred to as "Landlords", whether one or more, and G.G.A., Inc., an Indiana corporation, with its principal office and place of business in the City of Evansville, Vanderburgh County, Indiana, hereinafter referred to as "Tenant", WITNESSETH THAT:

Landlords, for and in consideration of the covenants and agreements herein contained and set forth to be kept and performed by Tenant and subject to and upon the terms and conditions hereinafter set forth, do hereby lease, let and demise unto Tenant, and Tenant does hereby take and hire of and from Landlords the following described real estate situated in the City of Salt Lake, Salt Lake County, State of Utah, to-wit:

A certain tract or parcel of real estate containing Thirty-six Thousand Eight Hundred Seventy-two (36,872) square feet, more or less, said tract or parcel being more commonly known and referred to as 550 East 4th South and 418 South 6th East, Salt Lake City, Utah, and said real estate being more particularly described in Exhibit A attached hereto and made a part hereof,

which real estate is hereinafter referred to as the "demised premises:.

TO HAVE AND TO HOLD said demised premises unto Tenant for the period commencing as of the date hereof and extending to the first day of February, 1977, (said latter date being the "commencement date") plus a term of twenty-five (25) years commencing on said commencement date, with the right to extend said term as hereinafter set forth, all upon and subject to the limitations, terms, covenants, provisions and conditions hereof as hereinafter set forth.

I.

RENTAL

Tenant covenants and agrees to pay to Landlords, without demand, at such place as Landlords may, from time to time,

EXHIBIT A

designate in writing, and Landlords agree to accept, as rental for the demised premises during the term of this lease the sums set forth in the following schedule:

- A. For a period of four (4) months after the execution of this lease, no rental has to be payable by the Tenant hereunder and the Landlords will make monthly payments to ~~XXLTY~~ ~~XXLTY~~ Tenant ~~XXLTY~~ of Nine Hundred Dollars (\$900.00) per month for said period of four (4) months.
- B. The sum of Twelve Thousand Dollars (\$12,000.00) per year, net rental, payable at the rate of One Thousand Dollars (\$1,000.00) per month in advance on the first day of each calendar month for the first five (5) years of said term.
- C. The sum of Thirteen Thousand Two Hundred Dollars (\$13,200.00) per year, net rental, payable at the rate of One Thousand One Hundred Dollars (\$1,100.00) per month in advance on the first day of each calendar month during the 6th through the 10th years of said term.
- D. The sum of Fourteen Thousand Four Hundred Dollars (\$14,400.00) per year, net rental, payable at the rate of One Thousand Two Hundred Dollars (\$1,200.00) per month in advance on the first day of each calendar month during the 11th through the 15th years of said term.
- E. The sum of Fifteen Thousand Six Hundred Dollars (\$15,600.00) per year, net rental, payable at the rate of One Thousand Three Hundred Dollars (\$1,300.00) per month in advance on the first day of each calendar month during the 16th through the 25th years of said term.
- F. The sum of Sixteen Thousand Eight Hundred Dollars (\$16,800.00) per year, net rental, payable at the rate of One Thousand Four Hundred Dollars (\$1,400.00) per month in advance on the first day of each calendar month during the 26th through the 35th years (the first two [2] extension terms) of said lease.
- G. The sum of Eighteen Thousand Dollars (\$18,000.00) per year, net rental, payable at the rate of One Thousand Five Hundred Dollars (\$1,500.00) per month in advance on the first day of each calendar month during the 36th through 45th years (the third and fourth extension terms) of said lease.

- H. The sum of Nineteen Thousand Two Hundred Dollars (\$19,200.00) per year, net rental, payable at the rate of One Thousand Six Hundred Dollars (\$1,600.00) per month in advance on the first day of each calendar month during the 46th through 55th years (the fifth and sixth extension terms) of said lease.

The term "year" or "lease year" as used herein shall be construed as meaning and referring to a period of one (1) year commencing on the first day of the twenty-five (25) year term of this lease or the anniversary of such date.

Rental not paid within ten (10) days from and after the due date thereof shall be payable together with a delinquency charge in the amount of five percent (5%) of the delinquent rental.

Notwithstanding the provisions of the proceeding subparagraphs F, G, and H with respect to the rental payable following the expiration of the initial twenty-five (25) year term hereof, Landlords at their option may request that the rental for each or any of said ten (10) year periods specified in said paragraphs F, G, and H be determined by a board of appraisors each of whom shall be realtors or real estate appraisers engaged in business in the City of Salt Lake, Utah. One of said appraisers shall be selected by Landlords, one by Tenant and the third by the two thus first selected. The cost of such appraisal shall be borne by Landlords. Following the rental determination by such board of appraisers, Tenant shall have the right at its option, for a period of thirty (30) days following the receipt of written notification of such rental determination, by written notice to Landlords to elect to terminate this lease regardless of whether the term thereof shall have been otherwise extended.

As additional consideration for this lease, Tenant undertakes and agrees to secure the release of Landlords and the above described real estate from any further liability under or by virtue of that certain mortgage indebtedness in favor of Valley Bank and Trust Company covering the above described premises, the unpaid principal balance of which is currently in the approximate amount of Forty-seven Thousand Dollars (\$47,000.00), and which said indebtedness is payable in monthly installments of Nine Hundred Dollars (\$900.00) per month. In furtherance thereof, Tenant covenants and agrees to pay, as rental, the sums required to amortize said mortgage indebtedness in accordance with its present terms and from the commencement date hereof until the due date of the last installment of said mortgage indebtedness on April 1, 1981, Landlords shall credit Tenant with the sum of Nine Hundred Dollars (\$900.00) per month against the monthly rental payments otherwise payable hereunder and the balance, if any, of said monthly rental payments shall be paid to Landlords.

As hereinafter more particularly provided, all ad valorem taxes due and payable commencing with the installment of taxes due November, 1977 with respect to the above described real estate, all ad valorem taxes payable with respect to the buildings and improvements erected or placed upon said real estate by Tenant, and all costs of insurance and repairs with respect to the demised premises and improvements, payable during the term of this lease shall be paid by Tenant and the aforesaid rentals payable to Landlords shall therefore be net rentals to Landlords.

II.

LANDLORDS' TITLE AND TENANT'S POSSESSION

Landlords represent and warrant unto Tenant that Landlords are the owners of a merchantable record title in fee simple to the demised premises subject only to existing easements, highways and rights of way, and the mortgagee indebtedness aforesaid, and the lien of current taxes, and that subject to the terms and provisions of this lease, Tenant shall have and enjoy the quiet and peaceful possession of the demised premises during the entire term of this lease. Landlords shall contemporaneously with the execution of this lease furnish to Tenant a standard policy of title insurance showing the demised premises to be free and clear of all liens and encumbrances except as aforesaid.

The right to possession of the demised premises is hereby vested in Tenant effective as of the date of execution hereof if, as of said date, Tenant shall have secured a release of Landlords and the demised premises from any liability under the real estate mortgage in favor of Valley Bank and Trust Company and Tenant has secured a commitment from the City of Salt Lake, Utah, that all permits necessary or required to construct the proposed improvements upon the demised premises will be issued and granted.

III.

TAXES AND ASSESSMENTS

Tenant shall pay before any fine, penalty, interest or cost may be added thereto for the nonpayment thereof, all real estate taxes, assessments, water charges, sewer charges, and other governmental levies and charges, general and special, ordinary and extraordinary, unforeseen as well as foreseen, of any kind and nature whatsoever which are assessed, levied, confirmed, imposed or become a lien upon the demised premises

or any part thereof, including, but not limited to, all ad valorem property taxes payable upon and with respect to the demised premises during the term of this lease, commencing with the ----- installment of 1977 taxes, due and payable in November, 1977, and all such ad valorem taxes payable during the term of this lease with respect to any buildings and improvements erected or placed upon said real estate by Tenant."

