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File 1988-0018

Project Name: Sizzler Restaurant – 2440 Highway 5 & 50 - SUP

P r e s e n t	S c a n n e d	<p>A few items are denoted with an asterisk (*), which means they are to be scanned for permanent record on the in some instances, not all entries designated to be scanned by the department are present in the file. There are also documents specific to certain files, not found on the standard list. For this reason, a checklist has been provided.</p> <p>Remaining items, (not selected for scanning), will be marked present on the checklist. This index can serve as a quick guide for the contents of each file.</p> <p>Files denoted with (**) are to be located using the ISYS Query System. Planning Clearance will need to be typed in full, as well as other entries such as Ordinances, Resolutions, Board of Appeals, and etc.</p>	
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X		Review Sheets	X X Site Plan
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X		Planning Commission Minutes - ** - 7/5/88	
X		Notice of Special Use Application	
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X		Letter from John Ballagh to Karl Metzner re: Drainage issue – 6/7/88	
X		Certified letter from Michael Sutherland to Larry Follett, Intermountain SFSH Enterprises re: special use application approved – 6/28/88	
X		Memo from Kathy Portner to Mark Achen re: open space fee -6/30/88	
X	X	Memo from Planning Staff to City Council re: Open Space Fee Waiver Request – 7/6/88	
X		Letter from Don Newton to Kelly Ford, Kelco General Contractors re: utility extensions standards – 7/27/88	
X		Letter from Greg Trainor, Utility Manager to Sizzler Steak House re: sewer tap – 11/2/88	
X		Criteria of request waive open space fees	

PROJECT NARRATIVE

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Original
Do NOT Remove
From Office #1888

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#18 88

INTERMOUNTAIN SFSH ENTERPRISES
5620 WATERBURY WAY
SUITE A-201
SALT LAKE CITY, UT. 84121

LARRY M. FOLLETT
5620 WATERBURY WAY
SUITE A-201
SALT LAKE CITY, UT. 84121

THE EQUITABLE LIFE ASSURANCE
c/o GENERAL GROWTH MNGT. CO.
P.O. BOX 1536
DES MOINES, IA. 56306

RICHARD B. MEAD
333 33 1/2 RD.
PALISADE, CO. 81526

MCDONALDS CORP.
P.O. BOX 66207
AMF O'HARE AIRPORT
CHICAGO, IL. 60666

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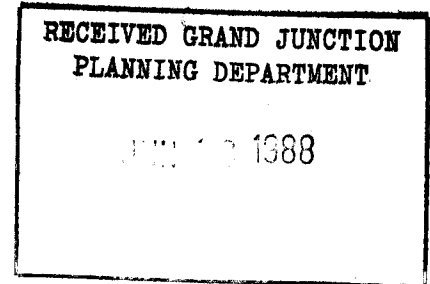
#18 88

GRAND JUNCTION DRAINAGE DISTRICT

722 23 ROAD
P.O. BOX 55246
GRAND JUNCTION, COLORADO 81505
(303) 242-4343

6/07/88

Mr. Karl Metzner
Planning Director
City of Grand Junction
250 No. 5th St.
Grand Junction, Co. 81501



RE: Sizzler 18-88

Dear Karl,

Mr. Larry Follett, the engineer/representative was in today to discuss his project.

I explained to Mr. Follett that all the Drainage District received to review was the review sheet, a copy of the application, and a two page narrative. The narrative does not mention drainage.


Mr. Follett explained that the owner, Equitable Life Assurance, through their property manager, General Growth Management, is working on getting the known drainage problem(s) corrected. Further, Mr. Follett said that until the Mall gets some easement question(s) resolved that he could not be sure which way the on-site drainage would be handled. Mr. Follett was able to convince me that he is aware of the surface drainage limitations of the site.

We did discuss the difference between public and private catch basins and drain lines. He acknowledged that responsibility for maintenance of private catch basins or private drain lines is certainly not with the public sector -- either the Drainage District or the City.

Mr. Larry Follett appears to be progressing toward a positive development. I am sure that Don Newton, PE, the City Engineer will be able to give the site plan the appropriate level review.

Sincerely,

Grand Junction Drainage District


John L. Ballagh
Manager



Grand Junction Planning Department
250 North Fifth Street
Grand Junction, Colorado 81501-2668
(303) 244-1430

June 28, 1988

Mr. Larry M. Follett
Intermountain SFSH Enterprises
5260 Waterbury Way, Suite A-201
Salt Lake City, UT 84121

CERTIFIED

Dear Mr. Follett:

On June 13, 1988 the special use application for the Sizzler Restaurant at Mesa Mall was approved. I've delayed writing this confirmation letter due to the uncertainty surrounding the issue of open space fee payment at the time of Mesa Mall development.

Our office has now received the remaining development files from Mesa County Planning and we have determined that open space fees were never paid for the Mesa Mall properties.

The Grand Junction Zoning and Development Code, section 5-4-6, requires that "All new development which requires processing through the rezoning, subdivision, planned development, conditional use, or special use procedures of this Code shall require payment to the escrow fund for parks/open space acquisition and/or development." The fee is 5% of the value of the raw land as determined, at the developer's expense, by an accredited real estate appraiser.

An appraisal of the land value must be submitted to this office, which we and the City Parks Department will review. After the appraisal is approved, the fee must be paid to the Grand Junction Parks Department and a copy of the receipt submitted to City Planning to be placed in the development file. The certificate of occupancy (C.O.) cannot be issued for the restaurant until the receipt has been filed with City Planning, along with final completion of all site requirements.

This letter will serve as notice of approval for the special use permit, and a copy will be kept in development file #18-88.

If I can answer questions or be of assistance, please contact me at any time. Your cooperation has been greatly appreciated, and best of luck with your project!

Sincerely,

Michael E. Sutherland
Senior City Planner

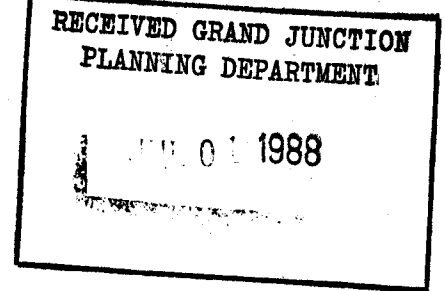
MES/tt

xc: File #18-88

Sizzler

Steak. Seafood. Salad

June 30, 1988



Honorable John W. Bennett, Mayor
Honorable Council Members
City of Grand Junction
250 North 5th Street
Grand Junction, CO 81501-2668

Dear Mayor Bennett and Council Members:

As the developers, owners and operators of a proposed new Sizzler Restaurant to be built at 2440 Highway 6 & 50, we hereby request a waiver of Section 5-4-6 of the Grand Junction Zoning and Development Code.

In support of this request for the waiver we respectfully submit the following:

1. Attached is our Project Narrative which was prepared in connection with the Special Use Application and describes the type of restaurant which we propose to operate as well as other information concerning the project. However, let us here emphasize that a new set down restaurant of our type is definitely needed in this area of the city.

2. As a restaurant we will be providing a service to the residents of the City of Grand Junction and surrounding area as well as those who come from outside the area to patronize the Mesa Mall and other visitors to the city. Sizzler Restaurants have a well recognized name and an excellent reputation with visitors from outside Colorado. This will bring additional sales tax revenue for the city as well as increase the property tax revenue.

3. We will be employing approximately 70 to 80 employees, almost all of which will be present residents of the area. Therefore, we will not be bringing in additional people who will require additional public sites, parks and other open space.

4. We are estimating the fee we are requesting waived to be approximately \$9,000.00 plus the cost and expenses of the appraisal. This amount plus the exorbitant cost of the sewer hook-up fee to the city of \$27,300.00 and water hook-up fee of approximately \$4,800.00 totals approximately \$43,100.00. This adds in excess of 10% to the cost of the project and has put the cost of the project over the amount allowed by our Lease Agreement with the Mall owners. To be required to pay the government body an amount in excess of ten percent (10%) of the cost of the building and site work is certainly excessive and far greater than any we have experienced in any other area.

Honorable John W. Bennett, Mayor
Honorable Council Members
City of Grand Junction
250 North 5th Street
Grand Junction, CO 81501-2668

5. It seems to us that the City of Grand Junction should be encouraging economic development rather than stifling it with charging such excessive fees which discourage new business and new development. It seems certain that at the time the city annexed the Mall into the city limits, if the Mall owners had requested the waiver of the open space fee for all of the Mall property it would have been waived at that time.

We thank you for your time and attention to this matter and again respectfully request that the fee be waived so that we may complete our proposed project.

Respectfully yours,

Larry M. Follett
Colorado Managing Partner

cc: ✓ Planning Commission
Neva Lockhart, City Clerk
Linda Smith, Mesa Mall

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Grand Junction Planning Department
250 North Fifth Street
Grand Junction, Colorado 81501-2668
(303) 244-1430

MEMORANDUM

TO: City Council
FROM: Planning Staff *KP*
DATE: July 6, 1988
RE: Parks and Open Space Fee Waiver Request

A special use application for the proposed Sizzler Restaurant at Mesa Mall (next to McDonald's on HWY 6 & 50) was approved by Planning Staff on June 13, 1988 (file #18-88). As per section 5-4-6 of the Zoning and Development Code, the payment of open space fees was a condition of approval.

Larry Follett, representing Sizzler Restaurants, has requested the open space fees be waived. He feels the open space fee added to the sewer tap and plant investment fee of \$27,300 and water tap fee of \$4,800 is too much and will put the project over budget. The estimate of \$9,000 open space fees has not been verified by an appraisal. The open space fee requirement is 5% of the appraised raw land value.

The Mall was initially developed outside the City limits and open space fees never paid. Likewise, open space fees were not paid for the subsequent development of McDonald's and Wendy's at the Mall. Since then, section 5-4-6 of the Zoning and Development Code has been amended clarifying when open space fees will be paid (amended March 4, 1987). It clearly states that "new development which requires processing through the rezoning, subdivision, planned development, conditional use, or special use procedures of this Code shall require payment to the escrow fund for Parks/Open Space acquisition and/or development". We're not aware of any waivers granted in the past.

The attached sheets list fees required by other communities for similar developments.

/kp
Attachments

xc: Mark Achen
Jim Shanks
Dan Wilson
Ted Novack
file #18-88

REVIEW SHEET SUMMARY

FILE NO. 18-88 TITLE HEADING Special Use for Sizzler Restaurant in H.O. zone DUE DATE 5/19/88
 ACTIVITY - PETITIONER - LOCATION - PHASE - ACRES Special Use for Restaurant
 Petitioner: Intermountain SFESH Enterprises Location: 2440 Hwy 6&50 Grand Junction, CO

PETITIONER ADDRESS 5620 Waterbury Way, Ste. A-201 Salt Lake City, UT 84121
 ENGINEER n/a

<u>DATE REC.</u>	<u>AGENCY</u>	<u>COMMENTS</u>
------------------	---------------	-----------------

 NOTE: WRITTEN RESPONSE BY THE PETITIONER TO THE REVIEW COMMENTS IS REQUIRED
 A MINIMUM OF 48 HOURS PRIOR TO THE FIRST SCHEDULED PUBLIC HEARING.

05/12/88	Fire Dept.	This office hasn't any objections to this proposal as long as all of the required access and water supplies are met for fire fighting purposes. If you have any questions, please call our office at 244-1400. Thank you.
05/09/88	Police Dept.	No problems noted.
05/10/88	Building Dept.	Our office has no objections to this development. We have had contact with the owner and he is aware of our requirements. Grand Junction city licensed general contractor is required.
05/12/88	Public Service gas: electric:	No objections No objections
05/12/88	Mtn. Bell	No objection
05/20/88	Ute Water	No objection
05/23/88	GJ Drainage	<p style="text-align: center;">LATE</p> <p style="text-align: center;">LATE</p> No on-site or off-site analysis of surface drainage or runoff was offered; hence, no determination of completeness or compliance with existing or proposed plans can be made. What is the source of irrigation water? Where is the excess irrigation water going to return to the river. What is the present drainage on-site? How will that drainage be altered? Are any detention/retention structures proposed? Are any catch basins proposed? Where will those catch basins dump water? Many questions could be answered with a drainage analysis, especially who will maintain which portions of the on- and off-site drainage system(s).
05/23/88	Development Dept.	Grand Jct. Drainage has numerous concerns regarding surface runoff which must be satisfactorily addressed prior to final approval. Please contact G.J. Drainage (242-4343), Mr. John Ballagh, as soon as possible. A final landscaping plan must be submitted and approved prior to installation. All landscaping and site requirements must be completed prior to issuance of a certificate of occupancy (C.O.). Continuous curbing or anchored curb blocks are necessary wherever automobiles could potentially conflict with pedestrian access, or wherever vehicles might unintentionally roll off of the site. Location(s) of signage is not shown on the site plan. A separate sign permit (by a licensed sign contractor) is required for any signage.

Handwritten: 5/24/88



Acres _____

File No. #1888

Units _____

Zone H.O.

Density _____

SPECIAL USE

Tax Parcel Number

1945-092-10-019

Activity Restaurant in H.O. Zone

Phase _____

Common Location 2440 Highway 6 & 50

Date Submitted _____ Date Mailed Out " " _____ Date Posted _____
 day Review Period Return by _____ *X we don't need it*

Open Space Dedication (acreage) _____ Open Space Fee Required \$ _____ Paid Receipt # _____

Recording Fee Required \$ _____ Paid (Date) _____ Date Recorded _____

review agencies

	A	B	D	E	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	W	X	Y	Z	AA	AB	AC	AD	AE	AF	AG
Development Dept.	•	•		•	•	•																									
City Public Works	•	•																													
City Engineer	•	•																													
Transportation Engineer	•	•																													
City Parks/Recreation	•	•																													
City Fire Dept.	•	•																													
City Police Dept.	•	•																													
County Planning	•	•																													
County Engineer	•	•																													
County Health	•	•																													
County Parks/Recreation	•	•																													
Comprehensive Planning	•	•																													
Floodplain Administration	•	•																													
G.J. Dept. of Energy	•	•																													
Walker Field	•	•																													
School District	•	•																													
Irrigation Grand Valley Irr.	•	•																													
Drainage - C.S. Draining	•	•																													
Water (Ute, Clifton)	•	•																													
Sewer Dist. (FV, CGV, OM)	•	•																													
Mountain Bell	•	•																													
Public Service (2 sets)	•	•																													
State Highway Dept.	•	•																													
State Geological	•	•																													
State Health Dept.	•	•																													
GJPC (7 packets)	•	•																													
CIC (9 packets)	•	•																													
OTHER BUILDING DEPT.	•	•																													
totals																															
	12	12		1																											

12 agencies

BOARDS	DATE	
	6-13-88	Special Use approved subject to completion & resolution of all site requirements prior to the release of C.O. <i>M. Sutherland</i>
P.C.	7/5/88	Considers request to waive open space fee. Recommend denial.
CIC	7/6/88	Waiver of open space fee denied

STAFF
(See also file #36-88) Mike Sutherland
 Original Kathy Partner
 Do NOT Remove 244-1430
 From Office

APPLICATION FEE REQUIREMENTS

\$115.00 fee payable at submitter's check to "City of Grand Jct."



development summary



File # 18-88 Name Sizzler Restaurant Date July 6, 1988

PROJECT LOCATION: 2440 Highway 6 & 50

PROJECT DESCRIPTION:

Special Use application for a Sizzler Restaurant in H.O. Zoning
Request for Parks and Open Space Fee Waiver

REVIEW SUMMARY (Major Concerns)

POLICIES COMPLIANCE	YES		NO*		TECHNICAL REQUIREMENTS	SATISFIED		NOT SATISFIED*	
Complies with adopted policies	X				Streets/Rights Of Way	X			
Complies with adopted criteria	X				Water/Sewer	X			
Meets guidelines of Comprehensive Plan			N/A		Irrigation/Drainage	X			
					Landscaping/Screening	X			
					Other: <u>Open space fees</u>				

* See explanation below

See attached

STATUS & RECOMMENDATIONS:

7/5/88--The Planning Commission recommended denial of the request to waive the Parks and Open Space Fees.

Planning Commission Action

SHOPPING CENTER LEASE

MESA MALL

GRAND JUNCTION, COLORADO

OWNER: THE EQUITABLE LIFE ASSURANCE
SOCIETY OF THE UNITED STATES

AGENT FOR EQUITABLE
GENERAL GROWTH MANAGEMENT, INC.
215 KEO
P.O. BOX 1536
DES MOINES, IOWA, 50306

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#18 88

THIS LEASE, made and entered into by and between THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES, c/o General Growth Management, Inc., Agent, with offices at 215 Keo, P. O. Box 1536, Des Moines, Iowa, 50306, hereinafter referred to as "Landlord", and INTERMOUNTAIN SFSH ENTERPRISES, a Utah partnership, with offices at 310 East, 4500 South, Murray, Utah 84107, hereinafter referred to as "Tenant", WITNESSETH:

ARTICLE I. GRANT AND TERM.