To the extent permitted by law and not inconsistent with the requirements of any existing or future mortgage affecting the demised premises, Tenant shall have the right to apply for the conversion of any special assessment for local improvements in order to cause the special assessment payable in installments. Tenant shall have the right to execute in the name of Landlords and as attorney in fact for Landlords (if Landlords after reasonable demand fail to do so) such agreement or agreements or other instruments as may be required or necessary to enable payment of any such special assessments in installments. In case any such assessments are payable and paid in installments as provided or permitted by law, then, Tenant shall not be liable for payment of any installments of such special assessments payable following the expiration of the term or extension of the term of this lease if such installments are on an equal or other periodic basis so that the total payment made by the respective parties toward such special assessment is proportionate to their respective periods of occupancy of the premises.

Tenant or Landlords shall have the right to contest or review by legal proceedings or in such other manner as may be deemed suitable in a tax assessment, rate or charge or other governmental imposition or charge herein previously mentioned. If the proceeding is instituted by Tenant, Tenant shall conduct the contest promptly at the Tenant's own expense. If required for the proceeding brought by Tenant, the contest may be brought in Landlords' name. Tenant may defer payment of a contested item upon condition that before instituting the proceeding Tenant shall furnish to Landlords and to any mortgagee, a surety company bond, cash deposit or other security reasonably satisfactory to Landlords and the mortgagee which is sufficient to cover the amount of the contested items together with interest and penalties for the period which such proceedings may be expected to take in securing payment of the contested items, interest and penalties and all costs in connection therewith. Notwithstanding the furnishing by Tenant of such bond or security other than a cash deposit, Tenant shall promptly pay the contested items if at any time all or any part of the demised premises are in danger of being sold, forfeited or otherwise lost. The

contest referred to shall include appropriate proceedings to review tax assessments, appeal from tax assessments, orders and appeals from any judgments, decrees or orders. All proceedings taken by Tenant shall be commenced as soon as possible after the imposition or assessment of the contested item and shall be prosecuted by Tenant to final adjudication with dispatch. If there is a refund with respect to any contested item based on the payment by Tenant, Tenant shall be entitled to the refund.

Nothing contained in this lease shall require that Tenant pay any inheritance, estate, succession, gift, franchise, gross receipts, income, profit, or excess profit, capital stock, corporate or other similar taxes or capital levy that may be imposed upon Landlords or upon the rent payable by Tenant hereunder, unless the taxes levied upon the rent reserved are in lieu of or as a substitute for a real estate tax upon the demised premises and then only to the extent that it relieves or reduces Tenant's obligation to pay real estate taxes; provided, however, that Tenant shall not be obligated to pay any amount greater than would have been payable by Landlords had the rent upon which the substitute tax was levied been the sole taxable income of Landlords for the relevant tax year in question.

IV.

BUILDING AND IMPROVEMENTS

Tenant shall have the right to remove from the demised premises all buildings and improvements now situated thereon; provided, however, that the removal or demolition of such buildings and improvements shall be at Tenant's sole cost and expense and Tenant shall indemnify and hold Landlords harmless of and from any and all cost, expense or liability incurred in connection with or arising in any manner out of the removal or demolition of said existing building and improvements; provided, however, that the exercise of said right shall be conditioned upon release of Landlords and the demised premises from the mortgage obligation aforesaid and the issuance by the City of Salt Lake of all necessary permits required for the construction of the improvements proposed by Tenant.

Within a reasonable time following the release of the aforesaid mortgage indebtedness and the issuance of all necessary permits by the City of Salt Lake, Tenant at its sole cost and expense and in compliance with all applicable laws, regulations and ordinances shall construct, erect and install upon the demised premises a restaurant building at a cost of not less than Eighty Thousand Dollars (\$80,000.00) and Tenant may, in like manner, remove or demolish any such building, structures or other improvements which Tenant determines to be delapidated, deteriorated, outmoded or otherwise inadequate, provided that in the event of any such removal or demolition Tenant shall promptly thereafter erect, construct

or install upon the demised premises a restaurant building or other similar improvements having a value substantially equal to the value (at the time of removal or demolition) of any such building, structure or other improvement which shall be removed or demolished. Prior to the commencement of the construction of any such buildings or improvements upon the demised premises, Tenant shall furnish Landlords with the plans and specifications for such proposed improvements and the estimated cost thereof. Tenant shall also have the right, at Tenant's cost and expense, to make alterations to and additions to such improvements, provided, however, that the making of such alterations or additions shall not cause any default in any then existing mortgage upon the premises. Prior to the commencement of construction of any such buildings or improvements upon the demised premises by Tenant, Tenant shall furnish to Landlords a good and sufficient corporate performance or surety bond naming both Landlords and Tenant as obligees conditioned that Tenant and/or Tenant's contractors will indemnify and save Landlords and the demised premises harmless of and from any claims for labor or materials furnished in the erection or construction of said building and improvements.

Neither Tenant nor any subtenant shall cause or permit any mechanic's lien to be suffered or imposed upon the title to the demised premises on account of or by reason of the erection, construction, installation, alteration, removal or demolition of any such building, structure or other improvement. In case of the filing of any such lien on account of any work, labor or material caused to be performed or furnished by Tenant, Tenant shall, promptly after receipt from Landlords of notice of such filing, either pay or sufficiently bond the same or procure the discharge thereof and Tenant shall also defend on behalf of Landlords and at Tenant's sole cost and expense any action, suit, or proceeding which may be brought for the enforcement of any such lien and Tenant shall pay any damage and discharge any judgment entered therein and save Landlords of and from any claim, loss, damage or expense on account thereof.

During the term of this lease Tenant shall own all improvements placed upon the demised premises. Upon the termination or expiration of this lease Tenant shall have no right to remove any of said buildings or improvements and all such buildings and improvements then located upon the demised premises shall thereupon be and become exclusively the property of Landlords. However, trade fixtures installed or located upon the demised premises by Tenant or any subtenant shall remain the property of Tenant or any such subtenant and may be removed from the premises; provided, however, that any damage to the premises caused by such removal shall be promptly repaired at the cost and expense of Tenant or any such subtenant who caused such damage.

V.

EMINENT DOMAIN

In case the demised premises or any part thereof shall be appropriated by exercise of the power of eminent domain or conveyed under threat of condemnation by public authority, Landlords shall be entitled to receive, and shall be paid, such award as is provided by law with respect to the appropriation or such conveyance of the land (as distinguished from the buildings and improvements). The entire award with respect to buildings and improvements shall be made available to Tenant for the purpose of paying the cost of repairing, remodeling or altering existing buildings or improvements upon said land or constructing new buildings or improvements thereon, provided, however, that in case this lease is terminated on account of such condemnation or conveyance under threat of such condemnation or in case Tenant shall not expend such funds for one or more of said purposes with reasonable promptness following such taking or conveyance, the amount of such award or portion thereof not so expended shall be divided between Landlords and Tenant in such manner that Landlords shall receive that proportion of such funds equal to the portion of the period of the then current term or extended term of this lease remaining at the time construction of such buildings or improvements was completed which elapsed between the date of such completion and the date of such taking or conveyance and Tenant shall receive that proportion of such funds equal to the portion of such period of time which is subsequent to the date of such taking or conveyance.

In case all of the demised premises shall be appropriated by the exercise of the power of eminent domain or conveyance by reason of threat of condemnation, this lease and the respective obligations of the parties shall terminate except that Tenant shall thereupon be entitled to a pro rata refund of any prepaid rental as of the date of such taking of said premises pursuant to the power of eminent domain.

In case a part of the demised premises shall be appropriated by the exercise of the power of eminent domain and by reason of such appropriation the use thereof shall be materially, substantially and adversely affected, Tenant shall have the right to terminate this lease by the giving of notice to that effect to Landlords; but if Tenant does not exercise such right of termination within six (6) months following the date of such partial appropriation this lease shall continue in full force and effect as to all of the real estate covered hereby which has not been appropriated, and following such taking fixed rental payable hereunder shall be reduced in proportion to the area so appropriated.

Landlords and Tenant each acknowledge that amounts received or receivable on account of or by reason of condemnation of all or any part of the demised premises shall be subject to the prior rights of any mortgagee of the premises in accordance with the terms and provisions of the mortgage held by any such mortgagee.

VI.

DEFAULT

In case Tenant defaults in respect to its covenants to pay rent or in respect to any other of its obligations hereunder and if Tenant fails to cure such default within sixty (60) days after written notice of the existence of such default has been given in writing by Landlords, Landlords may thereupon take possession of the demised premises and terminate this lease; provided, however, that if such default is of a character or kind that it would not be possible for Tenant to cure the same within a period of sixty (60) days this lease shall not be terminated if Tenant shall within said sixty (60) day period of time commence in good faith to cure such default and shall thereafter prosecute the matter of curing such default with reasonable diligence; and provided further, that if at the time of any such default the leasehold estate hereby created is subject to a mortgage lien of record in Salt Lake County, Utah, of which Landlords shall have been notified, or if at the time of any such default the premises are subject to one or more subleases of which Landlords have been notified, Landlords shall not have the right to and may not exercise such option or privilege of termination unless and until like notice of such default shall have been given and afforded to such mortgagee or subtenant or subtenants, which notice may be given at the same time as notice to Tenant.

In the event Tenant shall fail to cure any such default or to commence in good faith to cure such default within the period specified above, and Landlords shall give notice of intent to terminate, then any leasehold mortgagee or subtenant shall have an additional period of sixty (60) days following the expiration of the aforesaid initial sixty (60) day period within which to notify Landlords that it elects to remedy the default and to void the election of Landlords to terminate.

In the event of termination by Landlords, any leasehold mortgagee shall have a period of six (6) months following termination within which to elect to obtain a new lease upon all of the same terms and condition of the original lease upon payment to Landlords of the full amount of all unpaid rental pursuant to the terms of the original lease. In the event of such election by any leasehold mortgagee, Landlords covenant and agree to enter into a new lease with said lease-

hold mortgagee upon written request therefor and the payment of unpaid back rental as aforesaid, which such lease shall have equal priority with the original lease. In addition, Landlords agree to modify said lease upon request by any leasehold mortgagee, provided that any such modifications shall not result in any decrease in rentals or of the Tenant's obligations, nor any decrease in Landlords rights.

Any leasehold mortgagee shall not be required to cure any default resulting from any act of bankruptcy, insolvency or similar act on the part of Tenant.

The failure of Landlords to exercise any such option or privilege of termination at any time shall not be deemed a waiver of the right of termination in the event of any subsequent default.

If Tenant shall be in default in performance of any of the terms or provisions of this lease (other than the payment of rental) Landlords, after thirty (30) days' written notice to Tenant may at any time thereafter perform the same for the account of Tenant at the cost and expense of Tenant, and Tenant shall pay to Landlords on demand any amount properly paid by Landlords in connection with the curing of such default.

Notwithstanding any termination of this lease by reason of Tenant's default or otherwise, if at the time of such termination the premises are occupied by one or more subtenants, and if such subtenant or subtenants shall, after notice, fail to remedy such default, such subtenant or subtenants and each of them shall be entitled to continue in the exercise of all rights and privileges granted them by their respective subleases in accordance with the terms and tenor thereof (including, without limitation, any and all rights or privileges to renew or extend the terms of said sublease or subleases), so long as they shall keep and perform their respective obligations thereunder. Any such sublease or subleases effected by Tenant prior to termination of this lease shall survive termination and shall continue in full force and effect subject to the terms and provisions thereof and after such termination Landlords shall be substituted for Tenant in such subleases and shall be entitled to exercise all rights of Tenant in and under said subleases and to collect all rentals and other payments falling due under such subleases. Any and all such subleases shall continue to be binding upon Landlords and said sublessors, respectively, as though Landlords herein had been the lessor in each of such subleases.

LANDLORDS' RIGHT TO MORTGAGE DEMISED PREMISES

Landlords reserve the right to mortgage the demised premises; provided, however, that the monthly installment payments required to amortize any such mortgage indebtedness shall in no event exceed the rental payable pursuant to the terms and provisions hereof and provided further that Landlords shall secure and deliver to Tenant from any such mortgagee a written non-disturbance agreement providing that the holder of such mortgage will recognize Tenant or any subtenant's lease of the demised premises and will not disturb the Tenant or any subtenant's quiet possession of the premises for so long as Tenant or any subtenant is not in default of any of the terms and provisions of this lease.

VIII.

ADDITIONAL COVENANTS OF TENANT

Tenant agrees that Landlords shall have no obligation of any kind or character to maintain or repair any of the buildings or other improvements which Tenant shall cause to be constructed upon the demised premises.

Tenant further agrees that Landlords shall have no obligation to pay for or furnish gas, electricity, water or other utility services furnished during the principal term hereof in connection with the demised premises and Tenant covenants and agrees to hold Landlords harmless of and from any and all claims on account of charges for such utility services.

Tenant covenants and agrees to pay when due all mortgage payments required to be paid in connection with any mortgage loan upon the leasehold estate and any buildings or improvements constructed by Tenant. If Tenant shall fail to pay any such mortgage payments, Landlords may pay, but shall not be obligated to pay the same; and Tenant shall repay to Landlords upon demand the full amount of any such payments made by Landlords, together with interest at the rate hereinafter specified.

IX.

LIABILITY INSURANCE

Tenant covenants and agrees that it will, at its sole cost and expense, during the entire term of this lease, keep and maintain in full force and effect public liability insurance with respect to the use and occupancy of the above described premises, providing insurance with respect to such claims for injuries to or death of persons or damage or destruction of property arising out of or by reason of the use and occupancy of the premises and with limits of not less than Fifty Thousand Dollars (\$50,000.00) with respect to claims for to property, Three Hundred Thousand Dollars (\$300,000.00) with respect to claims on account of injuries

... with respect to claims of injuries to or death of more than one person arising out of any one accident or occurrence and which insurance shall name and designate Tenant or assigns and Landlords or their successors as insureds. In case Tenant shall at any time fail to procure such insurance Landlords, after thirty (30) days' written notice to Tenant, may procure the same and any and all sums paid for such insurance by Landlords shall be and become immediately due and payable by Tenant upon demand. Tenant agrees that the amounts and limits of the above described liability insurance shall be reviewed with Landlords at least once each five (5) years during the term or extension of the term of this lease, and that upon review the amounts of such limits shall be increased or decreased, in the light of then existing circumstances, to amounts and limits which are comparable to amounts and limits of such insurance then being maintained by reasonably prudent owners of comparable premises.

X.