Section 1.01. Demised Premises. For and in consideration of the covenants, agreements and stipulations of both parties herein contained, Landlord does hereby demise and lease unto Tenant, for the uses and purposes set forth in Section 4.01, and Tenant does lease and take from Landlord that certain piece or parcel of unimproved land (herein the "Demised Premises"), known as Parcel No. 3040, located in the Mesa Mall Shopping Center (herein the "Shopping Center"), in the City of Grand Junction, County of Mesa, State of Colorado. Said Demised Premises being more particularly described in Exhibit "A" attached hereto and made a part hereof.

The approximate boundaries and location of the Demised Premises are outlined in red on the site plan of the Shopping Center, which is marked Exhibit "B" attached hereto and made a part hereof.

Section 1.02. Term. The term of this Lease shall commence on the date hereof. Tenant's obligation to pay rent hereunder shall commence upon: (a) October 1, 1988, or (b) the date on which the Tenant shall open the Demised Premises for business to the public, whichever of said dates shall first occur, hereinafter referred to as "Rent Commencement Date". The term of this Lease shall end at 12:00 P.M. on December 31, 2008.

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

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

Section 1.05. Tenant's Covenant to Open Store. Tenant covenants and agrees, subject to delays beyond its control, that it will open its SIZZLER RESTAURANT for business to the general public within the time herein provided.

ARTICLE II. IMPROVEMENTS TO BE CONSTRUCTED BY TENANT.

Section 2.01. Construction of Improvements. Tenant agrees that it will construct upon the Demised Premises or cause to be constructed thereon (i) a one-story building which shall contain, in the aggregate, not more than 7500 square feet of floor area designated for the use set forth in Article IV

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hereof, and (ii) parking areas, sidewalks, driveways, common areas and such other facilities as are customarily provided in connection with the operation of such business operations. Tenant's acceptance of the Demised Premises and its construction work shall be performed in accordance with the provisions of Exhibit C hereof which is incorporated herein by reference.

Tenant shall commence the work of planning and constructing the improvements as soon as reasonably feasible (taking into account weather conditions, labor disputes, material shortages and other conditions beyond the reasonable control of Tenant) after the date of the execution and delivery of this Lease and shall thereafter continue diligently to prosecute the same to completion so that the completion date shall occur by the Rent Commencement Date set forth in Section 1.02(a) hereof, subject however, to any delays caused by strikes, shortages of materials and other circumstances not within the reasonable control of the Tenant. In no event shall Tenant commence construction later than July 1, 1988, unless otherwise agreed in writing by the Parties. Upon completion, the Demised Premises shall be free and clear of all liens, charges and encumbrances of whatsoever nature incurred in connection with the making of such improvements. The plans and specifications for the construction of the improvements shall be subject to Landlord's prior written approval, which approval shall not be unreasonably withheld, provided that the improvements shall be of a class, design, exterior appearance and quality which are consistent and compatible with those employed by Landlord in the construction of the Mesa Mall Shopping Center (the "Shopping Center") which is adjacent to the Demised Premises. If Landlord fails or neglects to approve or state its objections to Tenant's plans and specifications (or any revisions or changes thereof) within thirty (30) days after the receipt thereof, then the same shall be deemed approved. After obtaining such approval, the plans and specifications shall not be changed without the Landlord's approval except for (i) changes required by governmental authorities having jurisdiction over the premises, and (ii) interior non-structural changes. The location of the building on the Demised Premises and the size, location and design of any exterior signs shall be subject to Landlord's approval. No free-standing pylon sign shall be located on the Demised Premises.

Tenant shall cause all construction work to be done in a first-class workmanlike manner and in compliance with the building, zoning and other applicable laws, ordinances, rules and regulations and requirements of all federal, state and municipal governments and the appropriate departments, commissions, boards and officers thereof and in such manner that Tenant shall be able to obtain the insurance required to be carried by Tenant pursuant to Article IX of this Lease. Tenant shall cause to be obtained all building permits, licenses and other governmental approvals and authorizations which may be required to permit the construction and occupancy of the improvements, and Landlord agrees to cooperate with Tenant to the extent that Tenant may request or need such cooperation to obtain any such permit, license, compliance, approval or authorization and in all other respects to the end that the improvements may be constructed and the fixtures and equipment therein may be installed as efficiently and expeditiously as possible.

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

Tenant will construct on the Demised Premises sufficient parking spaces of not less than 5.5 parking spaces for standard sized American made automobiles for each 1,000 square feet of floor area in the building constructed on the

Demised Premises. Tenant's exterior lighting plans shall conform to the criteria established by Landlord for the Shopping Center.

Tenant shall have the responsibility to hire a General Contractor and to construct all improvements upon the Leased Premises as set forth above. It is agreed that the Tenant may either solicit bids or negotiate a construction contract with general contractors mutually acceptable to Tenant and Landlord for the construction of the aforesaid improvements. All such bids and/or contracts shall require the general contractor to provide a performance bond securing its performance and payment obligations. Tenant may accept and approve bids or execute a construction contract only with Landlord's consent which consent shall not be unreasonably withheld. Tenant agrees that it shall not be unreasonable for Landlord to withhold its consent in the event the total construction cost of the building improvements exceeds [REDACTED]. Tenant shall be responsible for and shall pay the cost of purchasing, and performing all work not shown on the final plans and specifications, including but not limited to the restaurant appliances, furnishings and equipment not provided on the Tenant's plans and specifications and all associated costs in connection with Tenant's opening of the Premises. Tenant covenants that the total cost of Tenant's investment in connection with such items and costs shall be at least equal to the lesser of [REDACTED] or seventy-five percent (75%) of the Construction Allowance paid by Landlord pursuant to Section 2.02 below.

Section 2.02. Construction Allowance. Provided Tenant is not in default hereunder, and further provided Tenant fully complies with Section 2.01 above, Exhibit C and Article XXIII, Landlord shall pay to Tenant, as a contribution for the work performed by Tenant pursuant to Section 2.01 above, an allowance equal to the total cost of Tenant's construction contract together with Tenant's cost to survey the Demised Premises, test the subsoil conditions and obtain leasehold title insurance, which shall be payable to Tenant as follows:

A. Once a month Tenant shall submit to Landlord a request for payment covering the work completed as of the date of the request. Such request shall be accompanied by an affidavit from Tenant stating the percentage of the total work completed and including a reasonably itemized breakdown of the costs incurred. In addition, Tenant shall submit notarized release and waivers of lien from all contractors, subcontractors, material suppliers and labor suppliers for the completed work. Provided Tenant fully complies with the requirements set forth above, Landlord shall make payment to Tenant within ten (10) days after Landlord's receipt of the applicable payment request. The total payments pursuant to such monthly requests shall not exceed ninety percent (90%) of Tenant's construction contract.

B. The final portion of the construction allowance shall be paid to Tenant sixty (60) days after Tenant shall open the Demised Premises for business provided Tenant has delivered to Landlord and/or complied with the following: (1) Tenant's affidavit stating that Tenant's Work has been substantially completed in compliance with Exhibit C and Tenant's approved working drawings (plans) and specifications and which affidavit shall include a detailed itemized breakdown of Tenant's final and total construction costs, together with proof, reasonably satisfactory to Landlord, of payment thereof and a statement that no security interests under the Uniform Commercial Code or chattel mortgages are outstanding or have been filed. (Landlord acknowledges that Tenant shall be permitted to finance Tenant's moveable fixtures and equipment.) Such affidavit may be relied upon by Landlord, it being understood that any deliberate misstatement by Tenant therein shall constitute an Event of Default hereunder; (2) An affidavit of the General Contractor or Contractors performing Tenant's Work stating that Tenant's Work has been fully completed in compliance with Exhibit C and Tenant's approved working drawings (plans) and specifications and that all subcontractors, laborers and material suppliers, who supplied labor and/or material for Tenant's Work (whose names and address shall be recited in the affidavit) have been paid in full; and that all liens therefore that have been filed have been discharged of record or waived; (3) A complete notarized release and waiver of lien with respect to the Premises, executed by each of Tenant's contractor, subcontractors, or material suppliers supplying labor and/or materials for Tenant's Work; or in lieu thereof, an attorney's certification (prepared by an attorney licensed to practice law in the State where the Shopping Center is located) that the lien period for the Tenant's Work performed by Tenant in the Premises has expired and no liens in connection therewith have been filed; (4) All certificates and approvals with respect to Tenant's Work that may be required by any governmental authorities as a condition for the issuance of a Certificate of Occupancy for the Premises.

C. The provisions of this Section 2.02 are a condition precedent to Tenants' right to receive its Construction Allowance, and no portion of said sum shall vest in Tenant, nor shall Tenant sell, assign, encumber or create a security interest in such allowance prior to full compliance with the Terms of this Section 2.02.

ARTICLE III. RENT.

Section 3.01. Minimum Guaranteed Rent. Tenant agrees to pay to Landlord at the office of Landlord, or at such other place designated by Landlord, without any prior demand therefor and without any deduction or setoff whatsoever, fixed Minimum Guaranteed Rent as set forth in the Rent Rider attached hereto and by this reference made a part hereof. Each monthly installment of Minimum Guaranteed Rent shall be due on the first day of each month and shall be delinquent if not received on or before the tenth day of each month.

The Minimum Guaranteed Rent provided in the rent rider is based upon an estimated cost of [REDACTED] Dollars [REDACTED] for the complete construction of a building and other improvements in accordance with Tenant's plans and specifications. In the event that the total cost of construction is other than the aforesaid estimated cost, then the minimum rents herein provided shall be adjusted to provide for either an increase or a decrease in the annual minimum rental equal to [REDACTED] [REDACTED] per annum of the difference of such actual cost over or under the Parties' estimated cost of construction. The modified minimum annual rental shall be payable in equal monthly installments by a corresponding adjustment of the minimum monthly rent; provided, however, if the final costs of construction exceed the Parties' estimated cost of [REDACTED] Dollars [REDACTED], then the Tenant shall have the option to either: (a) pay the excess in cash within sixty (60) days after completion of construction; or (b) make any necessary adjustments required to bring the construction costs back within the estimated budget; or (c) pay the increased rental as set forth above.

It is agreed that the aforesaid adjustments in rent are subject to final modifications due to change orders approved by the parties in accordance with the terms of the construction contracts.

Following the completion of construction, and upon the request of either Party, the Landlord and Tenant shall execute an amendment to this Lease specifying the final construction costs and establishing the minimum rental in accordance with the terms hereof.

Section 3.02. Additional Rent. Any other sums of money or charges to be paid by the Tenant pursuant to the provisions of any other sections of this Lease shall be designated as "Additional Rent". Such Additional Rent shall, in no manner, be considered as Minimum Rent.

Section 3.03. Past Due Minimum Guaranteed Rent and Additional Rent. If Tenant shall fail to pay, when the same is due and payable, any Minimum Guaranteed Rent, or other charges designated as Additional Rent in Section 3.02 hereof, such unpaid amounts shall bear interest from the due date thereof to the date of payment at the rate of twelve percent (12%) per annum.

Section 3.04. Promotional Charge and Maintenance Charge.

(a) Tenant agrees to pay to Landlord at the office of Landlord, or at such other place designated by Landlord a Promotional Charge equal to the initial rate of [REDACTED] per annum, payable in equal installments, in advance, at the rate of [REDACTED] per month, as Tenant's contribution towards the advertising, promotion, and public relations of the Shopping Center and administrative expenses related thereto. The Promotional Charge payable by Tenant to Landlord will be subject to increase at the beginning of every second (2nd) Lease Year of the Lease Term by a percentage equal to the percentage of increase from the base period (as hereafter defined) of "The Revised Consumer's Price Index for Urban Wage Earners and Clerical Workers, U.S. City Average All Items, Series A (1967=100)", issued by the Bureau of Labor Statistics of the United States Department of Labor in the Current Labor Statistics Section of the Monthly Labor Review (final publication only). The term "base period" as used herein shall refer to the date on which said Index is published, which is closest to the date immediately preceding the Rent

Commencement Date of the Lease Term, and the increase shall be based on the difference between such "base period" Index and the initial Index for the month of October preceding the effective date of the increase.

(b) Tenant also agrees to pay to Landlord at the office of Landlord, or at such other place designated by Landlord, a Maintenance Charge equal to the initial rate of [REDACTED], payable in equal installments, in advance, at the rate of [REDACTED] per month as Tenant's contribution towards the maintenance and repair of the ring roads mentioned under the provisions of Article V of this Lease. The Maintenance Charge payable by Tenant to Landlord will be subject to adjustments in the same manner and method as the Promotional Charge as set forth in Section 3.04(a) hereof.

Section 3.05. Percentage Rent.

(a) In addition to the Minimum Guaranteed Rent or any other additional rent reserved under this Lease and as part of the total rent to be paid, Tenant agrees to pay to Landlord, the additional rent (hereinafter referred to as "Percentage Rent") for each Lease Year or partial Lease Year as set forth in the Rent Rider attached to this Lease; and shall be payable as provided in subsection (b) of this Section 3.05.

(b) The Percentage Rent shall be paid within sixty (60) days after the end of each Lease Year, including the last Lease Year hereof, as to which Tenant's obligation shall survive the expiration of the Lease Term. Each Lease Year shall be considered as an independent accounting period for the purpose of computing the amount of Percentage Rent due, if any. The amount of Gross Sales of any Lease Year shall not be carried over into any other Lease Year.
SEE RIDER.

ARTICLE IV. CONDUCT OF BUSINESS BY TENANT.

Section 4.01. Use of Premises. Tenant shall use the Demised Premises during the full term of this Lease solely for the purpose of conducting the business of a SIZZLER STEAKHOUSE RESTAURANT facility.

Tenant covenants that during the entire term of this Lease it shall operate continuously in the Demised Premises the business above stated, and will not use or permit, or suffer the use of the Demised Premises for any other business purpose. All uses not specifically granted herein are reserved to Landlord and other tenants in the Shopping Center.

Landlord agrees that during the term of this Lease, it will not lease a store whose primary and principal use is the operation of a steakhouse restaurant to any other tenant or occupant located in the outparcels of Mesa Mall. Such prohibition shall not be applicable to areas owned, leased and/or subleased to any Department Store, Junior Department Store or any tenant in existence as of the date of this Lease. Such prohibition shall not apply to the enclosed mall. In no event and under no circumstances shall Tenant be entitled to any monetary or pecuniary damages, whether ordinary, special, compensatory or punitive for Landlord's breach of its obligations hereunder, it being understood and agreed that Tenant's sole and only remedy shall be limited to an action for injunctive relief and/or declaratory judgment. If any other tenant or occupant of the Shopping Center violates the provisions of the limitation granted hereunder without any action by Landlord permitting such a violation by signed lease or agreement provisions, then Landlord shall have no obligation or responsibility in connection therewith. Tenant shall have the right and option to take legal action or initiate legal proceedings against such other tenant or occupant to enjoin said violation, all of which shall be done at Tenant's own cost and expense, provided, however, Landlord agrees to cooperate with Tenant, at no cost or expense to Landlord. If any third party or federal, state or local governmental body or agency threatens or commences an investigation, inquiry, proceeding or action against

Landlord and/or Tenant arising out of, from, or on account of, directly or indirectly, the limitation granted hereunder, then Tenant, at its sole cost and expense, shall defend and save Landlord free and harmless and indemnified from and against all loss, damages, claims, actions or proceedings, including all costs, expenses and attorney's fees resulting therefrom.

In the event Tenant defaults in its obligation to continuously and uninterruptedly operate and conduct the aforesaid use in the Demised Premises, Landlord, in addition to its other remedies, may elect to sublease the Demised Premises from Tenant at a rent equal to the sum of the Minimum Guaranteed Rent and other lease charges required to be paid by Tenant under the terms of this Lease. Landlord shall make such election within ninety (90) days after the date on which Tenant notifies Landlord that it intends to discontinue its operations in the Demised Premises, and if it elects to sublease the Demised Premises, the sublease shall be effective on the first day of the fourth (4th) full calendar month following Tenant's vacating the Demised Premises. Tenant may remove from the Demised Premises such trade fixtures and equipment as it desires and shall repair any damage to the building caused by such removal.

Section 4.02. Compliance with Laws and Regulations. Tenant shall, at all times, maintain and conduct its business, insofar as the same relates to Tenant's use and occupancy of the Demised Premises, in a lawful manner and in strict compliance with all governmental laws, rules, regulations and orders and provision of insurance underwriters applicable to the business of Tenant conducted in and upon the Demised Premises.

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

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

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

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

- (a) That Tenant shall not sell or display merchandise outside the building on the Demised Premises.
- (b) That Tenant shall keep the display windows, if any, and the area in and adjacent to the building on the Demised Premises electrically lighted from dusk until 10:00 p.m. every day, except on Sundays and holidays when the facility is closed.
- (c) That Tenant shall conduct no auction, fire, bankruptcy, liquidation or similar sale without the written consent of Landlord first had and obtained.
- (d) That Tenant shall keep the building on the Demised Premises and exterior and interior portion of all windows, doors and all other glass or plate glass fixtures in a neat and clean condition.