NOTICES

Any notice required or permitted pursuant to the terms and provisions of this lease shall be deemed fully given or served if transmitted by registered or certified mail with return receipt requested, addressed to Tenant at 4300 East Morgan Avenue, Evansville, Indiana 47715, and to Landlords at the address then fixed by Landlords for the payment of rent. Either party may by like written notice at any time and from time to time designate a different address to which notices shall subsequently be transmitted to him, her or it.

XI.

DESTRUCTION OF IMPROVEMENTS -
MAINTENANCE OF HAZARD INSURANCE

During the term of this lease, Tenant at its sole cost and expense shall keep and maintain in full force and effect fire and extended coverage insurance with respect to the improvements situated upon the above described premises in an amount not less than the value, from time to time, of the destructible improvements situated upon the demised premises; and Tenant shall furnish to Landlords copies of policies or certificates with respect thereto evidencing the procurement and maintenance of such insurance. Any such fire and extended coverage insurance shall name any leasehold mortgagee as an additional insured and Tenant shall furnish to any such leasehold mortgagee similar copies of policies or certificates with respect thereto evidencing the procurement and maintenance of such insurance.

In case of damage to or destruction of any improvements, the proceeds of such insurance shall be used and applied to repair, restore or rebuild (subject to Tenant's option to terminate as set forth below), as the case may require, such improvements.

The occurrence of damage to such improvements by fire or other casualty shall not be cause for termination of this lease (subject to Tenant's option to terminate as set forth below in the event of total or substantial destruction) nor shall there be any abatement of rent on account of any such damage. In case such improvements are totally or substantially destroyed by fire or other casualty, and if the leasehold estate shall be subject to no unpaid mortgage indebtedness, Tenant at its option may terminate this lease by notice in writing given within sixty (60) days following the occurrence of such destruction and in such case Tenant shall be released and discharged of and from any and all liability with respect to the payment of rental or other obligations hereunder accruing subsequent to such destruction; provided, however, that in case of such termination (by reason of Tenant's exercise of its option so to do) all proceeds of hazard insurance with respect to the improvements upon said premises which shall have been constructed or installed by Tenant shall be payable to and be the sole property of Landlords.

XII.

ASSIGNMENT, SUBLETTING AND ATTORNMENT

Tenant shall have the right to sublet any part or parts or all of the demised premises for use and occupancy for any lawful purpose; but the term or terms of any such sublease or subleases shall not extend beyond the term of this lease. The interest and estate of any such sublessee shall not terminate by reason of Tenant's default hereunder.

The leasehold estate hereby created shall be freely assignable by Tenant and its assigns and no holder of the leasehold estate hereby created shall be liable for payment of rent or performance of any other obligation hereunder which accrues after the period of time during which such holder was vested with title to the leasehold estate hereby created. Tenant may from time to time without consent of Landlords assign its interest hereunder, either in whole or in part, by way of mortgage to any bank, insurance company or any other lending institution as mortgagee or otherwise. Any mortgagee acquiring the leasehold estate as provided above shall be liable for the performance of the obligation imposed upon Tenant by this lease only during the periods such mortgagee has ownership of the leasehold estate or possession of the premises subject thereto. Nothing contained in any such mortgage shall release or be deemed to release Tenant from the full and faithful observance or performance of any covenant and condition in this lease contained and on its part to be observed and performed or from any liability for the nonobservance or nonperformance thereof or be deemed to constitute the waiver of any rights of Landlords hereunder.

Landlords agree that their fee title in the premises shall be subject and subordinate to any subleases made between Tenant and subtenants occupying space in the demised premises and to any renewals, modifications, replacements and extensions of said subleases with said subtenants. Landlords agree to execute any further documents necessary to ratify the said subordination.

XIII.

OPTIONS TO EXTEND

So long as Tenant is not in default hereunder, Tenant shall have and is hereby granted options to extend the term of this lease for six (6) additional periods of five (5) years each, upon the terms, provisions and conditions contained and set forth in this lease. The first of said extended terms shall commence on the day following the expiration of the initial twenty-five (25) year term of this lease. Said options to extend shall be automatically exercised and the term extended without notice to Landlords from Tenant. In the event Tenant does not desire to extend this lease after the initial term or any extended term, Tenant shall give written notice to Landlords of its election not to extend this lease, which notice shall be given not less than one hundred eighty (180) days prior to the expiration of the initial term or the then extended term.

XIV.

OPTION TO PURCHASE
AND RIGHT TO FIRST REFUSAL

At any time following the expiration of the initial twenty-five (25) year term hereof, and so long as Tenant is not in default in performance hereunder, Tenant shall have and Landlords do hereby grant unto Tenant, an option to purchase the above described premises upon the terms and conditions herein set forth. In the event Tenant shall notify Landlords of its intent to exercise such option to purchase, and if Landlords and Tenant shall be unable to agree upon a purchase price, then the fair market value of the above described real estate hereby demised shall be determined by a board of three (3) appraisers, each of whom shall be licensed realtors or real estate appraisers engaged in business in Salt Lake City, Utah. One of said appraisers shall be selected by Landlords, one by Tenant and the third by the two so selected. The decision of a majority of any such board of appraisers shall be binding and conclusive upon the parties and the cost of such appraisal shall be borne equally by Landlords and Tenant. Following the determination of the fair market value of the demised premises as aforesaid, Tenant shall have the option for a period of sixty (60) days by written notice to Landlords following the determination of the fair market value to elect to purchase

the above described premises. In the event of the exercise of such option, the purchase price shall be an amount equal to the appraised fair market value of the above described real estate hereby demised. Said purchase price shall be payable in cash on the closing date as hereinafter set forth. In the event of the exercise of said option by Tenant, the closing of the purchase and sale shall be consummated with reasonable promptness thereafter by the payment of the purchase price to Landlords and the conveyance by Landlords of said real estate to Tenant by good and sufficient warranty deed whereby said real estate shall be conveyed to Tenant free and clear of and from any and all liens and encumbrances except building and use restrictions of record, roadways, easements and rights of way, if any, affecting title to said real estate, all nondelinquent real estate taxes which shall be a lien as of the date of closing, which said taxes Tenant shall assume and agree to pay and any liens and encumbrances suffered or imposed by Tenant. In the event of the exercise of such option and consummation of a sale of said premises pursuant thereto, rental hereunder shall be payable to the date of closing of said sale and any prepaid rental referable to the period of time following the date of the consummation of such sale shall be refunded by Landlords to Tenant.

Landlords further covenant and agree that in case Landlords shall at any time during the term of this lease as the same may be extended intend or desire to sell Landlords' estate in the demised premises, or if Landlords shall receive a bona fide offer to purchase said demised premises, Landlords shall first notify Tenant of such desire and intent or of such offer and the price at which and the terms upon which Landlords are willing to sell such estate. Thereupon, Tenant shall have the option, to be exercised within ninety (90) days after receipt by Tenant of written notice from the Landlords to elect to purchase the demised premises and all of Landlords' right, title and interest therein for such price and upon such stated terms and conditions. If Tenant exercises said option within said ninety (90) day period of time, the closing of the purchase and sale shall be consummated with reasonable promptness thereafter. If Tenant shall not exercise said option, Landlords shall have the right to conclude a sale of their interest in the demised premises for a price not less than and upon terms not more favorable than the price and terms stated in such notice; provided, however, notwithstanding the failure of the Tenant to exercise such option after notice from the Landlords or any subsequent owner or owners of the demised premises, the Tenant's option to purchase aforesaid and Tenant's right of first refusal as herein contained shall remain in force and be binding upon any subsequent owner or owners of the demised premises to the same extent as if said subsequent owner or owners were the Landlords named herein.

XV.

ZONING AND PERMITS

Landlords further covenant and agree that in the event Tenant is unable to secure all necessary permits required for the construction of the buildings and improvements proposed by Tenant within thirty (30) days following execution hereof, Tenant shall have the absolute right at its discretion to elect to terminate this lease in which event Tenant shall be released from any and all liability hereunder.

XVI.

SUPPLEMENTARY AGREEMENTS

Tenant agrees that at any time and from time to time upon not less than ten (10) days' prior written request by Landlords it will execute, acknowledge and deliver to Landlords, and Landlords agree that at any time and from time to time upon not less than ten (10) days' prior written request by Tenant they will execute, acknowledge and deliver to Tenant a statement in writing certifying that this lease is unmodified and in full force and effect (or if there have been modifications that the same is in full force and effect as modified and stating the modifications), and the dates to which the fixed rent and other charges have been paid in advance, if any, and whether or not there is any existing default by Tenant with respect to any sums of money required to be paid by Tenant under the terms of this lease, or notice of default served by Landlords, it being intended that any such statement delivered pursuant to this paragraph may be relied upon by any prospective purchaser of the fee or leasehold estate or by any prospective or existing mortgagee or assignee of any mortgagee of the leasehold estate. If any such certification by Landlords shall allege nonperformance by Tenant, the nature and extent of such nonperformance shall be summarized therein. In case either party shall fail to execute, acknowledge and deliver to the other such statement within ten (10) days after such request is made in writing it shall be conclusively presumed a certification that this lease is unmodified and in full force and effect and that all rental has been paid and that there is no existing default.

Landlords covenant and agree they they will execute any and all instruments which may be required of Landlords

in connection with the granting of easements (affecting the demised premises or any street adjacent thereto) in favor of utility companies for purposes of the installation of water, gas, steam, electricity, telephone, sewage or storm drainage serving or for the benefit of the demised premises.

XVII

MISCELLANEOUS PROVISIONS

Landlords and Tenant each hereby agree to execute and deliver upon demand any and all instruments which may be reasonably required or necessary to give further assurance of the covenants and agreements herein contained and set forth.

Notwithstanding any of the provisions hereof which might be construed to the contrary, this lease shall not be cancelled, surrendered, or any of the provisions thereof modified without the express written consent of any mortgagee of the leasehold estate of Tenant.

In case Tenant shall hold over after the expiration of the term of this lease such tenancy shall be deemed to be from month to month only but otherwise upon and subject to the terms, covenants and conditions herein contained.

The time or times herein specified within which Tenant is required to perform any act or to do any thing shall be and they are hereby extended for periods of time equal to the period of time during which performance is delayed directly by reason of strikes, lockouts, riots or insurrection, acts of God or other causes or conditions beyond Tenant's control.

Landlords shall have and are hereby given and granted the right to enter upon the demised premises at all reasonable times for the purposes of inspecting the condition thereof.

The parties agree that promptly following the execution and delivery of this agreement they will make and enter into a short form of lease for purposes of recording wherein there shall be set forth the legal description of the demised premises, the term of this lease and such other provisions hereof as shall be agreed upon by the parties.

In case of termination of this lease for any reason, Tenant covenants and agrees that it will promptly execute,

in recordable form, a release of this lease so as to provide to Landlords record evidence of such termination.


In case Landlords or Tenant shall be required to resort to litigation on account of any breach or default in performance hereunder and shall be successful in such litigation the judgment in such litigation shall include an allowance to the successful party or parties for all costs and expenses including reasonable attorneys' fees paid or incurred by such party or parties in connection with such litigation.

XVIII.

SUCCESSORS AND ASSIGNS

The terms and provisions hereof shall be and constitute covenants running with the title to the real estate described above, and shall inure to the benefit of and be binding upon the respective successors and assigns of the parties. Any party hereto shall have the right at any time to sell, transfer, assign, or convey his, her or its interest (whether fee, leasehold, or otherwise) in the demised premises (but subject to the option to purchase and rights of first refusal hereinabove set forth) to any person, firm or corporation; and upon the making of any such sale, transfer, assignment or conveyance such party shall cease to be liable hereunder on account of any liability or obligation which would otherwise have accrued following the date of such sale, transfer, assignment, or conveyance; provided, however, that any such sale, transfer, assignment or conveyance shall be subject to the terms and provisions of this agreement which shall be binding upon any purchaser, transferee or assignee.

IN WITNESS WHEREOF, Landlords have hereunto set their hands and seals and Tenant has caused the execution hereof and the affixing hereto of its corporate seal by its duly authorized officers pursuant to authority of its Board of Directors as of the day and date first above written.

 (SEAL)
Toula K. Leventis

(SEAL)

"Landlords"

G.G.A., Inc.

By A. Guagenti
its President

ATTEST:

Robert E. Griffin
Its Secretary

"Tenant"

STATE OF UTAH)
)SS:
COUNTY OF SALT LAKE)

Before me, the undersigned, a Notary Public, in and for said County and State, personally appeared the within named TOULA K. LEVENTIS and acknowledged the execution of the above and foregoing instrument.

WITNESS my hand and Notarial Seal this 9th day of September, 1976.

My Commission Expires:

October 5, 1979.

[Signature]
Notary Public
Residing in Salt Lake City, Utah.

STATE OF INDIANA)
)SS:
COUNTY OF VANDERBURGH)

Before me, the undersigned, a Notary Public, in and for said County and State, personally appeared the within named G.G.A., Inc., an Indiana corporation by Andrew Guagenti, its President and Robert E. Griffin, its Secretary who acknowledged the execution of the above and foregoing instrument pursuant to authority of its Board of Directors.

WITNESS my hand and Notarial Seal this 13th day of September, 1976.

My Commission Expires:

March 18, 1979

[Signature]
Notary Public

TOULA K. LEVENTIS

2875 Crestview Drive
Salt Lake City, Utah 84108

September 15, 1986

Mr. Phil Arlt
G.G.A. Incorporated
Wendy's Old Fashioned Hamburgers
232 South Main Street
Salt Lake City, Utah 84101

Re: Property located at 550 East 400 South and 418 South 600 East,
Salt Lake City, Utah 84102.

Dear Phil:


In compliance with the terms set forth in Article XIV of the "Real Estate Gound Lease" made and entered into on September 9, 1976, by and between G.G.A., Inc. as Tenant and Toula K. Leventis as Landlord, covering real property located at 550 East 400 South and 418 South 600 East, Salt Lake City, Utah, I am writing this to inform you that I have received a bona fide offer for the purchase of the above captioned property. Mr. Jimmy P. Brown, a reputable Salt Lake City businessman and close personal friend, has made an offer to purchase the property for \$210,000.00. I am enclosing a copy of the Earnest Money Agreement together with a copy of Mr. Brown's check for \$5,000.00 for your information.

Since a considerable amount of time has elapsed since we first discussed your interest in purchasing the above mentioned property, I would be most appreciative if you would kindly respond to this communication as soon as possible.

Thank you for your anticipated cooperation.

With kindest personal regards,

Sincerely yours,



Toula K. Leventis

cc: Mr. Andy Guagenti, Secretary, G.G.A., Inc.
Mr. Robert E. Griffin, Treasurer, G.G.A., Inc.