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- (e) That Tenant shall not permit any unlawful or immoral practice to be carried on in the Demised Premises; make any use of or allow the Demised Premises to be used for any purpose that might invalidate or increase the rate of insurance thereon; create any nuisance or injure the reputation of the Shopping Center; deface or injure the building; overload the floors; commit or suffer waste; permit any use prohibited by a zoning or building restriction or use, or permit the use of radios, loudspeakers or other devices that can be heard outside the building on the Demised Premises; or disturb the quiet enjoyment of any other tenant in the Shopping Center.
- (f) That the delivery or shipping of merchandise, supplies and fixtures to and from the Demised Premises shall be subject to such reasonable rules and regulations as in the judgment of Landlord are necessary for the proper operation of the Shopping Center.
- (g) That Tenant shall store all trash and garbage within the building on the Demised Premises or at such other locations outside the building as approved by Landlord, arranging for the regular pick up of such trash and garbage at Tenant's expense. Removal of garbage and trash shall be made only by reputable service contractors in accordance with reasonable rules and regulations of Landlord and applicable to all trash and garbage removal in the Shopping Center. Tenant shall not operate an incinerator or burn trash or garbage within the Demised Premises.
- (h) That Tenant shall keep the building on the Demised Premises at a temperature sufficiently high to prevent freezing of water pipes and fixtures.
- (i) That Tenant shall provide for pest extermination services at reasonable intervals, if necessary.
- (j) That the plumbing facilities shall not be used for any other purpose than that for which they are constructed, and no foreign substance of any kind shall be thrown therein, and the expense of any breakage, stoppage, or damage resulting from a violation of this provision shall be borne by Tenant.

ARTICLE V. EASEMENTS.

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

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satisfying any parking ratio requirements incident to the development of the Shopping Center.

ARTICLE VI. UTILITIES.

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

ARTICLE VII. TAXES.

Section 7.01. Taxes. Tenant will, at Tenant's cost and expense, bear, pay and discharge, or cause to be borne, paid and discharged, thirty (30) days prior to delinquency, all taxes (including personal property taxes, if any), assessments, sewer rents, water rents and charges, duties, impositions, license and permit fees, charges for public utilities of any kind, and payments and other charges of every kind and nature whatsoever, ordinary or extraordinary, foreseen or unforeseen, general or special (all of which are hereinafter sometimes collectively referred to as "Impositions") which shall, pursuant to present or future law or otherwise, during the term hereby granted have been or be levied, charged, assessed or imposed upon, or grow or become due and payable out of or for, or become or have become a lien on, the Demised Premises or any part thereof, or any buildings or improvements now or hereafter located thereon, or the appurtenances thereto, or the sidewalks or streets adjacent thereto, or any franchises as may be appurtenant to the use and occupation of the Demised Premises; it being the intention of the parties hereto that the rents reserved herein shall be received and enjoyed by Landlord as a net sum free of all of such Impositions (except income taxes assessed against Landlord, franchise, estate, succession, inheritance or transfer taxes of Landlord), or any tax or charge in replacement or substitution of the foregoing or of a similar character; provided, however, that if at any time during the term of this Lease the then prevailing method of taxation or assessment shall be changed so that the whole or any part of the Impositions theretofore payable by Tenant as above provided shall instead be levied, charged, assessed or imposed wholly or partially on the rents received by Landlord from the Demised Premises, or shall otherwise be imposed against Landlord in the form of a franchise tax or otherwise, then Tenant shall pay all such levies, charges, assessments, impositions, taxes and other substituted charges thirty (30) days prior to delinquency. If, by law, any such Imposition is payable, or may at the option of the taxpayer be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), the Tenant may pay the same, together with any accrued interest on the unpaid balance of such Imposition, in installments as the same, respectively, become due and before any fine, penalty, interest or cost may be added thereto for the nonpayment of any such installment and interest.

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

If Tenant shall fail to pay any Imposition thirty (30) days prior to delinquency, then Landlord may pay the same with all interest and penalties lawfully imposed upon the last payment thereof and the amounts so paid by Landlord shall thereupon be and become immediately due and payable by Tenant to Landlord hereunder, together with interest thereon.

Tenant, at Tenant's cost and expense may, in good faith, contest the validity or amount of any Imposition, in which event Tenant may defer the payment thereof for such period so long as such contest shall be continuously and diligently prosecuted to conclusion upon the conditions, however, that in the event of each such deferment of payment by Tenant:

(a) within thirty (30) days prior to the date on which the Imposition being contested shall become delinquent, and from time to time thereafter until payment thereof shall be determined not to be payable by the appropriate

body having jurisdiction, Tenant shall deposit and thereafter maintain with Landlord satisfactory indemnity or other security reasonably satisfactory to Landlord sufficient to pay the item or items so contested or intended to be contested together with the interest and penalties thereon which shall accrue during the period of such contest;

(b) no provision of this Lease shall be construed so as to require Landlord to allow any such items so contested or intended to be contested to remain unpaid for such length of time as shall permit the Demised Premises, or the lien thereon created by such item to be contested, to be sold by federal, state, county or municipal authority for the non-payment thereof.

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

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

ARTICLE VIII. MAINTENANCE AND REPAIR OF THE DEMISED PREMISES.

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

Section 8.02. Maintenance by Tenant. Tenant agrees that, from and after the date hereof and until the end of the term hereof, it will be responsible for all repairs and maintenance to the Demised Premises.

Section 8.03. Alterations by Tenant. Tenant may, from time to time, during the term make, at its own cost and expense, any reasonable non-structural alterations or changes in the building on the Demised Premises in a good and workmanlike manner in compliance with all applicable requirements of law, it being understood that "nonstructural" shall include moving of stud partitions, minor plumbing and electrical work and modification and rearrangement of fixtures. Landlord agrees to cooperate with Tenant for the purpose of securing necessary permits for any changes, alterations or additions permitted under this paragraph without expense to Landlord.

Tenant shall have no right, however, to make any change, alteration or addition to the building on the Demised Premises which would impair the structural soundness or diminish or increase the size thereof, without the prior written consent of Landlord. All costs of such work shall be paid promptly by Tenant so as to prevent the assertion of any liens for labor or materials.

Section 8.04. Condition of Premises at Termination. At the expiration of this Lease, by lapse of time or otherwise, Tenant will quit and surrender the Demised Premises in as good state and condition as they were when entered into, reasonable use and wear thereof, damage by fire and other casualty, and changes, alterations or additions permitted under preceding Section 8.03,

excepted. All alterations, additions, erections or improvements on or in the Demised Premises at the expiration of this Lease, except furniture or moveable fixtures paid for by Tenant shall be and become a part of the Demised Premises, and shall remain upon and be surrendered with said Premises as a part thereof at the termination of this Lease. Should Tenant fail to remove any of said furniture or moveable fixtures within thirty (30) days after the end of the Lease Term, then same shall be considered as abandoned and become the property of Landlord.

ARTICLE IX. INSURANCE AND INDEMNITY.

Section 9.01. Tenant's Insurance. At all times during the term of this Lease, Tenant shall: (a) keep the buildings which may hereafter be erected on the Demised Premises insured in the name of Landlord and Tenant as their interest may appear, in insurance companies satisfactory to Landlord, against loss or damage by fire and an extended coverage endorsement, windstorm, hail, explosion, riot, civil commotion, smoke, hurricane and tornado and damage from aircraft and vehicles, and such other risks as are customarily insured against by persons in the same or a similar business in the city in which the premises are located, in an amount representing not less than one hundred percent (100%) of the full replacement value.

The term "full replacement value" shall mean the actual replacement cost (excluding foundation and excavation cost and cost of underground flues, pipes and drains), as such replacement cost may be reasonably estimated by Landlord; (b) effect and maintain in insurance companies satisfactory to Landlord, adequate boiler, machinery, and air conditioning insurance if the same shall be appropriate, in the amount of [REDACTED] Dollars [REDACTED]; and (c) general public liability insurance, on an occurrence basis, for the benefit of Landlord and Tenant and covering any liability for a minimum of [REDACTED] and [REDACTED] in respect to property damage; (d) if Tenant is permitted to engage in the sale of beer, wine or other alcoholic beverages for on-premises consumption, Tenant shall also secure and keep in force, commencing as of the date Tenant sells such products to the public, Liquor Liability (dram shop) Insurance with a minimum limit of liability in an amount of [REDACTED] on an occurrence basis, covering bodily injury and death to one or more persons and [REDACTED] in connection with property damage; and (e) in the event of restoration, permitted alterations or changes in the Demised Premises that may be made by the Tenant in excess of \$20,000.00 per job, provide and keep in force for the benefit of the Landlord contingent liability and broad form builder's risk insurance in insurance companies satisfactory to the Landlord as to the amount of each policy and the identity of the respective insurers. Tenant agrees to deliver to Landlord all original policies for fire and extended coverage insurance or duplicate policies or certificates from insurance companies with respect to the insurance coverages provided for herein, at or prior to the commencement of the term of this Lease and from time to time thereafter as new policies are issued or existing policies renewed. If Tenant shall fail to effect or maintain such insurance, Landlord may effect the same and Tenant agrees to pay, on demand, any amount properly paid by Landlord for such purpose, together with interest thereon, and, in case of its failure to so pay, the same shall be added to and become part of the installment of rent next due under the terms of this Lease. Landlord shall not be limited in the proof of any damages which Landlord may claim against Tenant arising out of or by reason of Tenant's failure to provide and keep in force insurance policies as aforesaid, to the amount of the insurance premium or premiums not paid or incurred by Tenant which would have been payable upon such insurance but also shall be entitled to recover as damages for such breach, the uninsured amount of any loss, liability, damages, claims, costs and expenses of suit, judgments and interest, suffered, or incurred by Landlord by reason of any casualty or accident or disaster occurring on the Demised Premises which should have been insured hereunder. Tenant shall not violate or permit to be violated any condition of any of said policies, and Tenant shall so perform and satisfy the requirements of the companies writing such policies so that at all times companies of good standing shall be willing to write such insurance.

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All policies of insurance procured by Tenant shall be insured by insurance companies with general policyholder's rating of not less than A and a financial rating of Class XI as rated in the most current available "Best's Insurance Reports", and licensed to do business in the state where the Demised Premises is located and authorized to issue such policy or policies. All policies of insurance procured by Tenant shall be written as primary policies not contributing with and not in excess of coverage that Landlord may carry. All comprehensive general liability insurance procured by Tenant shall contain an endorsement that Landlord, although named as an insured, nevertheless shall be entitled to recover under said policies for any loss or damage occasioned to it, its servants, agents and employees by reason of the negligence of Tenant. All policies of insurance procured by Tenant shall contain an endorsement providing as follows: that such insurance may not be materially changed, amended or cancelled with respect to Landlord except after twenty (20) days' prior written notice from the insurance company to Landlord, sent by registered mail. All policies procured by Tenant shall contain an endorsement containing an express waiver of any right of subrogation by the insurance company against Landlord (whether named as an insured or not).

Anything in this Lease to the contrary notwithstanding, neither Landlord nor Tenant shall be liable to the other for any business interruption or any loss or damage to property or injury to or death of persons occurring on the Demised Premises or the adjoining properties, sidewalks, streets or alleys, or in any manner growing out of or connected with Tenant's use and occupation of the Demised Premises, or the condition thereof, or of sidewalks, streets or alleys adjoining, caused by the negligence or other fault of Landlord or Tenant or of their respective agents, employees, subtenants, licensees or assignees, to the extent that such business interruption or loss or damage to property or injury to or death of persons is covered by or indemnified by proceeds received from insurance carried by the other party (regardless of whether such insurance is payable to or protects Landlord or Tenant or both) or for which such party is otherwise reimbursed; and Landlord and Tenant each hereby respectively waives all right of recovery against the other, its agents, employees, sub-tenants, licensees and assignees, for any such loss or damage to property or injury to or death of persons to the extent the same is covered or indemnified by proceeds received from any such insurance, or for which reimbursement is otherwise received.

Section 9.02. Indemnification of Landlord. Tenant will indemnify Landlord and save it harmless from and against any and all claims, actions, damages, liability and expense in connection with loss of life, personal injury and/or damage to property arising from or out of any occurrence in, upon, or at the Demised Premises, or the occupancy or use by Tenant of the Demised Premises or any part thereof, or occasioned wholly or in part by any act or omission of Tenant, its agents, employees, contractors, sublessees, concessionaires or licensees, except if caused by the act or neglect of Landlord, its agents or employees.

ARTICLE X. DAMAGE BY CASUALTY.

Section 10.01. Restoration. If any building, fixture or other improvements now or hereafter situated on the Demised Premises (except moveable trade fixtures, furniture and furnishings) should at any time during the term of this Lease be damaged or destroyed by fire or otherwise, the Tenant shall, at its sole cost and expense (except to the extent that it shall be reimbursed out of insurance proceeds) restore and rebuild the same as nearly as possible to the condition they were in immediately prior to such damage or destruction, and such restoration and rebuilding, prosecuted with due diligence, shall be completed as soon as reasonably possible. No damage or destruction of the building or any of the fixtures or other property therein shall be grounds for the termination of this Lease or relieve the Tenant from any obligation created or imposed by the virtue of this Lease, any laws of the state in which the Demised Premises is located to the contrary notwithstanding, except that Tenant's Minimum Rent only shall be abated during any period in which the Premises are not tenantable provided Tenant is diligently pursuing the restoration of the building. All insurance moneys payable on account of such damage arising from insurance required under the

provisions of this Lease shall be paid to Tenant in the case of any particular casualty resulting in a loss payment not exceeding Ten Thousand Dollars (\$10,000.00) in the aggregate. In case of any particular casualty resulting in a loss payment in excess of Ten Thousand Dollars (\$10,000.00) in the aggregate, the insurance proceeds shall be paid in accordance with the standard mortgagee clause, if any, and if there is none, shall be paid to and held in trust by Landlord in a bank or trust company doing business in the state in which the Demised Premises is located designated by Landlord and shall be disbursed to Tenant, or its contractor, from time to time as construction progresses, subject to a ten percent (10%) holdback payable upon satisfactory completion of the restoration, rebuilding or repair. In the event any surplus of insurance moneys shall remain after repairs or replacement of said building shall have been made (and whether insurance proceeds shall, pursuant to the preceding provisions hereof, have been paid directly to Landlord or Tenant), such excess shall forthwith be paid to and become the property of Landlord. In the event the funds held in trust by Landlord are insufficient to complete the restoration, rebuilding or repair, such additional funds shall be advanced by Tenant prior to any disbursement of trust funds by Landlord.

In the event of any damage by fire or other casualty, the terms of this Lease shall be otherwise unaffected, and Tenant shall remain and be continued liable for the payment of rent, real estate taxes and assessments, and other charges hereunder as though no damage by fire or other casualty had occurred. However, if the improvements on the Demised Premises are partially or totally damaged or destroyed during the last five (5) years of the Lease Term and Tenant elects not to repair and restore such improvements, then, and in such event, this Lease shall be deemed cancelled and terminated as of the date of such damage or destruction on condition that (i) Tenant delivers to Landlord a thirty (30) day notice of such election to cancel and terminate and (ii) Tenant pays to Landlord the net insurance proceeds, as hereinafter defined. "Net insurance proceeds" shall mean the total amount of insurance proceeds collected by Tenant for the building and improvements, excluding proceeds for Tenant's personal property, from which amount shall be deducted the costs of collection thereof, including appraisers' and attorneys' fees.

ARTICLE XI. CONDEMNATION.

Section 11.01. Taking for Temporary Use. If the temporary use of the whole or any part of the Demised Premises shall be taken at any time during the term of this Lease for any public or quasipublic purpose by any lawful power or authority, by the exercise of the right of condemnation or eminent domain, or by agreement between the Tenant and those authorized to exercise such right, the Tenant shall give prompt notice thereof to the Landlord, and the term of this Lease shall not be reduced or affected in any way. In such case, the Tenant shall continue to pay in full the annual Minimum Guaranteed Rent and any other sum of money provided to be paid by the Tenant. The Tenant shall be entitled to the entire award for such taking (whether paid by way of damages, rent, or otherwise) unless the period of occupation and use by the condemning authority shall extend beyond the date of expiration of this Lease, in which case the award made for such taking shall be apportioned between the Landlord and the Tenant as of the date of such expiration. In any proceeding for such taking or condemnation, the Landlord shall have the right to intervene and participate; provided that if such intervention shall not be permitted, the Tenant shall, at the Tenant's expense, consult with the Landlord, its attorneys, and experts, and shall cooperate with the Landlord in the prosecution or defense of such proceeding. At the termination of any such use or occupation of the Demised Premises, the Tenant will, at its sole cost, repair and restore the buildings and improvements then upon the Demised Premises to the condition, as nearly as may be reasonably possible, in which such buildings and improvements were at the time of such taking. The Tenant shall not be required to make such repairs and restoration if the term of this Lease shall expire prior to the date of termination of the temporary use so taken, and, in any such event, the Landlord shall be entitled to recover all damages and awards arising out of the failure of the condemning authority to repair and restore the buildings at the expiration of such temporary taking. Any recovery or sum received by the Tenant as an award or compensation for

physical damage to the Demised Premises caused by and during the temporary taking shall be deemed a trust fund for the purpose of repairing or restoring such damage.