EXHIBIT B

EARNEST MONEY SALES AGREEMENT

EARNEST MONEY RECEIPT

Legend Yes(X) No(O)

DATE: Sept. 9, 1986

The undersigned Buyer JIMMY P. BROWN hereby deposits with Broker as EARNEST MONEY, the amount of Five Thousand Dollars Dollars (\$ 5,000.00) in the form of a check, which shall be deposited in accordance with applicable Stat

Brokerage _____ Phone Number _____ Received by _____

OFFER TO PURCHASE

1. **PROPERTY DESCRIPTION** The above stated EARNEST MONEY is given to secure and apply on the purchase of the property situated at 572 East Fourth South in the City of Salt Lake City County of Salt Lake subject to any restrictive covenants, zoning regulations, utility or other easements or rights of way, government patents or state deeds of record approved by in accordance with Section G. Said property is more particularly described as A parcel of land about 43,208 sq. ft. or 0.99+ acres on which a Wendy's fast food restaurant has been built. See attached Exhibit "A" for the
CHECK APPLICABLE BOXES: description.

☐ UNIMPROVED REAL PROPERTY ☐ Vacant Lot ☐ Vacant Acreage ☐ Other _____
☒ IMPROVED REAL PROPERTY ☒ Commercial ☐ Residential ☐ Condo ☐ Other _____

(a) Included items. Unless excluded below, this sale shall include all fixtures and any of the items shown in Section A if presently attached to the property. The following personal property shall also be included in this sale and conveyed under separate Bill of Sale with warranties as to title: _____

(b) Excluded items. The following items are specifically excluded from this sale: No exclusions. Buyer acknowledges Real Estate Ground Lease dated September 9, 1976 by and between Seller and C.C.A., Inc. an Ind.

(c) ~~CONVEYANCE~~ WARRANTY OF TITLE Seller represents that the property includes the following improvements in the purchase
☒ public sewer ☒ connected ☒ well ☒ connected ☒ other _____ ☒ electricity ☒ connected
☒ septic tank ☒ connected ☐ irrigation water secondary system ☐ ingress & egress by private easement: _____
☐ other sanitary system _____ = of shares _____ Company _____ ☒ dedicated road ☒ paved
☒ public water ☒ connected ☐ TV antenna ☐ master antenna ☐ prewired ☒ curb and gutter
☒ private water ☒ connected ☒ natural gas ☒ connected ☐ other rights _____

(d) Survey. A certified survey ☐ shall be furnished at the expense of _____ prior to closing, ☐ shall not be furnished.

(e) Buyer Inspection. Buyer has made a visual inspection of the property and subject to Section 1 (c) above and 6 below, accepts it in its present physical condition, except: _____

2. **PURCHASE PRICE AND FINANCING.** The total purchase price for the property is Two Hundred Ten and No/100 Dollars (\$ 210,000.00) which shall be paid as follows:

\$ 5,000.00 which represents the aforescribed EARNEST MONEY DEPOSIT.
\$ 205,000.00 representing the approximate balance of CASH DOWN PAYMENT at closing.
\$ _____ representing the approximate balance of an existing mortgage, trust deed note, real estate contract or other encumbrance to be assumed by buyer, which obligation bears interest at N/A % per annum with monthly payments of \$ N/A which include: ☐ principal: ☐ interest: ☐ taxes: ☐ insurance: ☐ condo fees: ☐ other: _____
\$ _____ representing the approximate balance of an additional existing mortgage, trust deed note, real estate contract or other encumbrances to be assumed by Buyer, which obligation bears interest at N/A % per annum with monthly payments of \$ _____ which include: ☐ principal: ☐ interest: ☐ taxes: ☐ insurance: ☐ condo fees: ☐ other: _____
\$ _____ representing balance, if any, including proceeds from a new N/A loan, to be paid as follows: as directed by Seller and approved by Buyer
\$ _____ Other N/A
\$ 210,000.00 TOTAL PURCHASE PRICE

If Buyer is required to assume an underlying obligation and/or obtain outside financing, Buyer agrees to use best efforts to assume and/or procure same and this offer is made subject to Buyer qualifying for and lending institution granting said assumption and/or financing. Buyer agrees to make application within N/A days after Seller's acceptance of this Agreement, to assume the underlying obligation and/or obtain the new financing at an interest rate not to exceed N/A. If Buyer does not qualify for the assumption and/or financing within N/A days after Seller's acceptance of this Agreement, this Agreement shall be void at the option of the Buyer or Seller upon written notice.

Seller agrees to pay \$ N/A towards Buyer's total financing and closing costs, including, but not limited to, loan discount points. If this Agreement involves the assumption of an existing loan or obligation on the property, Section F shall apply.

EXHIBIT C

property, subject to encumbrances and except: _____ noted herein, evidenced by ☐ a current policy of tit _____ agrees to furnish good and marketable tit
of title brought current, with an attorney's opinion. (See Section H) _____ insurance in the amount of purchase price ☐ an

4 INSPECTION OF TITLE. In accordance with Section G, Buyer shall have the opportunity to inspect the title to the subject property prior to
Buyer shall take title subject to any existing restrictive covenants, including condominium restrictions (CC & R's). Buyer ☐ has ☐ has not reviewed any
minium CC & R's prior to signing this Agreement.

5 VESTING OF TITLE. Title shall vest in Buyer as follows Jimmy P. Brown or affiliate designated at closing.

6. SELLER WARRANTIES. In addition to warranties contained in Section C, the following items are also warranted: z z None

Exceptions to the above and Section C shall be limited to the following: _____

7. SPECIAL CONSIDERATIONS AND CONTINGENCIES. This offer is made subject to the following special conditions and/or contingencies which
be satisfied prior to closing: Both parties shall be responsible for paying their own legal, consulting, or
other fees in connection with this transaction. Also buyer shall pay real estate brokerage
commission typically paid by seller.

8. CLOSING OF SALE. This Agreement shall be closed on or before **, 19 _____ at a reasonable location to be design.
Seller subject to Section G. Upon demand Buyer shall deposit with the Escrow Closing Office all documents necessary to complete the purchase in acc
with this Agreement. Prorations set forth in Section R, shall be made as of ☐ date of possession ☒ date of closing ☐ other ** as mutually agree
or before December 10, 1986. Closing to be done by Utah Title Company - 629 east 400 south

9. POSSESSION. Seller shall deliver possession to Buyer on closing unless extended by written agreement of parties. slc, U

10. GENERAL PROVISIONS. Unless otherwise indicated above, the General Provision Sections on the reverse side hereof are incorporated in
Agreement by reference

11. AGREEMENT TO PURCHASE AND TIME LIMIT FOR ACCEPTANCE. Buyer offers to purchase the property on the above terms and conditions
shall have until _____ (AM / PM) _____, 19 _____, to accept this offer. Unless accepted, this offer shall lapse and the Agent shall ret
EARNEST MONEY to the Buyer

Signature of Buyer

Date

Signature of Buyer

Jimmy P. Brown
Jimmy P. Brown

CHECK ONE

☐ ACCEPTANCE OF OFFER TO PURCHASE. Seller hereby ACCEPTS the foregoing offer on the terms and conditions specified above.

☐ REJECTION. Seller hereby REJECTS the foregoing offer _____ (Seller's Initials)

☐ COUNTER OFFER. Seller hereby accepts the foregoing offer SUBJECT TO the exceptions or modifications as specified below or in the attached Addendum
presents said COUNTER OFFER for Buyer's acceptance. Buyer shall have until _____ (A.M. / P.M.) _____, 19 _____ to accept the
specified below

Date _____

Time _____ (AM-PM)

Signature of Seller

Toula K. Leventis
Toula K. Leventis

Signature of Seller

CHECK ONE

☐ Buyer accepts the counter offer

☐ Buyer accepts with modifications on attached addendum

Date _____

Time _____ (AM-PM)

Signature of Buyer

Signature of Buyer

COMMISSION. The undersigned hereby agrees to pay to _____ (Broker)
a commission of _____ as consideration for the efforts in procuring a buyer

Signature of Seller

Date

Signature of Seller

DOCUMENT RECEIPT

State Law requires Broker to furnish Buyer and Seller with copies of this Agreement bearing all signatures. (One of the following alternatives must then
be completed)

A ☐ I acknowledge receipt of a final copy of the foregoing Agreement bearing all signatures

SIGNATURE OF SELLER

SIGNATURE OF BUYER

Date

Date

Date

Date

B ☐ I personally caused a final copy of the foregoing Agreement bearing all signatures to be mailed on _____, 19 _____
Certified Mail and return receipt attached hereto to the ☐ Seller ☐ Buyer. Sent by _____

Toula

EXHIBIT "A"

PARCEL 1:

Commencing at the NE corner of Lot 7, Block 33, Plat B, SLC Survey, thence West 2.5 Rods; thence South 20 Rods; thence East 2.5 Rods; thence North 198 feet; thence East 165 feet; thence North 79.25 feet; thence West 114.25 feet; thence North 52.75 feet; thence West 50.75 feet to beginning.

PARCEL 2:

Commencing 8 Rods from the Northeast Corner of Lot 8, Block 33, Plat B, SLC Survey; thence South 45.5 feet; thence West 10 Rods; thence North 45.5 feet; thence East 10 Rods to beginning.

TOULA K. LEVENTIS

2875 Crestview Drive
Salt Lake City, Utah 84108

October 28, 1986

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Phil Arlt
G.G.A. Incorporated
Wendy's Old Fashioned Hamburgers
232 South Main Street
Salt Lake City, Utah 84101

Re: Rescission of offer to purchase the property located at 550 East 400 South
and 418 South 600 East, Salt Lake City, Utah 84102

Dear Phil:

I have been informed by Mr. Jimmy Brown, the prospective buyer of the property at 572 East 400 South, Salt Lake City, Utah (see my earlier letter of September 15, 1986), that his offer has been rescinded and withdrawn; accordingly I have returned the earnest money deposit to Mr. Brown.

I do want to sell my property and will entertain new offer(s) to sell it; accordingly I do not consider myself bound to sell at the price of \$210,000.00. Thank you for your consideration.

Sincerely yours,



Toula K. Leventis

cc: Mr. Andy Guagenti, Secretary, G.G.A., Inc.
Mr. Robert E. Griffin, Treasurer, G.G.A., Inc.

EXHIBIT D

TOULA K. LEVENTIS
2875 Crestview Drive
Salt Lake City, Utah 84108

November 21, 1986

Mr. Phil Arlt
G.G.A., Incorporated
Wendy's Old Fashioned Hamburgers
232 South Main Street
Salt Lake City, Utah 84101

CERTIFIED - RETURN RECEIPT REQUESTED

Re: Property located at 550 East 400 South and 418 South 600 East, Salt Lake City, Utah 84102 -- Receipt of \$250,000 offer to purchase this property

Dear Phil:

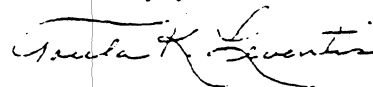
In compliance with the terms set forth in Article XIV of the "Real Estate Ground Lease" made and entered into on September 9, 1976 by and between G.G.A., Inc. as Tenant and Toula K. Leventis as Landlord, covering real property located at 550 East 400 South and 418 South 600 East, Salt Lake City, Utah, I am writing this letter to inform you that I have received a bona fide cash offer of \$250,000 for the purchase of the above-captioned property. Janus Associates is a Salt Lake City based investment group headed by Dr. James P. Pappas and I have been assured that the transaction can be closed on a cash basis before the end of this year which is important to me because of the change in the tax laws covering capital gains which I understand will be in effect as of January 1, 1987. Enclosed is a copy of the Earnest Money Agreement covering this transaction for your information.

My advisers tell me the buyers understand your continuing rights as lessees of the property and your interest in the improvements thereon as well as your option to purchase detailed in Article XIV of our lease. The nominal \$1,100 per month rent you are now paying me under the lease underscores the importance to me and my family of closing this transaction at the earliest possible date that we might benefit from much needed improved financial circumstances from this property.

As you know, I have been desirous of selling this property for a long time and know that you and your associates, Mr. Guagenti and Mr. Griffin, have discussed your possible interest in purchasing the subject property on various occasions in the past. Because of previous evaluations by you, I would hope that you could make your decision within two or three weeks. It would be a real courtesy to me and greatly appreciated if you could respond to this communication within a maximum of thirty days rather than the ninety days provided for in Article XIV of our Lease Agreement.

Thank you in advance for your anticipated cooperation in this matter.

Sincerely yours,


Toula K. Leventis

cc: Mr. Andy Guagenti; Secretary, G.G.A., Inc.
Mr. Robert E. Griffin, Treasurer, G.G.A., Inc.

EXHIBIT E

LAW OFFICES OF

BAMBERGER, FOREMAN, OSWALD AND HAHN

708 HULMAY BUILDING

P. O. BOX 657

EVANSVILLE, INDIANA 47704

December 6, 1986

TELEPHONE (812) 425-1591

TELECOPIER (812) 465-4041

FREDERICK P. BAMBERGER
(1903-1983)

WILLIAM F. FOREMAN
C. E. OSWALD, JR.
ROBERT M. HAHN
JOHN R. BURKE, JR.
JEFFREY R. KINNEY
GEORGE A. PORCH
ROBERT M. BECKER
FRED S. WHITE
ROBERT T. BODKIN
GEORGE MONTGOMERY
TERRY D. FARMER
KAROL M. KROHN
MARK E. MILLER
RODERICK W. CLUTTER, JR.
KEVIN J. MESSNER

Toula K. Leventis
2875 Crestview Drive
Salt Lake City, UT 84108

Re: Real Estate Situated at 550 East 400 South and
418 South 600 East, Salt Lake City, Utah

Dear Mrs. Leventis:

C At the request of our client, the tenant under the Lease Agreement with you dated September 9, 1976, we have reviewed the applicable provisions of the Lease Agreement, particularly the provisions of Article XIV thereof, and your correspondence of September 15, 1986; October 28, 1986; and November 21, 1986.

O As you are aware and indicated in your September 15, 1986, letter, that Article of the Lease Agreement specifically provides, in the event of your intent or desire to sell your interest in the above-described real estate or the receipt of an offer to purchase the same upon terms acceptable to you, that you are required to first notify the tenant of such intent and such offer and, thereupon, the tenant has the option, exercisable within ninety (90) days after receipt of such written notice from you, to elect to purchase the premises and all of your interest therein upon the terms set forth in such offer.

P As you know, the provisions of Article XIV of the lease in question were specifically negotiated for and constituted a material part of the consideration for the execution of said lease by our client.

Y In your letter of September 15, 1986, you offered to sell the real estate in question to our client for a purchase price of \$210,000.00.

By your subsequent letter of October 28, 1986, you purported to rescind that offer, and by your subsequent letter of November 21, 1986, you purported to make a new and different offer to our client, as tenant.

Based upon our research, and after consultation with our local counsel, McKay, Burton and Thurman of Salt Lake City, it is our opinion that the making of the initial offer by you on September 15, 1986, created in our client a valid and effective option

EXHIBIT F

Toula K. Leventis
Re: G.G.A. II, Inc.
Page 2

to purchase, supported by a good and valuable consideration, the real estate in question at the price specified in that offer, which would remain in effect for the contractually stipulated period of ninety (90) days and would not be subject in any way to rescission, revocation or alteration by you during the option period.