Section 11.02. Total Taking. If the whole or all of the Demised Premises shall be taken at any time during the term of this Lease for any public or quasi-public purpose by any lawful power or authority, by the exercise of right of condemnation or eminent domain, or by agreement between Landlord, Tenant and those authorized to exercise such right, then this Lease shall automatically terminate as of the date possession shall be taken by such authority and rent shall be paid up to that date with a proportionate refund by Landlord of any rent paid in advance. In the event that such substantial part of the building on the Demised Premises is taken as shall result in that portion of the Demised Premises remaining after such taking being unsuitable and untenable for the particular use as used by the Tenant (even if restoration was made), then the Tenant may, at Tenant's option, terminate this Lease by written notice to Landlord given within sixty (60) days after such taking. Any such taking of the Demised Premises which results in the termination of this Lease shall be taken and referred to as a total taking. No taking of the parking area of the Demised Premises shall be deemed to be a total taking so long as the parking area is not reduced below the standards set by the City of Grand Junction, Colorado or one parking space for every three interior seats, whichever is the greater. In the event the taking of the parking area is so reduced the Landlord shall have the right, within one hundred eighty (180) days after the receipt of the award in condemnation to supply substitute parking facilities on the property of Landlord mutually acceptable to Tenant as to location, and, in such event, Tenant shall have no right of termination hereunder.

Section 11.03. Partial Taking. A partial taking shall be the taking of a portion of the Demised Premises for any public or quasi-public purpose by any lawful power or authority, by the exercise of right of condemnation or eminent domain, or by agreement between the Landlord, Tenant and those authorized to exercise such right, which does not constitute a taking for temporary use or a total taking as defined in Sections 11.01 and 11.02 of this Article XI. In the case of partial taking, this Lease shall remain in full force and effect as to the portion of the Demised Premises remaining immediately after such taking, without any abatement or reduction of rent, or any other sum payable hereunder. However, if more than ten percent (10%) of the floor area of the building on the Demised Premises shall be taken, then Tenant may, by written notice on or before the date of surrendering possession to the public authority, terminate this Lease.

Section 11.04. Application of Award in Event of Partial Taking or Total Taking (Other Than Taking for Temporary Use).

(i) In the event of partial taking as defined herein, the total award shall be paid to and held in trust by the Landlord. The said total award shall be used to restore or repair the Demised Premises to the extent necessary to make the same usable and so that the remaining portions of the Demised Premises when complete shall be substantially the same in character as prior to the partial taking. The restoration and repair of the Demised Premises shall be done and accomplished by the Tenant, notwithstanding the amount of the award available for such restoration and repair, and said total award shall be disbursed to Tenant, or its contractor, from time to time as construction progresses, subject to a ten percent (10%) holdback payable upon satisfactory completion of the restoration or repair. After such restoration or repair, any portion of the total awards remaining on hand shall be paid to Tenant.

(ii) In the event of a total taking as defined herein, or a partial taking, and Tenant cancels this Lease, the awards and other payments on account of a taking, meaning the awards and other payments to which the Landlord and Tenant shall be entitled to have and receive, shall be paid to the Landlord, and said awards and other payments shall be applied as follows:

1. First, to the payment of the expenses of attorneys' and appraisers' fees.
2. (This Subsection intentionally omitted.)
3. Tenant shall be entitled to receive out of any award with respect to said taking that portion of the award equitably attributable to Tenant's movable trade fixtures.

The balance of such award shall be retained by Landlord.

Tenant shall be entitled to assert a claim (in connection with said taking) with respect to the loss of Tenant's leasehold estate under this Lease subject to and limited by the following:

- (i) Said claim and anything awarded pursuant thereto shall, in no event, involve, be predicated upon, or be compensation for, loss of improvements, it being understood and agreed that Tenant accepts the provisions with respect to said loss of improvements set forth in subparagraph (3) above as adequate compensation therefor and agrees that it is not entitled to receive any additional award with respect thereto under its claim for loss of its leasehold estate or otherwise;
- (ii) Said leasehold estate claim shall be based upon, determined and predicated on the unexpired term of this Lease at the time of the taking, including option periods.

ARTICLE XII. ASSIGNMENT AND SUBLETTING.

Section 12.01. Consent Required. Tenant may not (except as hereinafter stipulated) assign this Lease and/or sublet the Demised Premises, or any part thereof, without, in each instance, obtaining the written permission of Landlord; however, Landlord's permission shall not be unreasonably withheld. It shall not be considered unreasonable for Landlord to withhold its consent for assigning or subletting for any use or to any tenant which would be in violation of any restrictive or exclusive agreements theretofore entered into by Landlord with respect to the Shopping Center. After the commencement of the term of this Lease, Tenant may, upon notice to Landlord, but without Landlord's permission, assign this Lease and/or sublet the Demised Premises, or any part thereof, to an affiliated, subsidiary, or reorganized corporation of Tenant, including a corporation resulting through merger, or to a dealer or franchisee of Sizzler Restaurant's International, Inc. with a reasonably satisfactory reputation and standing, and a then net worth equal to or greater than Tenant's then net worth, for the purpose of continued operation hereunder of the business conducted on said Premises in substantially the same manner as before. The consent by Landlord to any assignment or subletting shall not constitute a waiver of the necessity for such consent to any subsequent assignment or subletting. This prohibition against assigning or subletting shall be construed to include a prohibition against any assignment or subletting by operation of law. If this Lease be assigned, or if the Demised Premises or any part thereof be underlet or occupied by anybody other than Tenant, Landlord may collect rent from the assignee, under-tenant or occupant, and apply the net amount collected to the rent herein reserved, but no such assignment, underletting, occupancy or collection shall be deemed a waiver of this covenant, or the acceptance of this assignee, under-tenant or occupant as tenant, or a release of Tenant from the further performance by Tenant of covenants on the part of Tenant herein contained. Except as provided below, notwithstanding any assignment or sublease, Tenant shall remain fully liable on this Lease and shall not be released from performing any of the terms,

covenants and conditions of this Lease. No assignee or sublessee shall be permitted to use the Demised Premises for any purpose other than that set forth in Section 4.01 hereof.

Notwithstanding anything to the contrary, after the eighteenth (18th) full month of the Lease Term, Robert N. Minshew, Steven F. Lowe and Robert A. Kinsey may, upon notice to Landlord but without Landlord's permission, assign their interest in this Lease to Larry M. Follett or an entity controlled by Larry M. Follett. Upon the effective date of such assignment such individuals and Intermountain SFSH Enterprises shall be released from liabilities and obligations accruing on and after such effective date provided that Larry M. Follett, individually, shall remain fully liable as Tenant hereunder.

ARTICLE XIII. TENANT'S DEFAULT.

Section 13.01. Events of Default. The following events shall be deemed to be events of default by Tenant under this Lease:

- (a) Tenant shall have failed to pay any installment of rent or any other charge provided herein, or any portion thereof when the same shall be due and payable, and the same shall remain unpaid for a period of ten (10) days after Tenant's receipt of written notice from Landlord; or
- (b) Tenant shall have failed to comply with any other provisions of this Lease and shall not cure such failure within thirty (30) days after Landlord, by written notice, has informed Tenant of such non-compliance (in the case of a default which cannot, with due diligence, be cured within a period of thirty (30) days, Tenant shall have such additional time to cure same as may reasonably be necessary, provided Tenant proceeds promptly and with due diligence to cure such default after receipt of said notice); or
- (c) (This subsection intentionally omitted.)
- (d) Tenant shall, for reasons other than those specifically permitted in this Lease, cease to conduct its normal business operations in the Demised Premises or shall vacate or abandon the Demised Premises and leave same vacated or abandoned for a period of ten (10) days; or
- (e) Tenant shall do or permit to be done anything which creates a non-permitted lien upon the Demised Premises, provided, however, that Tenant may contest the validity of such lien without being in default hereunder by posting a bond equal to the amount of said lien or as required by the laws of the state of Colorado;

then Landlord may elect either (i) to cancel and terminate this Lease, or (ii) to terminate Tenant's right to possession only without terminating the Lease, or (iii) pursue any other remedy available at law or in equity.

In the event of election under (ii) above to terminate Tenant's right to possession only, Landlord may, at Landlord's option, enter into the Demised Premises and take and hold possession thereof, without such entry into possession terminating this Lease or releasing Tenant in whole or in part from Tenant's obligation to pay the rent hereunder for the full stated term. Upon such re-entry, Landlord may remove all persons and property from the Demised Premises, and such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Tenant, all without service of notice or resort to legal process and without being deemed guilty of trespass, or becoming liable for any loss or damage which may be occasioned thereby. Upon and after entry into possession without termination of the Lease, Landlord shall use its best efforts to relet the premises, or any part thereof, for the account of Tenant, to any person, firm or corporation, other than Tenant, for such rent, for such time, and upon such terms as Landlord, in Landlord's sole discretion, shall determine, but Landlord shall not be required to accept any tenant offered by Tenant or to observe any instruction given by Tenant about such reletting. In any such case, Landlord may make repairs and redecorate the premises to the extent deemed by Landlord necessary

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or desirable, and Tenant shall, upon demand, pay the costs thereof, together with Landlord's expense of reletting. If the consideration collected by Landlord upon any such reletting for Tenant's account, and after deducting all expenses incident thereto, including reasonable brokerage fees and legal expenses, is not sufficient to pay monthly the full amount of the rent provided in this Lease, Tenant shall pay to Landlord the amount of each monthly deficiency upon demand. In the event that Landlord shall have terminated Tenant's right to possession only, Landlord shall have the right to cancel and terminate this Lease by serving five (5) days' written notice on Tenant of such further election and to pursue any remedy at law or in equity that may be available to Landlord.

Section 13.02. Computation of Rent. In the event Tenant ceases to conduct its business operations in the Demised Premises or, if Landlord shall at any time be entitled to rent under this Lease pursuant to any of the covenants, conditions or agreements of this Lease after termination of Tenant's right to possession without termination of this Lease, Landlord shall recover and Tenant agrees to pay the Minimum Guaranteed Rent and any Additional Rent as provided in Article III of this Lease.

The parties covenant and agree that because of the difficulty or impossibility of determining Landlord's damages by way of loss of the anticipated Percentage Rent from Tenant or other tenants or occupants in or adjoining the Shopping Center, or by way of loss of value in the property because of diminished saleability or mortgage-ability or adverse publicity or appearance by Tenant's actions, should Tenant (a) fail to take possession and open for business in the Demised Premises fully fixtured, stocked and staffed on the date herein fixed for the commencement of the rental obligations, or (b) vacate, abandon or desert the Demised Premises, or (c) cease operating or conducting Tenant's business therein (except where the Demised Premises are rendered untenable by reason of fire, casualty, permitted repairs or alterations or other causes beyond Tenant's control mentioned under Section 21.07 hereof), or (d) fail or refuse to maintain business hours on such days or nights or any part thereof as provided in Section 4.03 hereof, then, and in any of such events (hereinafter collectively referred to as "failure to do business"), Landlord shall have the right, at its option (i) to collect not only Minimum Guaranteed Rent and other rents and charges herein reserved, but also Additional Rent equal to the average of Tenant's Percentage Rent paid during the prior two-year period; and such additional rent shall be deemed to be liquidated damages in lieu of any Percentage Rent that might have been earned by Landlord during such period, and, in addition, at Landlord's option, (ii) to treat such failure to do business as an "Event of Default" within the meaning of Section 13.01 of this Lease. As used herein the terms "vacate", "abandon" or "desert" shall not be defeated because Tenant may have left all or any part of its trade fixtures or other personal property in the Demised Premises.

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

Section 13.04. Landlord's Lien. Landlord shall have, at all times, a valid lien for all rentals and other sums of money becoming due hereunder from Tenant, upon all goods, wares, equipment, fixtures, furniture and other personal property of Tenant situated on the Demised Premises, and such property shall not be removed therefrom without the consent of Landlord until all arrearages in rent as well as any and all other sums of money then due to Landlord hereunder shall first have been paid and discharged. Upon the occurrence of an event of default by Tenant, Landlord may, in addition to any other remedies provided herein or by law, enter upon the Demised Premises and take possession of any and all goods, wares, equipment, fixtures, furniture and other personal property of Tenant situated on the Premises without liability for trespass or conversion, and sell the same with or without notice at public or private sale, with or without having such property at the sale, at which Landlord or his assigns may purchase and apply the proceeds thereof

less any and all expenses connected with the taking of possession and sale of the property, as a credit against any sums due by Tenant to Landlord. Any surplus shall be paid to Tenant, and Tenant agrees to pay any deficiency forthwith. Alternatively, the lien hereby granted may be foreclosed in the manner and form provided by law for foreclosure of chattel mortgages or in any other form provided by law. The statutory lien for rent is not hereby waived, the express contractual lien herein granted being in addition and supplementary thereto. Anything herein to the contrary notwithstanding, purchase money financing of Tenant's removable trade fixtures and equipment shall not be a default under this Section 13.04 and shall be superior to the Landlord's lien set forth above. Landlord shall within thirty (30) days after written request from Tenant provide Tenant with such Landlord lien waiver as may be requested by Tenant's Lender for any purchase money financing of Tenant's personal property. Such lien waiver shall be in a form reasonably acceptable to Landlord's counsel.

ARTICLE XIV. HOLDING OVER.

Section 14.01. Holding Over. In the event Tenant, with Landlord's consent, remains in possession of the Demised Premises after the expiration of this Lease and without the execution of a new lease, it shall be deemed to be occupying said Premises as a Tenant from month to month at a rental equal to the rental (including any Additional Rent) herein provided for the period immediately prior to the fixed expiration date of the lease and otherwise subject to all the conditions, provisions and obligations of this Lease insofar as the same are applicable to a month-to-month tenancy.

ARTICLE XV. ACCESS BY OWNER.

Section 15.01. Right of Entry. Provided that Tenant's business operations are not unreasonably interfered with, Landlord or Landlord's agents shall have the right to enter the Demised Premises at all reasonable times to examine the same, and to show them to prospective purchasers or lessees of the building. During the six (6) months prior to the expiration of the term of this Lease or any renewal term, Landlord may place upon the Demised Premises the usual notice "To Let" or "For Sale", which notices Tenant shall permit to remain thereon without molestation. If Tenant shall not be personally present to open and permit an entry into said Premises at any time when for any reason an entry therein shall be necessary to protect the Demised Premises from damage, Landlord or Landlord's agents may forcibly enter the same, without rendering Landlord or such agents liable therefor and without, in any manner, affecting the obligations and covenants of this Lease. Landlord shall repair any damage caused by its forcible entry. Nothing herein contained, however, shall be deemed or construed to impose upon Landlord any additional obligation, responsibility or liability whatsoever, for the care, maintenance or repair of the building or any part thereof, except as otherwise herein specifically provided.

ARTICLE XVI. LANDLORD'S DEFAULT.

Section 16.01. Notice to Landlord. Landlord shall, in no event, be charged with default in the performance of any of its obligations hereunder unless and until Landlord shall have failed to perform such obligations within thirty (30) days (or such additional time as is reasonably required to correct any such default) after written notice by Tenant to Landlord properly specifying wherein Landlord has failed to perform any such obligation.

ARTICLE XVII. REMEDIES CUMULATIVE.

Section 17.01. No Waiver. No Waiver by Landlord or Tenant of a breach of any covenants, agreements, obligations or conditions of this Lease shall be construed to be a waiver of any future breach of the same or other covenant, agreement, obligation or condition hereof. No receipt of money by Landlord from Tenant after notice of default, or after termination of this Lease, or

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after the commencement of any suit or after final judgment of possession of the Premises, shall reinstate, continue or extend the term of this Lease or affect any notice, demand or suit. Unless otherwise qualified, the rights and remedies hereby created are cumulative, and the use of one remedy shall not be taken to exclude or waive the right to the use of another, or exclude any other right or remedy allowed by law.

ARTICLE XVIII. NO ENCUMBRANCES.

Tenant covenants and agrees that it will not, at any time during the term of this Lease, encumber, mortgage or pledge the leasehold estate hereunder as security for any indebtedness.

ARTICLE XIX. LANDLORD'S TITLE.

Section 19.01. Quiet Possession. Landlord covenants that it has full right and power to execute and perform this Lease, and that it will put Tenant into complete and exclusive possession of the Demised Premises free from all orders and notices of violations of any public or quasi-public authority. Landlord further covenants that Tenant, on paying the rents reserved herein and performing the covenants and agreements hereof, shall peaceably and quietly have, hold and enjoy the Demised Premises and all rights, easements, appurtenances and privileges thereunto belonging or in any wise appertaining, during the term hereof. Anything herein to the contrary notwithstanding, Landlord shall not be liable for any breach of the covenant of quiet enjoyment or any other breaches occurring after Landlord shall have transferred ownership of the Demised Premises, provided that Landlord's grantee shall affirmatively assume Landlord's obligations under said covenant of quiet enjoyment, as well as all other covenants to be performed by Landlord pursuant to the provisions of this Lease. The Demised Premises is situated on one or more Subparcels which, together with the adjoining Shopping Center, comprise the development known as Mesa Mall Shopping Center; Landlord holds good and valid title to the Shopping Center, including the Subparcel on which the Demised Premises is located. The Subparcels, including the Demised Premises, may be subject to the provisions contained in a certain Declaration of Rights and Easements recorded in the office of the Recorder of Mesa County, Colorado, as the same may be from time to time amended. The Demised Premises is subject to title exceptions of record in Mesa County, Colorado.