Consequently, it is our further opinion that the purported rescissions set forth in your letters of October 28, 1986, and November 21, 1986, are not legally effective and would not deprive our client of the right to exercise its contractual option rights to purchase upon the terms initially offered.

Consequently, you are hereby notified and advised, on behalf of our client, G.G.A. Incorporated, d/b/a Wendy's Old-Fashioned Hamburgers, of its election to exercise its option, which option is hereby exercised, to purchase the above-described premises and all of your right, title and interest therein in accordance with the provisions of Article XIV of the Lease Agreement of September 9, 1976, for the purchase price of \$210,000.00 set forth in your initial offer of September 15, 1986.

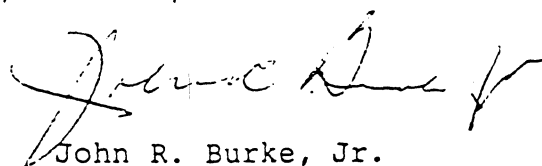
As an accommodation to you, I have been authorized to advise you, on behalf of my client, that since it apparently would be to your benefit for income tax purposes, that it is agreeable to concluding its purchase of the subject real estate on a cash basis prior to the year-end.

To that end, the purchase of the real estate in question will be handled by our local counsel, McKay, Burton and Thurman, to expedite the matter.

As noted, our client intends to enforce its contractual rights under the terms of the Lease Agreement and to take any action required in connection therewith, and should any such action be necessary, it will, similarly, be handled by McKay, Burton and Thurman.

Yours very truly,

BAMBERGER, FOREMAN, OSWALD AND HAHN



John R. Burke, Jr.

JRB:kol

cc: Phillip M. Arlt
Andrew Guagenti
Robert E. Griffin
Barrie G. McKay, Esq.

CERTIFIED MAIL NO. P 261 314 870
Return Receipt Requested

MCKAY, BURTON & THURMAN

A PROFESSIONAL CORPORATION

WILFORD M. BURTON
BARRIE G. MCKAY
WILLIAM T. THURMAN
DAVID P. BROWN
WILLIAM THOMAS THURMAN
PETER STIRBA
DAVID L. BIRD
REID TATEOKA
STEPHEN W. RUPP
SCOTT C. PIERCE
JOEL T. MARKER
BENSON L. HATHAWAY, JR.

ATTORNEYS AND COUNSELORS AT LAW
SUITE 1200 KENNECOTT BUILDING
10 EAST SOUTH TEMPLE STREET
SALT LAKE CITY, UTAH 84133
(801) 521-4135

OF COUNSEL
DAVID L. MCKAY

February 17, 1987

Toula K. Leventis
2875 Crestview Drive
Salt Lake City, Utah 84108

Nick J. Colessides, Esq.
466 South 400 East
Salt Lake City, Utah 84111

HAND DELIVERED AND
CERTIFIED MAIL

Re: Property located at 550 East 400 South and 418 South
600 East, Salt Lake City, Utah 84102

Dear Ms. Leventis and Mr. Colessides:

As you are both aware, this firm represents GGA, Inc. ("GGA") doing business as Wendy's Old Fashioned Hamburgers, the lessee under that certain Real Estate Ground Lease dated September 9, 1976 by and between Toula K. Leventis as Landlord and GGA as Tenant. GGA is in receipt of your letter dated November 21, 1986 addressed to Mr. Phil Arlt advising GGA of an offer to purchase the above described property for the amount of \$250,000.00. This, notwithstanding your previous notification on September 15, 1986 of an option to purchase the property for the amount of \$210,000.00, which option was timely exercised by GGA.

You are hereby notified on behalf of our client, GGA of its election to exercise its Option to Purchase the above described property as set forth in Article XIV of the Real Estate Ground Lease in response to the Notice in your November 21, 1986 letter. This notification constitutes an unequivocal exercise of GGA's Option to Purchase the demised premises and all of your right, title and interest therein, for the price and upon the stated terms and conditions contained in your notice. This letter will further advise you that GGA is ready, willing and able to close the purchase and sell of the above described property with reasonable promptness at a date, place and time acceptable to both parties.

You are further notified that GGA hereby specifically reserves all of its rights and remedies under the terms of that certain Real Estate Ground Lease and specifically, but not by way of limitation to, the rights and remedies provided for in Article

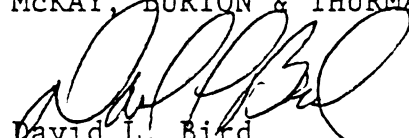
EXHIBIT G

Toula K. Leventis
Nick J. Colessides
February 17, 1987
Page 2

XIV and further reserves all of its rights and remedies under the September 15, 1986 option and GGA's timely exercise thereof. Please advise this office at your earliest convenience of date, time and place for the closing of this transaction.

Sincerely,

McKAY, BURTON & THURMAN

A handwritten signature in black ink, appearing to read "David L. Bird", is written over the typed name.

David L. Bird
Attorneys for GGA, Inc.

DLB05:ls
CC: Phil Arlt
Andrew Guagenti
Robert E. Griffith
John R. Burke, Jr.

LAW OFFICES
NICK J. COLESSIDES
466 SOUTH 400 EAST
SALT LAKE CITY, UTAH 84111
801 621-4441

February 17, 1987

Mr. David L. Bird
Attorney at Law
Suite 1200 Kennecott Building
10 East South Temple Street
Salt Lake City, Utah 84133

GGA, Inc.
4300 East Morgan Avenue
Evansville, Indiana 47715

HAND DELIVERED AND
CERTIFIED MAIL

Re: Notice of exercise of Right of First Refusal dated
February 17, 1987 of the real property located at
550 East 400 South and 418 South 600 East, Salt Lake
City, Utah, by David L. Bird, Attorney for GGA, Inc..

Gentlemen:

I am in receipt of your notice of your election to exercise
your right of first refusal and purchase the above referenced
real property as per my client's notice to you dated November
21, 1986, for the purchase price of \$250,000.00.

In connection therewith and in accordance with the applicable
provisions of the lease, I have instructed Western States
Title, 370 East 500 South, Salt Lake City, Utah 84111,
Attention Michael Jensen, to act as the closing agent; I have
also instructed the closing agent to make a determination as
to any amounts which are due and payable as an encumbrance
upon the property, and to pay any and all amounts due to any
third parties from the proceeds to be received from the
buyer, so that seller may deliver to you title free and clear
of any financial encumbrance and subject only to standard
exceptions. At my request a preliminary title report is
being prepared and will be delivered to your local counsel on
or before Thursday, February 19, 1987; a standard policy of
title insurance will be issued to the buyer.

Accordingly, I have instructed Western States Title to
prepare a Warranty Deed together with a closing statement and

EXHIBIT H

Mr. David L. Bird
GGA, Inc.
February 17, 1987
page two

requested that the closing take place on Thursday, February 26, 1987, at the hour of 2:00 o'clock p.m., at the offices of Western States Title at the within shown address.

You are requested to supply to Western States Title Company Bankable funds in the sum of \$ 250,000.00, on or before Thursday February 26, 1987, but in any event prior to the time of closing.

If you fail to deliver bankable funds to the closing agent as requested herein, it shall be deemed to be and shall be a material breach of your election to purchase, and my client will be free to consummate the transaction with JANUS ASSOCIATES. Time is of the essence in the performance of your obligation to pay the funds to the closing agent.

Sincerely,



NICK J. COLESSIDES

NJC:ssc

cc: Toula K. Leventis