ARTICLE XX. BANKRUPTCY-INSOLVENCY.

The parties acknowledge that the Premises occupied by Tenant consists of a store building located within an integrated shopping center development owned and operated by Landlord, and, in the event Tenant becomes subject to voluntary or involuntary proceedings under the Bankruptcy Reform Act of 1978 (the "Act"), the specific provisions of the Act as the same may be amended from time to time relating to shopping centers shall be applicable to such proceedings. The parties further acknowledge that in order to protect the mix of tenants within the Shopping Center and to provide the sales volume anticipated from Tenant's business operations within the Demised Premises, the purpose for which the Tenant may use the Demised Premises have been specifically limited by the provisions of Article IV hereof, and that the economics of this Lease, particularly with respect to the agreed upon Minimum Guaranteed Rent, Percentage Rent and Additional Rent, were established on the basis of Tenant's expected business operations as a restaurant facility. Notwithstanding anything in this Lease to the contrary, in the event Tenant becomes subject to voluntary or involuntary proceedings under the Act and Tenant or any trustee, receiver or other custodian of Tenant or of its assets or properties shall assign this Lease, any and all amounts paid or to be paid by or for the account of the assignee in consideration of such assignment shall be and remain the property of the Landlord, and any and all such amounts received by Tenant or such trustee, receiver or custodian shall be held in trust for the Landlord and remitted to the Landlord promptly after receipt thereof.

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ARTICLE XXI. MISCELLANEOUS PROVISIONS.

Section 21.01. Relationship of Parties. Nothing herein contained shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between the parties hereto, it being understood and agreed that neither the method of computation of rent, nor any other provision contained herein, nor any acts of the parties hereto, shall be deemed to create any relationship between the parties hereto other than the relationship of Landlord and Tenant.

Section 21.02. Construction. The necessary grammatical changes required to make the provisions of this Lease apply in the plural sense where there is more than one tenant and to either corporations, associations, partnerships or individuals, males or females, shall, in all instances, be assumed as though fully expressed. The relationship between Landlord and Tenant created hereunder shall be that of lessor and lessee and nothing herein shall be construed as creating any joint venture or partnership. The captions used in this Lease are for convenience only and do not in any way limit or amplify the terms and provisions hereof.

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

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

Section 21.05. Brokers. The parties warrant that they have had no dealings with any broker or agent in connection with the negotiation or execution of this Lease and the parties agree to indemnify and hold each other harmless from and against any and all cost, expense or liability for commissions or other compensation and charges claimed by any other broker or agent with respect to this lease.

Section 21.06. Savings. The invalidity or unenforceability of any provision of this Lease shall not affect or impair the validity of any other provision. The laws of the state of Colorado shall govern the interpretation, validity, performance and enforcement of this Lease.

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

If Tenant shall be prevented, due to unavoidable delays beyond its reasonable control (namely, the aforementioned conditions) from completing Tenant's Work, under Exhibit C, to an extent sufficient to permit Tenant to open for business in the Demised Premises as provided under this Lease, then and in such event Tenant shall be excused from opening for business in the Demised Premises and concurrently delay the commencement date hereof, during which period no Fixed Minimum Rent, or other rentals or charges shall accrue or become due and payable, subject to and conditioned upon the following: (i) the period or periods of any such delay or delays shall not, in the aggregate exceed one hundred eighty (180) days and (ii) Tenant shall give prompt notice to Landlord of any and all such delays. If such delay or delays exceed one hundred eighty (180) days, then and in such event, Landlord shall have the right to require Tenant to pay all rentals and other charges reserved hereunder.

Section 21.08. Recording of Lease. It is understood by the parties hereto that this Lease shall not be recorded, but that a short form Lease of even date herewith, describing the property herein demised, giving the term of the Lease and referring to this Lease may be recorded by either party.

Section 21.09. (This Section deleted.)

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

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

Section 21.12. Notices. Wherever any notice is required or permitted hereunder, such notice shall be in writing. Any notice or document required or permitted to be delivered hereunder shall be deemed to be delivered whether actually received or not when deposited in the United States Mail, postage prepaid, Registered or Certified Mail, Return Receipt Requested, addressed to the parties hereto at the respective addresses set out on Page 1 of this Lease, or at such other addresses as they have theretofore specified by written notice delivered in accordance herewith. In addition, any notice of an alleged Tenant default shall be sent, in triplicate, to the following:

Tenant notice to:

1. Larry M. Follett
5620 Waterbury Way-Suite A-201
Salt Lake City, Utah 84121
2. Intermountain SFSH Enterprises
310 East 4500 South
Murry, Utah 84107
3. The Sizzler, Parcel No. 8
Mesa Mall
2424 U.S Highway 6 & 50
Grand Junction, Colorado 81505
Attn: Store Manager

Any notice of an alleged Landlord Default shall be sent in triplicate, to the following:

1. Legal Counsel
General Growth Management, Inc., Agent
P. O. Box 1536
Des Moines, Iowa, 50306
2. Chief Corporate Officer
Equitable Real Estate Investment Management Inc.
3414 Peachtree Road, N. E.
Atlanta, Georgia, 303265-1162
3. Regional Property Manager
Equitable Real Estate Investment Management Inc.
2500 Mellon Financial Center
1775 Sherman Street
Denver, Colorado, 80203

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

possession of the Demised Premises through foreclosure or in lieu of foreclosure.

Section 21.14. Landlord's Liability. Anything contained in this Lease to the contrary notwithstanding, Tenant agrees that Tenant shall look solely to the estate and property of the Landlord in the land and buildings comprising the Demised Premises and the rentals therefrom for the collection of any judgment (or other judicial process) requiring the payment of money by Landlord in the event of any default or breach by Landlord with respect to any of the terms and provisions of this Lease to be observed and/or performed by Landlord, and no other assets of the Landlord shall be subject to levy, execution or other judicial process for the satisfaction of Tenant's claims. In the event Landlord conveys or transfers its interest in the Demised Premises or in this Lease, except as collateral security for a loan, upon such conveyance or transfer, Landlord (and in the case of any subsequent conveyances or transfers, the then grantor or transferor) shall be entirely released and relieved from all liability with respect to the performance of any covenants and obligations on the part of the Landlord to be performed hereunder from and after the date of such conveyance or transfer, provided that any amounts then due and payable to Tenant by Landlord (or by the then grantor or transferor) or any other obligations then to be performed by Landlord (or by the then grantor or transferor) for Tenant under any provisions of this Lease, shall either be paid or performed by Landlord (or by the then grantor or transferor) or such payment or performance assumed by the grantee or transferee; it being intended hereby that the covenants and obligations on the part of the Landlord to be performed hereunder shall, subject as aforesaid, be binding on Landlord, its successors and assigns only during and in respect of their respective period of ownership of an interest in the Demised Premises or in this Lease. This provision shall not be deemed, construed or interpreted to be or constitute any agreement, express or implied, between Landlord and Tenant that the Landlord's interest hereunder and in the Demised Premises shall be subject to impressment of an equitable lien or otherwise.

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

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

Section 21.17. Public User. Tenant shall not suffer or permit any portion of the Demised Premises to be used by the public, as such, in such manner as might reasonably make possible a claim or claims of adverse user or adverse possession by the public, as such, or of implied dedication, of the Demised Premises or any portion thereof; and any such portion of the Demised Premises shall, at all times, be subject to such reasonable rules or directions as Landlord may from time to time make or give in writing with respect to the maintenance and use thereof, for the purpose of Landlord's protection against possible claim or claims of the public, as such; Tenant hereby acknowledges that Landlord does not hereby consent, expressly or by implication, to the unrestricted use or possession of the whole or any portion of the Demised Premises by the public, as such; and Tenant covenants and agrees that all such reasonable rules and directions so given shall be deemed

to be and become incorporated in this Lease and any renewal hereof, by reference, and shall be fully and promptly performed and enforced by Tenant at its own cost and expense.

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

Section 21.19. Consent Not to be Unreasonably Withheld. If either Party requests of the other any consent or approval required by this Lease, the Party shall not unreasonably withhold or postpone the grant of such request. Except as is expressly set forth in its Lease to the contrary, in the event either Party requests such consent or approval and the other Party does not provide written notice of express disapproval within thirty (30) days after the receipt of such request, then such consent or approval shall be deemed given. Notices relying upon this provision must contain the statement that if no action is taken within thirty (30) days by the Party to whom the notice is to be given, then the requested consent or approval will be deemed given.

ARTICLE XXII. TITLE TO IMPROVEMENTS; SURRENDER.

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

(a) All furniture, fixtures and equipment installed by Tenant in or upon the Leased Premises shall at all times be and remain the Tenant's personal property regardless of the method in which the same is affixed to the Premises, and may be removed by Tenant at the expiration or the earlier termination of this Lease. Tenant shall, at Tenant's expense, repair any damage to the building caused by such removal.

At the expiration or termination of this Lease, Tenant may remove all signs and other identifying marks from the Premises and may repaint the building with materials and colors satisfactory to the Landlord and subject to Landlord's prior approval, so as to eliminate Tenant's distinctive colors and color combinations, signs or other identifying marks.

This Lease Agreement shall be neither construed nor interpreted as in any manner or form assigning or permitting Landlord's use, display, or advertising of the registered trademarks and tradenames, "SIZZLER," "SIZZLING," "SIZZLER FAMILY STEAK HOUSE" or any derivative thereof; and, any such use by Landlord, its assigns or lessees, is expressly and strictly prohibited.

(b) Upon termination of this Lease, by expiration or prior termination by default or otherwise, Landlord shall be the sole and absolute owner of the improvements, free of any right, title, interest or estate of Tenant therein without the execution of any further instrument and without payment of any money or other consideration thereof. Tenant shall execute such further assurances of title as may be requisite. Tenant hereby grants, releases, transfers, sets over, assigns and conveys to Landlord all of its right, title and interest in and to the improvements upon the termination of this Lease. Nothing herein contained shall adversely affect any right that Tenant may have to quiet enjoyment and possession so long as the Lease shall continue in force and effect and Tenant shall not be in default hereunder.

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

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

(e) Landlord, upon termination of this Lease for any reason, may, without notice (any notice to quit or intention to re-enter required by law being expressly waived by Tenant), re-enter upon the Demised Premises and possess itself thereof by summary proceedings, ejectment, or otherwise, and may dispossess Tenant and remove Tenant and all other persons and property from the Demised Premises and may enjoy the Demised Premises and improvements and have the right to receive all rents and other income from the same. Any personal property of Tenant remaining on the Demised Premises after termination or expiration of this Lease shall be deemed abandoned by it and be retained by Landlord as its sole property or be disposed of, without liability or accountability, as Landlord sees fit.

ARTICLE XXIII. MECHANICS' LIENS.

If, in connection with any work being performed by Tenant or any subtenant or in connection with any materials being furnished to Tenant or any subtenant, any mechanic's lien or other lien or charge shall be filed or made against the Demised Premises or any part thereof or any buildings or improvements now or hereafter erected and maintained thereon or on any appurtenances thereto, or if any such lien or charge shall be filed or made against Landlord as owner, then Tenant, at Tenant's cost and expense, within thirty (30) days after such lien or charge shall have been filed or made, shall cause the same to be cancelled and discharged of record by payment thereof or filing of a bond or otherwise, and shall also defend, at Tenant's cost and expense, any action, suit or proceeding which may be brought for the enforcement of such lien or charge, and shall pay any damages suffered or incurred therein by Landlord and shall satisfy and discharge any judgment entered therein. In the event of the failure of Tenant to discharge within the above-mentioned thirty (30) day period any mechanic's lien or other lien or charge herein required to be paid or discharged by Tenant, Landlord may pay such items or discharge such liability by payment or bond, or both, and Tenant will repay to Landlord upon demand any and all amounts paid by Landlord therefor, or by reason of any liability on any cash bond, and also any and all incidental expenses, including counsel fees in reasonable amount, incurred by Landlord in connection therewith together with interest thereon; provided, however, Tenant shall have the right to contest any such mechanic's lien or other lien, provided, that Tenant (i) diligently continues such contest in good faith, and (ii) deposits or delivers to Landlord satisfactory indemnification or other security reasonably satisfactory to Landlord.

ARTICLE XXIV. RENEWAL OPTIONS.

Section 24.01. Tenant's Option to Renew. Provided Tenant is not then in default of any substantial obligations under this Lease and is operating a SIZZLER RESTAURANT facility on the Demised Premises, Landlord grants to Tenant two (2) options to renew the term of this Lease for additional periods of five (5) years each. The Parties acknowledge and agree that each option to extend the term of this lease shall be deemed automatically exercised by the Tenant unless Tenant provides Landlord with written notice of election not to exercise any option. Notice of election not to exercise an option shall be provided by Tenant to Landlord in writing and within one hundred eighty (180)

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days prior to the last day of the original term or the extended term. The extended term shall be on the same terms and conditions as contained in this Lease except for the provisions of this Article XXIV. The Minimum Annual Guaranteed Rent during the renewal period shall be set forth in the Rent Rider. The provisions of this Article XXIV shall not be applicable to any sublessee or assignee of Tenant other than Larry M. Follett or any assignee permitted without Landlord's consent.

ARTICLE XXV. PRESENT CONDITION OF PREMISES.

Except as provided in Article XXVII below, Tenant represents that the Demised Premises leases have been examined by Tenant and that Tenant accepts the same, without recourse to Landlord, in the condition or state in which they or any of them now are, without representation or warranty, express or implied, in fact or by law, as to the nature, condition or usability thereof or as to the use or uses to which the Premises or any part thereof may be put or as to the prospective income from, and expense of operation of, the Demised Premises.

ARTICLE XXVI. CONDITIONS TO BE SATISFIED BY LANDLORD.

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

Landlord has already installed or agrees to install or cause to be installed, at its sole cost and expense, electricity, water, storm sewer and sanitary sewer to within five feet of the boundary of the Demised Premises. Such utilities shall be adequate to properly service the improvements required to be constructed on the Demised Premises under Article II above and shall be completed prior to completion of the improvements required to be constructed under Article II above.

ARTICLE XXVII. TENANT'S RIGHT OF TERMINATION.

Landlord and Tenant specifically acknowledge and agree that this Lease Agreement is subject to and conditioned upon the following, which shall be deemed to be conditions precedent to the validity and enforceability of this Lease Agreement:

(a) Tenant's obtaining, at Tenant's sole cost and expense, within a period of sixty (60) days after full execution of this Lease, such soil test borings and other engineering tests, surveys and studies as are reasonably necessary and desirable to ascertain whether the Demised Premises are suitable for the improvements to be constructed by Tenant under this Lease. Tenant, its agents and contractors shall have the right to enter upon the Demised Premises for purposes of conducting such soils tests, engineering tests, surveys and other examinations and Tenant agrees to indemnify and hold harmless Landlord from and against any and all liability arising out of, from, or on account of any such soils tests, engineering tests, surveys and other examinations. If, in the reasonable opinion of Tenant, such soils tests, engineering tests, surveys or other examinations establish that the soil and property characteristics of the Demised Premises do not indicate a capacity for supporting structures suitable for the construction and operation of the improvements to be constructed by Tenant under this Lease, then Tenant shall have the right, within sixty (60) days' after full execution of this Lease, to cancel and terminate this Lease Agreement, in which event the rights and obligations of the parties hereto shall thereupon cease; and

(b) Tenant's obtaining, at Tenant's sole cost and expense, within a period of thirty (30) days after full execution of this Lease, a leasehold title insurance commitment in an amount satisfactory to Tenant from a reputable title company insuring Tenant's leasehold estate under this Lease. Such title policy must reveal insurable and marketable title in Landlord (subject to the title exceptions mentioned in the annexed Lease) and must include survey coverage. In the event the insurance commitment or survey

reveals defects or conditions that would render title unmarketable or otherwise adversely and substantially interfere with the improvements to be constructed by Tenant under this Lease or the use of the Demised Premises contemplated by the Lease, Tenant shall advise Landlord in writing of such particular defects within fifteen (15) days after such leasehold title commitment is obtained. Lessor shall then have a period of thirty (30) days from the receipt of such notice of defects to correct the same, which corrective action shall be performed at Landlord's sole cost and expense. In the event Landlord fails to or is unable to correct such defects within such thirty (30) day period, then tenant shall have the right to cancel and terminate this Lease Agreement for a period of fifteen (15) days after the expiration of the Landlord's thirty (30) day curing period by providing written notice of such intent to Landlord, in which event the rights and obligations of the parties hereto shall thereupon cease; and

(c) Tenant's obtaining, at Tenant's sole cost and expense, all necessary "Permits and Licenses" for the use of the Demised Premises as contemplated by this Lease within a period of ninety (90) days after full execution of this Lease. For purposes of this rider paragraph, the phrase "Permits and Licenses" shall be deemed to include all governmental permits, licenses and authorizations required for the construction and operation of the improvements to be constructed by Tenant under this lease, including, but not limited to, building permits, signage permits, site plan and/or use approvals, zoning certificates, environmental and land use permits, driveway and/or curb cut approvals for reasonable access to the Demised Premises, water, sewer and utility certificates and any other necessary approvals from state or local health, safety, transportation and other governmental boards or authorities. Tenant agrees to proceed in good faith and to exercise due diligence in obtaining all such Permits and Licenses within such ninety (90) day period. In the event Tenant has been unable to obtain such Permits and Licenses after diligent and good faith efforts, then the rights and obligations of the parties hereto shall thereupon cease; and

Provided, however, in the event Tenant proceeds with the construction of improvements contemplated by this Lease prior to the expiration of the periods during which Tenant may cancel and terminate this Lease as set forth in subsections (a) through (c) hereof, inclusive, then each and every one of the foregoing rights of cancellation and termination shall be deemed void and of no further force and effect as of the date Tenant commences such construction. In the event of a cancellation and termination of this Lease Agreement by Tenant under subsections (a) through (c) hereof, inclusive, then it is understood and agreed that (i) Tenant shall be fully and solely responsible for payment of any and all claims held by mechanic's lien claimants or otherwise in connection with, or arising out of Tenant's use and enjoyment of the Demised Premises from the Commencement Date of the Lease Term through the date of termination and cancellation, which obligation shall survive the termination and cancellation of this lease, and (ii) Tenant's agreement with respect to indemnification and hold harmless as set forth in subsection (a) hereof shall survive the termination and cancellation of this Lease.

DATED this 21st day of April, 1988.

ATTEST:
Shirley A. Snow

LANDLORD:
THE EQUITABLE LIFE ASSURANCE
SOCIETY OF THE UNITED STATES
By: Michael Mayer *SRA*
Attorney-in-Fact

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TENANT:
INTERMOUNTAIN SFESH ENTERPRISES,
a Utah Partnership

PARTNERS:
LARRY M. FOLLETT, Partner

By: [Signature]
Larry M. Follett

ROBERT N. MINSHEW, Partner

By: [Signature]
Robert N. Minshew

STEVEN F. LOWE, Partner

By: [Signature]
Steven F. Lowe

ROBERT A. KIMSEY, Partner

By: [Signature]
Robert A. Kimsey

FOR LANDLORD:

STATE OF Georgia)
COUNTY OF Fulton) ss.

On this 21st day of April, 1988, before me a Notary Public, in and for the jurisdiction aforesaid, personally appeared Michael Mayer and Attorney-in-Fact, to me personally known, who by me duly sworn did say that they are the Attorney-in-Fact of The Equitable Life Assurance Society of the United States, a New York corporation, and that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and that they acknowledged execution of said instrument to be the voluntary act and deed of said corporation by it voluntarily executed.

(Notarial Seal)

[Signature]
Notary Public, DeKalb County, Geo.
My Commission expires Sept. 4, 19

FOR TENANT (INDIVIDUAL):

COUNTY OF Salt Lake
STATE OF Utah) ss.

On this 21st day of March, 1988, before me, a Notary Public, in and for the jurisdiction aforesaid, personally appeared Larry M. Follett to me personally known, who by me duly sworn did say that he/she acknowledged the execution of said instrument to be his/her voluntary act and deed.

(Notarial Seal)

[Signature]
Notary Public
My Commission expires 5/11/91

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FOR TENANT (INDIVIDUAL):

COUNTY OF Salt Lake)
STATE OF Utah) ss.

On this 24th day of March, 1988, before me, a Notary Public, in and for the jurisdiction aforesaid, personally appeared Robert Minslow to me personally known, who by me duly sworn did say that he/she acknowledged the execution of said instrument to be his/her voluntary act and deed.

(Notarial Seal)

Janine Smith
Notary Public
My Commission expires 5/11/91

FOR TENANT (INDIVIDUAL):

COUNTY OF Salt Lake)
STATE OF Utah) ss.

On this 24th day of March, 1988, before me, a Notary Public, in and for the jurisdiction aforesaid, personally appeared Robert F. Howe, to me personally known, who by me duly sworn did say that he/she acknowledged the execution of said instrument to be his/her voluntary act and deed.

(Notarial Seal)

Janine Smith
Notary Public
My Commission expires 5/11/91

FOR TENANT (INDIVIDUAL):

COUNTY OF Salt Lake)
STATE OF Utah) ss.

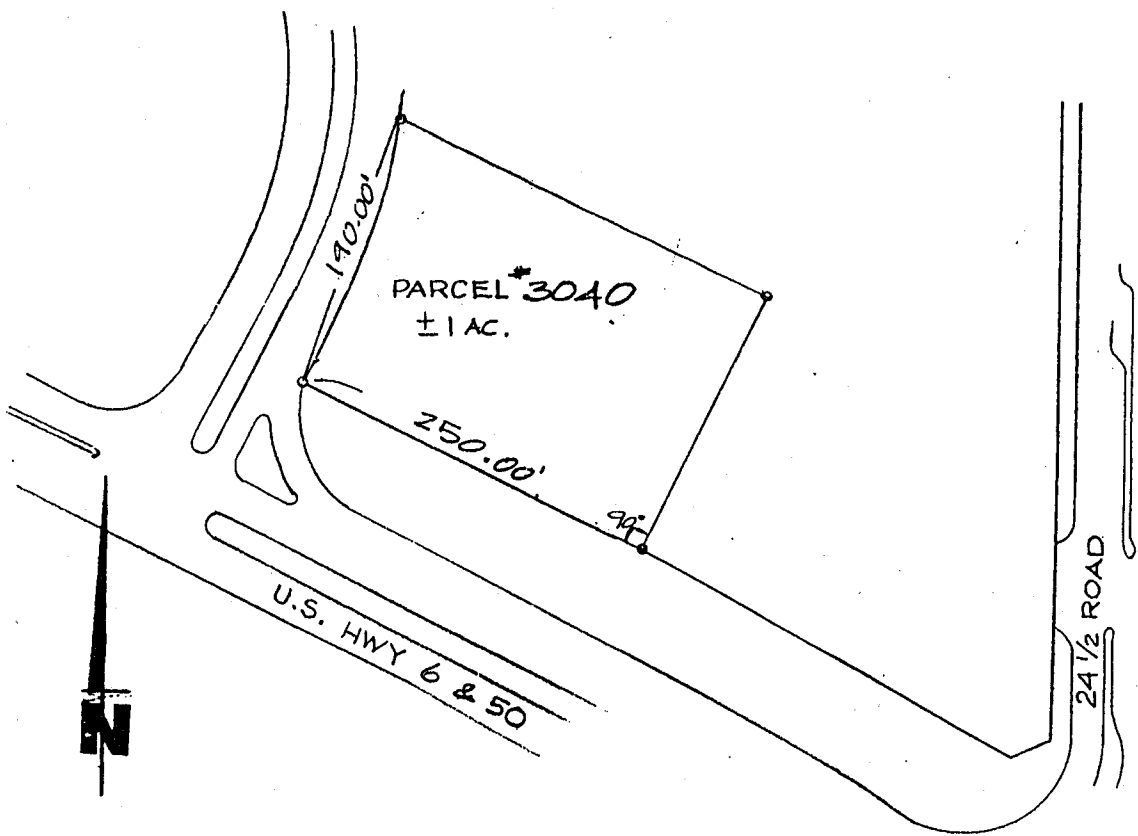
On this 24th day of March, 1988, before me, a Notary Public, in and for the jurisdiction aforesaid, personally appeared Robert O. Kinsey, to me personally known, who by me duly sworn did say that he/she acknowledged the execution of said instrument to be his/her voluntary act and deed.

(Notarial Seal)

Janine Smith
Notary Public
My Commission expires 5/11/91

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1/6/88

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MESA MALL
 GRAND JUNCTION, COLORADO

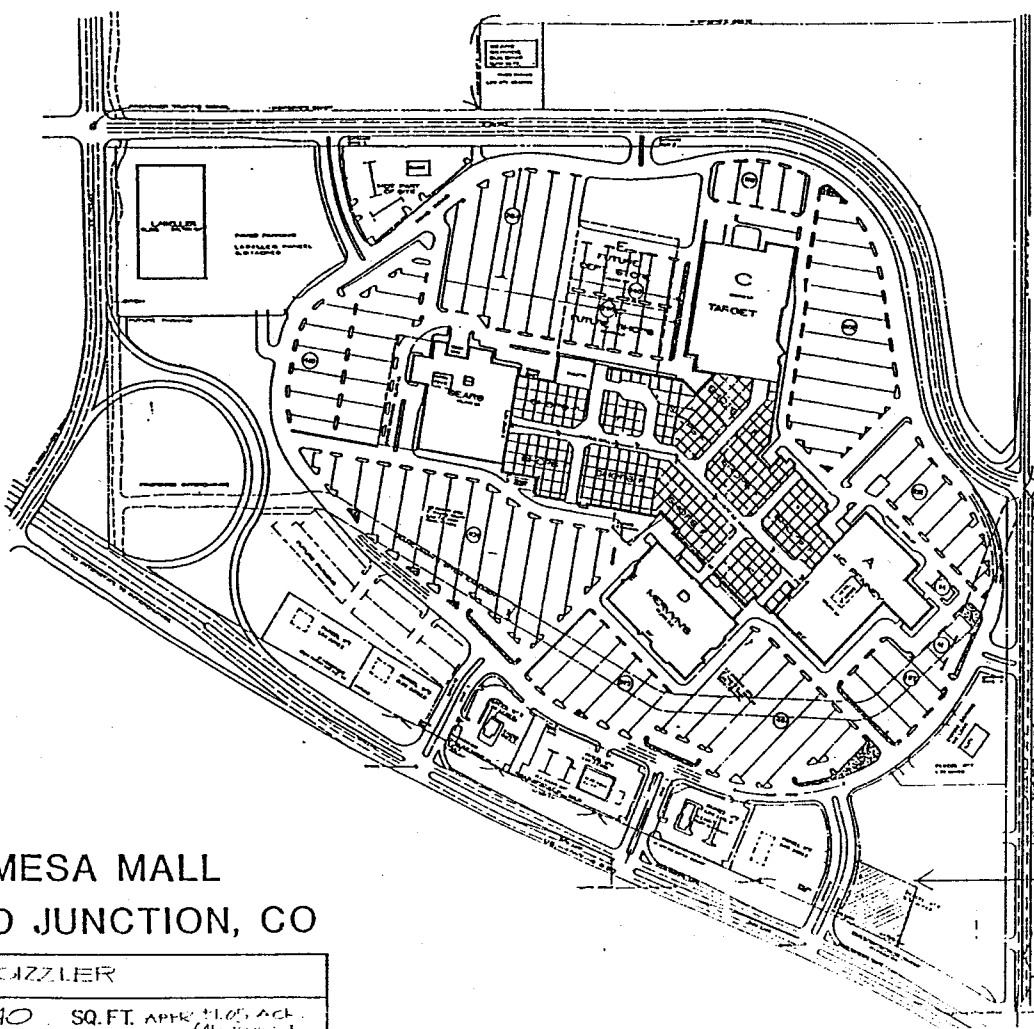
TENANT	SIZZLER
SPACE	3040 SQ.F.T. APPR. ±1.05 ACR. (45,000 S.F.)
DATE	9-10-87 REV. 3-15-88

SUBJECT TO A FINAL CERTIFIED SURVEY OF PARCEL PREPARED BY REGISTERED LAND SURVEYOR.

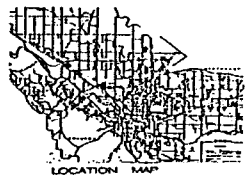
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derwood j. quade
 architect & engineer
 1055 6th ave des moines, iowa

GENERAL GROWTH MANAGEMENT CORPORATION
 AGENT FOR EQUITABLE, 215 KEO DES MOINES, IOWA



- NOTES:
1. THIS EXHIBIT A-1 IS DIAGNATIC AND IS INTENDED ONLY FOR THE PURPOSE OF INDICATING THE LOCATION OF THE DENISED PREMISES, THE BUILDINGS AND PARKING AREAS. IT DOES NOT PURPORT TO SHOW THE EXACT OR FINAL LOCATION OF COLUMNS, DIVISION WALLS OR OTHER REQUIRED ARCHITECTURAL, STRUCTURAL, MECHANICAL OR ELECTRICAL ELEMENTS. SIZES AND DIMENSIONS SHOWN ARE APPROXIMATE. LANDLORD RESERVES THE RIGHT TO ELIMINATE OR ADD AND TO MAKE CHANGES IN THE SIZE OR LOCATION OF SUCH ELEMENTS AND OF THE BUILDINGS AND PARKING AREAS AND AS MAY BE REQUIRED TO CONFORM TO BUILDING CODE, EXIT REQUIREMENTS, FIRE WALLS AND MECHANICAL EQUIPMENT SPACE.
 2. ENTRANCE AND EXIT LOCATIONS FROM SURROUNDING ROADS ARE DIAGNATIC AND SUBJECT TO APPROVAL OF GOVERNING AUTHORITIES.
 3. DIMENSIONS INDICATED FOR THE DENISED PREMISES ARE MEASURED TO THE CENTER LINE OF INTERIOR AND PARTY WALLS AND TO THE EXTERIOR FACE OF EXTERIOR WALLS OR WALL LEASE LINES.
 4. Kiosk, FREE STANDING BUILDINGS AND FUTURE BUILDING AREAS ARE INDICATED FOR GENERAL PURPOSES AND LOCATION. LANDLORD RESERVES THE RIGHT TO ADD, DELETE, RELOCATE AND CHANGE ANY OR ALL OF THE SAME.
 5. NOTHING CONTAINED ON THIS EXHIBIT A-1 SHALL BE CONSTRUED, DEPED OR INTERPRETED TO BE A WARRANTY, REPRESENTATION OR AGREEMENT ON THE PART OF LANDLORD THAT ANY DEPARTMENT STORE OR REGIONAL OR NATIONAL CHAINSTORE OR OTHER MERCHANT INDICATED ON THIS EXHIBIT BY NAME SHALL INITIALLY OPEN OR REMAIN OPEN FOR BUSINESS OR OCCUPY OR CONTINUE TO OCCUPY ANY PREMISES OR SPACE IN OR ADJOINING THE SHOPPING CENTER.



PARCEL # 3040

MESA MALL
GRAND JUNCTION, CO

TENANT	CAZZLIER
SPACE	3040 SQ. FT. APPROX. 11.05 ACRES
DATE	9-10-87 REV. 9-15-88

GENERAL GROWTH MANAGEMENT CORPORATION
AGENT FOR EQUITABLE 215 KEO DES MOINES, IOWA

derwood j. quade
attorney at law

EXHIBIT

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EXHIBIT C

Except as provided in Article XXVII above, Tenant has inspected the Demised Premises and accepts the same in its "AS IS" condition, except Landlord agrees to bring the necessary utilities to the property line, the exact location of said utilities to be determined by Landlord. All other work of every type and character shall be at the sole cost and expense of Tenant.

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

2. AS TO SANITARY SEWER: Landlord will have a sanitary sewer line brought to within five (5) feet of the edge of Tenant's land parcel. It is the Tenant's responsibility to make arrangements for taps and pay all fees for same.

3. AS TO WATER: Landlord will have a water line brought to within five (5) feet of the edge of Tenant's land parcel. It is the Tenant's responsibility to make arrangements for bringing the water to your desired location and pay all fees involved.

4. AS TO ELECTRICAL: Landlord will have an electrical line brought to within five (5) feet of the edge of Tenant's land parcel. It is the Tenant's responsibility to arrange for service with the power company. All electric service must be underground.

5. AS TO GAS SERVICE: Landlord will have a gas line brought to within five (5) feet of the edge of Tenant's land parcel. It is the Tenant's responsibility to arrange for service with the gas service company.

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

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

II. SIGNS

The design and location of all signs, for the exterior of the Demised Premises, shall be subject to prior written approval by Landlord. Tenant shall submit detailed sign drawings to Landlord; and no sign shall be installed until Landlord's written approval has been obtained by Tenant. Drawings submitted shall be in duplicate and contain all vital information pertaining to dimensions, location, material, color and type of illumination. Color samples of all signs, if not white, shall be submitted to Landlord. However, the following limitations will apply:

- (a) Wording of all signs shall be limited to Tenant's Trade Name and logo only.
- (b) All signs will be self-illuminated.

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(c) The following is not permitted and is expressly prohibited:

- (i) Signs with exposed neon or fluorescent tubing or exposed lamps.
- (ii) Signs with flashing, blinking, moving, flickering, animated or audible effects or type.
- (iii) Printed signs on fronts or show windows.
- (iv) Exposed raceways, ballast boxes or electrical transformers.
- (v) Paper signs, stickers, banners or flags unless professionally prepared.
- (vi) Exposed sign company names or stamps.
- (vii) Exposed sign illumination or illuminated sign cabinets or modules.
- (viii) Painted signs on the exterior surface of any building.
- (ix) Roof top signs.
- (x) Sign boxes.
- (xi) Pylon signs.

III. CONSTRUCTION PROCEDURE

The following provisions shall apply to Tenant's Work:

PLANS AND SPECIFICATIONS: Tenant must receive written approval of Tenant's plans and specifications by Landlord prior to beginning any construction. A sepiia or mylon of all drawings is required.

COORDINATION: To permit proper coordination, Tenant shall furnish Landlord, prior to the commencement of Tenant's Work, with a detailed work schedule of all work to be performed by Tenant's contractors and subcontractors, as well as names, addresses and telephone numbers of such contractors and subcontractors.

QUALITY: Tenant's Work shall be performed in a first-class and workmanlike manner and shall be in good and useable condition at the date of completion thereof.

FEES AND PERMITS: Tenant's contractor shall pay for all necessary permits and/or fees required by public authorities and/or utility companies with respect to Tenant's Work.

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

PROTECTION: It shall be the Tenant's responsibility to cause each of Tenant's contractors and subcontractors participating in Tenant's Work to maintain continuous protection of adjacent premises in a manner as to prevent any damage to Tenant's Work or adjacent property and improvements by reason of the performance of Tenant's Work. Each contractor and subcontractor shall properly protect Tenant's Work with lights, guard rails, and barricades and shall secure all parts of Tenant's Work against accident, storm and any other hazard.

COORDINATION OF TENANT'S WORK: Tenant's Work shall be coordinated with all work being performed by Landlord or its contractors and other tenants of the project to such extent that Tenant's Work will not interfere with or delay the completion of any such work in the adjacent Shopping Center. The contractor or subcontractor shall not at any time damage, injure, interfere with or delay the completion of any other construction within the Shopping Center. Tenant at all times will enforce strict discipline and good order among its employees and contractors hired to perform Tenant's Work. If Tenant's employees, agents or contractors cause any dispute or stoppages among other contractors performing work in the Shopping Center, Landlord shall have the right to order Tenant to terminate any construction work at any time (i.e., either in the initial construction of the Demised Premises, or at any time during the Lease Term) being performed by or on behalf of Tenant in the Demised Premises. Upon notification from Landlord to Tenant to cease any such work, Tenant shall forthwith remove from the Demised Premises all agents, employees and contractors of Tenant performing such work, until such time as Landlord shall have given its written consent for the resumption of such construction work, and Tenant shall have no claim for damages of any nature whatsoever against Landlord in connection therewith. Tenant shall use and Tenant shall require its contractors and subcontractors to use every effort to prevent work stoppages on the premises or elsewhere in the Shopping Center, to the extent attributable to work performed on the premises, irrespective of the reason for any such stoppage, in recognition of the fact that it is of the utmost importance to Landlord, Tenant and all those occupying space in the adjacent Shopping Center. In any contract or undertaking which Tenant may make or enter into with a contractor or subcontractor for work to be performed on the premises, provisions shall be made for the dismissal from the job for stoppage of work as herein provided. Landlord may assign specific entrances to the Shopping Center to be used by one, several or all of Tenant's contractors and subcontractors, and Tenant agrees to require strict compliance with the same.

IV. INSURANCE REQUIREMENTS: TENANT'S CONSTRUCTION

BUILDER'S RISK INSURANCE: At all times during the period between the commencement of construction of Tenant's Work and Tenant's opening for business in the premises, Tenant shall maintain, or cause to be maintained, casualty insurance in Builder's Risk form covering Landlord, General Growth Companies and its affiliates, Landlord's Architect and Tenant and Tenant's contractors, as their interests may appear, against loss or damage by fire, vandalism and malicious mischief and other such risks as are customarily covered by the so-called "extended coverage endorsement" upon all Tenant's Work in place and all materials stored at the site of Tenant's Work and all materials, equipment, supplies and temporary structures of all kinds, incident to Tenant's Work, and builder's machinery, tools and equipment, all while forming a part of, or contained in, such improvements or temporary structures while on the premises or when adjacent thereto, while on malls, drives, sidewalks, streets or alleys, all to the full insurable value thereof at all times. Said Builder's Risk Insurance shall contain an express waiver of any right of subrogation by the insurance company against Landlord, its agents, employees and contractors.

WORKER'S COMPENSATION: At all times during the period of construction of Tenant's Work, Tenant's contractors and subcontractors shall maintain in effect statutory Worker's Compensation and Occupational Disease Insurance as required by the state where the Shopping Center is located.

PUBLIC LIABILITY INSURANCE: At all times during the period between the commencement of construction of Tenant's Work and the opening for business in the premises, Tenant shall secure and cause to be maintained in effect, at Tenant's cost and expense, a Comprehensive General Liability Policy on an occurrence basis with limits of not less than [REDACTED] including Property Damage, Water Damage and Sprinkler Leakage Liability. The Liability Policy shall be on a Comprehensive General and Automobile Liability form and shall include, but not be limited to, coverage for all operations of Tenant, Tenant's contractor and subcontractors, including automobile coverage (for both owned and non-owned vehicles), contractual liability, completed operations liability and contingent or protective liability.

CANCELLATION: The policies of insurance referred to in this Paragraph shall contain the following endorsement: "It is understood and agreed that the coverage of this policy shall not be cancelled or modified by the company until the company has mailed written notice, by registered mail or certified mail, to Landlord stating when, but in no event less than twenty (20) days thereafter, such cancellation or modification in coverage shall be effective."

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RENT RIDER

A. Minimum Guaranteed Rent:

The Annual and Monthly Minimum Guaranteed Rent payable pursuant to Article III of the Lease shall be as follows:

<u>Period</u>	<u>Annual Rent</u>	<u>Monthly Rent</u>
(i) From the Rent Commencement Date through the fifth full Lease Year, inclusive;	██████████	██████████
(ii) During the sixth through the tenth full Lease Year, inclusive;	██████████	██████████
(iii) During the eleventh through the fifteenth full Lease Year, inclusive;	██████████	██████████
(iv) During the sixteenth through the twentieth full Lease Year, inclusive;	██████████	██████████
(v) The Annual Minimum Guaranteed Rent during each five-year option period shall be a sum equal to the total of the Minimum Guaranteed Rent and Percentage Rent payable in the lease year immediately preceding the commencement of the applicable option period. Said Annual Minimum Guaranteed Rent shall be paid in advance, in equal monthly installments. In no event shall the Minimum Guaranteed Rent in the option periods be less than the Minimum Guaranteed Rent in the immediately preceding period.		

B. Percentage Rent

The Percentage Rent during each full lease year of the initial twenty (20) year Lease Term shall be a sum equal to ██████████ of Tenant's Gross Sales up to ██████████ Dollars ██████████ and ██████████ of Tenant's Gross Sales in excess of ██████████ Dollars ██████████, less Tenant's Minimum Guaranteed Rent for said Lease Year. The Percentage Rent during each lease year of the option periods shall be a sum equal to ██████████ of Tenant's Gross Sales less Tenant's Minimum Guaranteed Rent for said Lease Year.

C. Definition of "Gross Sales":

The phrase "Gross Sales" as used in this Lease shall mean the dollar aggregate of (a) the entire amount of the price charged for all goods, wares and merchandise sold, leased, licensed or delivered, excluding the sale of gasoline, and all charges for all services sold or performed by Tenant from all business conducted at, upon or from the Demised Premises by Tenant, whether made for cash, by check, on credit, charge accounts or otherwise, without reserve or deduction for inability or failure to collect the same, including, but not limited to, transactions (i) where the orders originate at or are accepted by Tenant in the Demised Premises, but delivery or performance thereof is made from or at any other place; all sales made and orders received in or at the Demised Premises shall be deemed as made and completed therein, even though the payment of account may be transferred to another office for collection, and all orders which result from solicitation off the Demised Premises but which are conducted by personnel operating from or reporting to or under the control or supervision of any employee of Tenant shall be deemed part of Gross Sales; (ii) pursuant to mail, telephone, telegraph or other similar orders received or billed at or from the Demised Premises; (iii) by means of mechanical or other vending devices to the extent that Tenant receives income therefrom; (iv) originating from whatever source, and which Tenant in the normal and customary course of Tenant's operations would credit or attribute to Tenant's business conducted in the Demised Premises, and (b) all monies or other things of value received by Tenant from Tenant's operations at, upon or from the Demised Premises which are neither included in nor excluded from Gross Sales by the other provisions

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of this definition, but without any duplication, including, without limitation, finance charges, cost of gift or merchandise certificates and all deposits not refunded to customers. (c) Each charge or sale upon installment or credit shall be treated as a sale for the full price in the month during which such charge or sale is made, irrespective of the time when Tenant shall receive payment (whether full or partial) therefor. No deduction shall be allowed from Gross Sales for uncollectible credit accounts. Each lease or rental of merchandise shall be treated as a sale in the month during which such lease or rental is made, for a price equal to the total rent payable. (d) For the purpose of ascertaining the amount of Gross Sales upon which the payment of Percentage Rent is to be computed hereunder, the following may be deducted from Gross Sales: (i) the exchange of merchandise between stores of Tenant or its subsidiaries where such exchanges are made solely for the convenient operation of Tenant's business and not for the purpose of consummating a sale which has been made at, upon or from the Demised Premises; (ii) returns to shippers or manufacturers; (iii) sales of trade fixtures after use thereof, which are not part of Tenant's stock in trade and not sold in the regular course of Tenant's business; (iv) cash or credit refunds made upon transactions included within Gross Sales but not exceeding the selling price of the merchandise returned by the purchaser and accepted by Tenant; or (v) the amount of any local, county, state or federal sales, luxury or excise tax on such sales provided such tax is both added to the selling price (or absorbed therein) and paid to the taxing authority by Tenant (but not by any vendor of Tenant) provided, however, no franchise or capital stock tax and no income or similar tax based upon income, profits or gross sales as such, shall be deducted from Gross Sales in any event whatsoever. (e) For the purposes of this Paragraph the term "Tenant" shall include any of Tenant's subtenants, concessionaires or licensees.

D. Books and Records:

Tenant shall prepare and keep for a period of not less than thirty-six (36) months following the end of each Lease Year, true and accurate books of account and records, conforming to generally sound and accepted accounting principles consistently applied, including, but not limited to, sales tax and other reports filed with governmental agencies, all purchases and receipts of merchandise, inventories and all sales and other transactions by Tenant from which Gross Sales at, upon or from the Demised Premises can be determined. Tenant agrees to record all sales, at the time each sale is made, whether for cash or credit, in a cash register or registers containing locked-in cumulative tapes with cumulation capacity.

E. Reports:

Tenant agrees to submit to Landlord on or before the thirtieth (30th) day following the end of each calendar month during the Lease Term (including the thirtieth (30th) day of the month following the end of the Lease Term, as to which Tenant's obligation shall survive the expiration of the Lease Term) a written statement, signed by Tenant (or by an authorized officer, if Tenant is a corporation) and verified to be true and correct showing the amount of Gross Sales derived from the business conducted at, upon or from the Demised Premises by Tenant (and all subtenants, concessionaires or licensees of Tenant) during the preceding calendar month, and an itemization of all permissible deductions therefrom. Tenant further agrees to submit to Landlord on or before the sixtieth (60th) day following the end of each Lease Year or partial Lease Year (including the last Lease Year hereof, as to which Tenant's obligation shall survive the expiration of the Lease Term) a written statement, signed and certified by Tenant to be true and correct, showing the amount of such Gross Sales during the preceding Lease Year or partial Lease Year and an itemization of all permissible deductions therefrom. Said annual statement shall also be duly certified to be true and correct in compliance with the definition of Gross Sales referred to in Article III of the annexed Lease and as defined in Paragraph C hereof by Tenant or an Officer of Tenant in accordance with sound and accepted accounting practice consistently applied. The statements referred to in this Paragraph shall be in such form and style and shall contain such details and information as Landlord may

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reasonably designate. The acceptance by Landlord of payments of Percentage Rent or reports thereof shall be without prejudice and shall in no event constitute a waiver of Landlord's right to claim a deficiency in the payment of Percentage Rent or to audit Tenant's books and records, as hereafter set forth. The Gross Sales for any portion of a calendar month prior to the commencement of the first full calendar month, shall be included in the monthly report, next succeeding any such partial month.

F. Audit:

Landlord shall have the right, upon fifteen (15) days' notice to Tenant to cause a complete audit of all statements of Gross Sales and in connection with such audit, to examine Tenant's books of account and records (including all supporting data and any other records from which Gross Sales may be tested or determined) of Gross Sales disclosed in any statement given to Landlord by Tenant; and Tenant shall make all such records available for such examination at the office where such records are regularly maintained. Landlord shall have the right to copy and duplicate such information as Landlord may require. If any such audit discloses that the actual Gross Sales transacted by Tenant exceed those reported, then Tenant shall pay Landlord such additional Percentage Rent as may be so shown to be payable and if the excess so disclosed shall be more than three percent (3%), Tenant shall also then pay the reasonable cost of such audit and examination. The furnishing by Tenant of any fraudulent statement shall constitute a breach of this Lease. If any audit shall be commenced by Landlord or if there shall arise a difference or dispute concerning Gross Sales, then and in any such event, Tenant's books of account and records, (including all supporting data and any other records from which Gross Sales may be tested or determined shall be preserved and retained by Tenant until a final resolution or final determination of such dispute or difference. Any information obtained by Landlord as a result of such audit shall be treated as confidential, except in any litigation or proceeding between the parties and, except further, that Landlord may disclose such information to prospective purchasers, to prospective or existing lenders, to prospective or existing ground lessors and in any statement filed with the Securities and Exchange Commission, Internal Revenue Service, or other similar governmental agency or pursuant to any subpoena or judicial process. If Landlord shall fail to audit any such reports within thirty-six (36) months after the same had been received by Landlord, then any such report shall be deemed conclusively true and correct, except as to any fraudulent report.

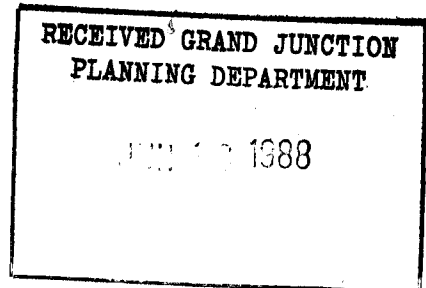
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GRAND JUNCTION DRAINAGE DISTRICT

722 23 ROAD
P.O. BOX 55246
GRAND JUNCTION, COLORADO 81505
(303) 242-4343

6/07/88

Mr. Karl Metzner
Planning Director
City of Grand Junction
250 No. 5th St.
Grand Junction, Co. 81501



RE: Sizzler 18-88

Dear Karl,

Mr. Larry Follett, the engineer/representative was in today to discuss his project.

I explained to Mr. Follett that all the Drainage District received to review was the review sheet, a copy of the application, and a two page narrative. The narrative does not mention drainage.

Mr. Follett explained that the owner, Equitable Life Assurance, through their property manager, General Growth Managment, is working on getting the known drainage problem(s) corrected. Further, Mr. Follett said that until the Mall gets some easement question(s) resolved that he could not be sure which way the on-site drainage would be handled. Mr. Follett was able to convince me that he is aware of the surface drainage limitations of the site.

We did discuss the difference between public and private catch basins and drain lines. He acknowledged that responsibility for maintenance of private catch basins or private drain lines is certainly not with the public sector -- either the Drainage District or the City.

Mr. Larry Follett appears to be progressing toward a positive development. I am sure that Don Newton, PE, the City Engineer will be able to give the site plan the appropriate level review.

Sincerely,

Grand Junction Drainage District


John L. Ballagh
Manager



Grand Junction Planning Department
250 North Fifth Street
Grand Junction, Colorado 81501-2668
(303) 244-1430

June 28, 1988

Mr. Larry M. Follett
Intermountain SFSH Enterprises
5260 Waterbury Way, Suite A-201
Salt Lake City, UT 84121

CERTIFIED

Dear Mr. Follett:

On June 13, 1988 the special use application for the Sizzler Restaurant at Mesa Mall was approved. I've delayed writing this confirmation letter due to the uncertainty surrounding the issue of open space fee payment at the time of Mesa Mall development.

Our office has now received the remaining development files from Mesa County Planning and we have determined that open space fees were never paid for the Mesa Mall properties.

The Grand Junction Zoning and Development Code, section 5-4-6, requires that "All new development which requires processing through the rezoning, subdivision, planned development, conditional use, or special use procedures of this Code shall require payment to the escrow fund for parks/open space acquisition and/or development." The fee is 5% of the value of the raw land as determined, at the developer's expense, by an accredited real estate appraiser.

An appraisal of the land value must be submitted to this office, which we and the City Parks Department will review. After the appraisal is approved, the fee must be paid to the Grand Junction Parks Department and a copy of the receipt submitted to City Planning to be placed in the development file. The certificate of occupancy (C.O.) cannot be issued for the restaurant until the receipt has been filed with City Planning, along with final completion of all site requirements.

This letter will serve as notice of approval for the special use permit, and a copy will be kept in development file #18-88.

If I can answer questions or be of assistance, please contact me at any time. Your cooperation has been greatly appreciated, and best of luck with your project!

Sincerely,

Michael E. Sutherland
Senior City Planner

MES/tt

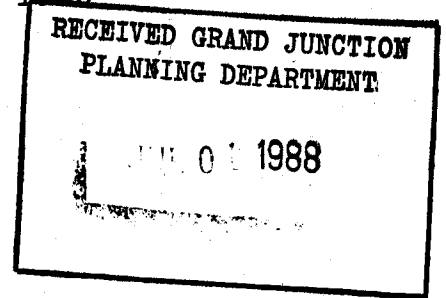
xc: File #18-88

Sizzler.

Steak. Seafood. Salad

June 30, 1988

Honorable John W. Bennett, Mayor
Honorable Council Members
City of Grand Junction
250 North 5th Street
Grand Junction, CO 81501-2668



Dear Mayor Bennett and Council Members:

As the developers, owners and operators of a proposed new Sizzler Restaurant to be built at 2440 Highway 6 & 50, we hereby request a waiver of Section 5-4-6 of the Grand Junction Zoning and Development Code.

In support of this request for the waiver we respectfully submit the following:

1. Attached is our Project Narrative which was prepared in connection with the Special Use Application and describes the type of restaurant which we propose to operate as well as other information concerning the project. However, let us here emphasize that a new set down restaurant of our type is definitely needed in this area of the city.

2. As a restaurant we will be providing a service to the residents of the City of Grand Junction and surrounding area as well as those who come from outside the area to patronize the Mesa Mall and other visitors to the city. Sizzler Restaurants have a well recognized name and an excellent reputation with visitors from outside Colorado. This will bring additional sales tax revenue for the city as well as increase the property tax revenue.

3. We will be employing approximately 70 to 80 employees, almost all of which will be present residents of the area. Therefore, we will not be bringing in additional people who will require additional public sites, parks and other open space.

4. We are estimating the fee we are requesting waived to be approximately \$9,000.00 plus the cost and expenses of the appraisal. This amount plus the exorbitant cost of the sewer hook-up fee to the city of \$27,300.00 and water hook-up fee of approximately \$4,800.00 totals approximately \$43,100.00. This adds in excess of 10% to the cost of the project and has put the cost of the project over the amount allowed by our Lease Agreement with the Mall owners. To be required to pay the government body an amount in excess of ten percent (10%) of the cost of the building and site work is certainly excessive and far greater than any we have experienced in any other area.

Honorable John W. Bennett, Mayor
Honorable Council Members
City of Grand Junction
250 North 5th Street
Grand Junction, CO 81501-2668

5. It seems to us that the City of Grand Junction should be encouraging economic development rather than stifling it with charging such excessive fees which discourage new business and new development. It seems certain that at the time the city annexed the Mall into the city limits, if the Mall owners had requested the waiver of the open space fee for all of the Mall property it would have been waived at that time.

We thank you for your time and attention to this matter and again respectfully request that the fee be waived so that we may complete our proposed project.

Respectfully yours,

Larry M. Follett
Colorado Managing Partner

cc: ✓ Planning Commission
Neva Lockhart, City Clerk
Linda Smith, Mesa Mall

PROJECT NARRATIVE

THE PROPOSED PROJECT IS TO BUILD AND OPERATE A SIZZLER RESTAURANT ON APPROXIMATELY 1.05 ACRES OF LOT 2 MESA MALL SUB-DIVISION, WHICH IS LOCATED ON THE NORTHEAST CORNER OF MESA MALL DRIVE 1 AND HIGHWAY 6 & 50 IN GRAND JUNCTION, COLORADO. THE IMPROVEMENTS TO BE CONSTRUCTED INCLUDE A STANDARD SIZZLER RESTAURANT BUILDING OF APPROXIMATELY 7500 SQUARE FEET HAVING A SEATING CAPACITY OF 250 PEOPLE WITH APPROPRIATE LANDSCAPING AND PARKING AREA CONTAINING 100 PARKING STALLS.

THE CONSTRUCTION OF THE PROJECT IS EXPECTED TO COMMENCE IMMEDIATELY UPON APPROVAL OF THIS SPECIAL USE APPLICATION AND ISSUANCE OF THE NECESSARY BUILDING PERMITS. FUNDING FOR THE PROJECT IS COMPLETED AND IS BEING PROVIDED BY THE PROPERTY OWNER, THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES AS A CONSTRUCTION ALLOWANCE. THE PROJECT WILL TAKE APPROXIMATELY 120 DAYS TO COMPLETE AND OPEN THE RESTAURANT.

IT IS ANTICIPATED THAT THE PROJECT WILL IMPACT THE ENTIRE GRAND JUNCTION VALLEY IN THAT WE WILL BE PROVIDING A NEW RESTAURANT FACILITY THAT WILL BE AVAILABLE AND USED BY THE ENTIRE POPULATION OF THE VALLEY AS WELL AS THE VISITORS TO THE MALL AND GRAND JUNCTION. SIZZLER IS A RESTAURANT CHAIN THAT BEGAN IN 1959 AND PRESENTLY HAS APPROXIMATELY 600 UNITS IN OPERATION IN THE UNITED STATES. THE DEVELOPER OF THE PROJECT IS INTERMOUNTAIN SFESH ENTERPRISES, A FRANCHISE OF SIZZLER RESTAURANT INTERNATIONAL, INC. INTERMOUNTAIN SFESH ENTERPRISES IS A PARTNERSHIP WHICH PRESENTLY OWNS 10 SIZZLER RESTAURANTS IN UTAH AND IDAHO. THE PARTNERS OF INTERMOUNTAIN SFESH ENTERPRISES OWN AND OPERATE A TOTAL OF 39 SIZZLER RESTAURANTS IN UTAH, IDAHO, NEVADA AND WASHINGTON. SIZZLER RESTAURANTS HAVE A BROAD MENU CONSISTING OF FRESH FISH, SHELL FISH, CHICKEN, RED MEAT AND A LARGE SOUP AND SALAD BAR WHICH INCLUDES A PASTA BAR AND TOSTADA BAR. THE CUSTOMERS ORDER IS TAKEN IN LIVE AFTER WHICH FULL SERVICE IS PROVIDED AND WE EMPHASIZE SERVICE. IN ADDITION WE WILL HAVE A BANQUET FACILITY FOR SPECIAL GROUP USE.

THE PROJECT IS TOTALLY COMPATIBLE WITH THE SURROUNDING AREA AND RESIDENTS AND IS A NECESSARY ADDITION TO THE AREA PROVIDING AN EXCELLENT FACILITY WITH A BROAD MENU SIT DOWN RESTAURANT WHICH THIS AREA PRESENTLY DOES NOT HAVE. THE MESA MALL DEVELOPERS PLANNED FOR AND THE PRESENT OWNERS HAVE ENCOURAGED A FULL SIT DOWN RESTAURANT TO ENHANCE THE MALL. THE PATRONS OF THE MALL AND THE AREA RESIDENTS HAVE A NEED FOR THE PROJECT.

THE PROJECT MEETS ALL THE CITY'S CRITERIA FOR SPECIAL USES AND COMPLIES WITH ALL APPLICABLE REGULATIONS OF THE CODE. ADEQUATE PUBLIC SERVICES, INCLUDING SEWAGE AND WASTE DISPOSAL, DOMESTIC AND IRRIGATION WATER, GAS, ELECTRICITY ARE AVAILABLE AND WERE INCLUDED IN THE MESA MALL PLANNING. THE PROJECT WILL NOT REQUIRE ANY SPECIAL POLICE OR FIRE PROTECTION WHICH WILL REDUCE THE SERVICES TO OTHER EXISTING USES.

THE PROJECT IS COMPATIBLE WITH ADJACENT USES IN APPEARANCE AND SITE DESIGN. THE PARKING LOT LIGHTING WILL BE COMPATIBLE WITH THE MALL PARKING LOT LIGHTING. THE TRAFFIC TO AND FROM THE SITE IS ONTO THE MALL ENTERPRISE ROAD. THE PROJECT WILL NOT HAVE AN ADVERSE IMPACT WITH NOISE, DUST OR ODOR.

OTHER USES COMPLEMENTARY TO AND SUPPORTIVE OF THE PROJECT ARE AVAILABLE, INCLUDING SCHOOLS, PARKS, HOSPITALS, BUSINESS AND COMMERCIAL FACILITIES AND TRANSPORTATION FACILITIES AND THIS PROJECT WILL NOT HAVE ANY ADVERSE EFFECT ON ANY OF THESE EXISTING FACILITIES.

UPON COMPLETION OF CONSTRUCTION THE PROJECT WILL EMPLOY FROM 70 TO 80 EMPLOYEES AND WILL PROVIDE ADDITIONAL SALES TAX REVENUE FOR THE CITY AS WELL AS ADDITIONAL PROPERTY TAXES.



Grand Junction Planning Department
250 North Fifth Street
Grand Junction, Colorado 81501-2668
(303) 244-1430

MEMORANDUM

TO: City Council
FROM: Planning Staff *KP*
DATE: July 6, 1988
RE: Parks and Open Space Fee Waiver Request

A special use application for the proposed Sizzler Restaurant at Mesa Mall (next to McDonald's on HWY 6 & 50) was approved by Planning Staff on June 13, 1988 (file #18-88). As per section 5-4-6 of the Zoning and Development Code, the payment of open space fees was a condition of approval.

Larry Follett, representing Sizzler Restaurants, has requested the open space fees be waived. He feels the open space fee added to the sewer tap and plant investment fee of \$27,300 and water tap fee of \$4,800 is too much and will put the project over budget. The estimate of \$9,000 open space fees has not been verified by an appraisal. The open space fee requirement is 5% of the appraised raw land value.

The Mall was initially developed outside the City limits and open space fees never paid. Likewise, open space fees were not paid for the subsequent development of McDonald's and Wendy's at the Mall. Since then, section 5-4-6 of the Zoning and Development Code has been amended clarifying when open space fees will be paid (amended March 4, 1987). It clearly states that "new development which requires processing through the rezoning, subdivision, planned development, conditional use, or special use procedures of this Code shall require payment to the escrow fund for Parks/Open Space acquisition and/or development". We're not aware of any waivers granted in the past.

The attached sheets list fees required by other communities for similar developments.

/kp
Attachments

xc: Mark Achen
Jim Shanks
Dan Wilson
Ted Novack
file #18-88

REVIEW SHEET SUMMARY

FILE NO. 18-88 TITLE HEADING Special Use for Sizzler Restaurant in H.O. zone DUE DATE 5/19/88
 ACTIVITY - PETITIONER - LOCATION - PHASE - ACRES Special Use for Restaurant
 Petitioner: Intermountain SFSH Enterprises Location: 2440 Hwy 6&50 Grand Junction, CO

PETITIONER ADDRESS 5620 Waterbury Way, -Ste. A-201 Salt Lake City, UT 84121
 ENGINEER n/a

<u>DATE REC.</u>	<u>AGENCY</u>	<u>COMMENTS</u>
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NOTE: WRITTEN RESPONSE BY THE PETITIONER TO THE REVIEW COMMENTS IS REQUIRED A MINIMUM OF 48 HOURS PRIOR TO THE FIRST SCHEDULED PUBLIC HEARING.

05/12/88	Fire Dept.	This office hasn't any objections to this proposal as long as all of the required access and water supplies are met for fire fighting purposes. If you have any questions, please call our office at 244-1400. Thank you.
05/09/88	Police Dept.	No problems noted.
05/10/88	Building Dept.	Our office has no objections to this development. We have had contact with the owner and he is aware of our requirements. Grand Junction city licensed general contractor is required.
05/12/88	Public Service gas: electric:	No objections No objections
05/12/88	Mtn. Bell	No objection
05/20/88	Ute Water	No objection
05/23/88	GJ Drainage	<p style="text-align: center; font-size: 2em; font-weight: bold;">LATE</p> <p>No on-site or off-site analysis of surface drainage or runoff was offered; hence, no determination of completeness or compliance with existing or proposed plans can be made. What is the source of irrigation water? Where is the excess irrigation water going to return to the river. What is the present drainage on-site? How will that drainage be altered? Are any detention/retention structures proposed? Are any catch basins proposed? Where will those catch basins dump water? Many questions could be answered with a drainage analysis, especially who will maintain which portions of the on- and off-site drainage system(s).</p> <p style="text-align: center; font-size: 2em; font-weight: bold;">LATE</p>
05/23/88	Development Dept.	Grand Jct. Drainage has numerous concerns regarding surface runoff which must be satisfactorily addressed prior to final approval. Please contact G.J. Drainage (242-4343), Mr. John Ballagh, as soon as possible. A final landscaping plan must be submitted and approved prior to installation. All landscaping and site requirements must be completed prior to issuance of a certificate of occupancy (C.O.). Continuous curbing or anchored curb blocks are necessary wherever automobiles could potentially conflict with pedestrian access, or wherever vehicles might unintentionally roll off of the site. Location(s) of signage is not shown on the site plan. A separate sign permit (by a licensed sign contractor) is required for any signage.

Handwritten:
 5/24/88

OFF ACTION SHEET

Acres _____

Units _____

Density _____

File No. #18 88

Zone H.O.

Tax Parcel Number
1945-092-10-014

SPECIAL USE

Activity Restaurant in H.O. Zone

Phase _____

Common Location 2440 Highway 6 & 50

Date Submitted _____ Date Mailed Out 11 Date Posted _____

day Review Period Return by X we don't need it

Open Space Dedication (acreage) _____ Open Space Fee Required \$ _____ Paid Receipt # _____

Recording Fee Required \$ _____ Paid (Date) _____ Date Recorded _____

review agencies

	A	B	D	E	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	W	X	Y	Z	AA	BB	CC	DD	EE	FF	GG
<input type="checkbox"/> Development Dept.	•	•	•	•																											
<input checked="" type="checkbox"/> City Public Works	•	•																													
<input checked="" type="checkbox"/> City Engineer	•	•																													
<input type="checkbox"/> Transportation Engineer																															
<input checked="" type="checkbox"/> City Parks/Recreation	•	•																													
<input checked="" type="checkbox"/> City Fire Dept.	•	•																													
<input checked="" type="checkbox"/> City Police Dept.	•	•																													
<input type="checkbox"/> County Planning																															
<input type="checkbox"/> County Engineer																															
<input type="checkbox"/> County Health																															
<input type="checkbox"/> County Parks/Recreation																															
<input type="checkbox"/> Comprehensive Planning																															
<input type="checkbox"/> Floodplain Administration																															
<input type="checkbox"/> G.J. Dept. of Energy																															
<input type="checkbox"/> Walker Field																															
<input type="checkbox"/> School District																															
<input checked="" type="checkbox"/> Irrigation Grand Valley Irr.	•	•																													
<input checked="" type="checkbox"/> Drainage - G.J. Drainage	•	•																													
<input checked="" type="checkbox"/> Water (Ute, Clifton)	•	•																													
<input checked="" type="checkbox"/> Sewer Dist. (FV, CGV, OM)	•	•																													
<input checked="" type="checkbox"/> Mountain Bell	•	•																													
<input checked="" type="checkbox"/> Public Service (2 sets)	•	•																													
<input type="checkbox"/> State Highway Dept.																															
<input type="checkbox"/> State Geological																															
<input type="checkbox"/> State Health Dept.																															
<input type="checkbox"/> GJPC (7 packets)																															
<input type="checkbox"/> CIC (9 packets)																															
<input checked="" type="checkbox"/> OTHER BUILDING DEPT.	•	•																													
totals	12	12	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	

12 agencies

BOARDS	DATE <u>6-13-88</u>	<u>Special Use approved subject to completion & resolution of all site requirements prior to the release of C.O. W. Sutherland</u>
	<u>P.C. 7/5/88</u>	<u>Consider request to waive open space fee. Recommend denial.</u>
	<u>CIC 7/6/88</u>	<u>waive of open space fee denied</u>
	_____	_____

STAFF	<u>(See also file #36-88)</u>	<u>Mike Sutherland</u>
	<u>Original</u>	<u>Kathy Partner</u>
	<u>Do NOT Remove From Office</u>	<u>244-1430</u>

APPLICATION FEE REQUIREMENTS

\$115.00 fee payable at submitter's
check to "City of Grand Jct."



development summary



File # 18-88 Name Sizzler Restaurant Date July 6, 1988

PROJECT LOCATION: 2440 Highway 6 & 50

PROJECT DESCRIPTION:

Special Use application for a Sizzler Restaurant in H.O. Zoning
Request for Parks and Open Space Fee Waiver

REVIEW SUMMARY (Major Concerns)

POLICIES COMPLIANCE	YES		NO *		TECHNICAL REQUIREMENTS	SATISFIED		NOT SATISFIED *	
Complies with adopted policies	X				Streets/Rights Of Way	X			
Complies with adopted criteria	X				Water/Sewer	X			
Meets guidelines of Comprehensive Plan	N/A				Irrigation/Drainage	X			
					Landscaping/Screening	X			
					Other: <u>Open space fees</u>				

* See explanation below
See attached

STATUS & RECOMMENDATIONS:

7/5/88--The Planning Commission recommended denial of the request to waive the Parks and Open Space Fees.

Planning Commission Action