

EXHIBIT F

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
JACKELINE MONTOYA,

Plaintiff,

-against-

BAY PLAZA APPLE, LLC, BAY PLAZA COMMUNITY
CENTRE, LLC AND SP CENTER, LLC, DAFFY'S, INC., and
ACCOLADE BUILDING MAINTENANCE CORP.,

Defendants.
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Index No.: 21612/2011E

SUPPLEMENTAL
RESPONSE TO
COURT ORDER OF
NOVEMBER 24, 2015

C O U N S E L O R S :

PLEASE TAKE NOTICE, that the defendants, BAY PLAZA COMMUNITY CENTRE, LLC AND SP CENTER, LLC, by and through their attorneys, MALAPERO & PRISCO LLP, further respond to the Court's Order of November 24, 2015 which directed that defendants respond to plaintiff's "combined demands of June 17, 2012." A review of defendants' file confirms that "plaintiff's combined demands of June 17, 2012" does not exist. However, in a further good faith effort to respond to this Court's Order of November 24, 2015 and plaintiff's correspondence of March 21, 2016, defendants, BAY PLAZA COMMUNITY CENTRE, LLC AND SP CENTER, LLC, state upon information and belief as follows:

RESERVATION OF RIGHTS:

- A. To the extent that defendant produces documents in response to said demands, they do so without conceding the materiality, authenticity, admissibility or relevance of any such documents, or of any substantive responses to demands.
- B. Defendant reserves all objections to the use of these responses and if any documents produced in connection herewith. Such objections may be interposed by responding defendants at any time, including at the time of trial or as otherwise required by the rules and orders of this Court.

- C. Defendant reserves the right to amend, supplement, modify or correct these responses, objections and production of documents, if any, as additional information and/or documents are identified and/or become available.
- D. Insofar as the inadvertent production of any documents by the defendants pursuant to the demands may be deemed a waiver of any privilege or right, such waiver shall be deemed to be a limited waiver solely with respect to that particular document. The inadvertent production of any document shall not be deemed or construed to constitute a waiver of any privilege, right or obligation of defendants, and defendants reserve the right to demand that such document and all copies thereof be returned to defendants.
- E. Defendant reserves the right to redact non-responsive material from many otherwise responsive documents that may be produced as part of defendants' responses to the demands.

GENERAL OBJECTIONS:

- A. Defendant objects to the demands to the extent that they seek information, documents or other materials that are neither relevant to the subject matter of the pending action nor reasonably calculated to lead to the discovery of admissible evidence.
- B. Defendant objects to the demands to the extent that they purport to seek information, documents or other materials protected by the attorney-client privilege, the work product doctrine or any other applicable privilege or immunity.
- C. Defendant objects to the demands to the extent that they purport to seek documents generated by or at the direction of their counsel. In responding to the demands, defendants will construe the demands as not requesting production of such documents.
- D. Defendant objects to the demands to the extent that they purport to require defendants to produce or to provide information or documents not within responding defendants' possession, custody or control.

- E. Defendant objects to the demands to the extent that they do not incorporate time limitations.
- F. Defendant objects to the demands to the extent that they seek to impose obligations extended beyond those imposed or authorized by the CPLR of this Court.
- G. Defendant objects to the demands to the extent that they purport to demand information, documents or other materials created, dated or generated after the date of the complaint that this action was filed.
- H. These general objections are continuing and are incorporated by reference and response to each of the demands set forth below. Any objection or lack of objection to any portion of the demands is not to be deemed an admission. Subject to and without waiver of these general objections, defendants respond to the demands of co-defendant as follows:

RESPONSES

1. STATEMENTS

- a) Defendants object to plaintiff's demand as irrelevant, overbroad, unduly burdensome and vague. Over objection and without waiving same, upon information and belief, defendants, BAY PLAZA COMMUNITY CENTER, LLC i/s/h/a BAY PLAZA COMMUNITY CENTRE, LLC, and SP CENTER, LLC, are not in possession of any statements, whether in writing or transcribed from oral declaration or tape recording, issued by plaintiff.
- b) Defendants object to plaintiff's demand as irrelevant, overbroad, unduly burdensome and vague. Over objection and without waiving same, upon information and belief, defendants, BAY PLAZA COMMUNITY CENTER, LLC i/s/h/a BAY PLAZA COMMUNITY CENTRE, LLC, and SP CENTER, LLC, are

not in possession of any statements, including copies of actual audio tape recordings, issued by plaintiff.

- c) Defendants object to plaintiff's demand as irrelevant, overbroad, unduly burdensome and vague. Over objection and without waiving same, upon information and belief, defendants, BAY PLAZA COMMUNITY CENTER, LLC i/s/h/a BAY PLAZA COMMUNITY CENTRE, LLC, and SP CENTER, LLC, are not in possession of any statements issued by plaintiff.

2. SURVEILLANCE VIDEO

- a) Defendants object to plaintiff's demand for the name and address of the entity or person who is responsible for the surveillance camera system at the subject location as irrelevant, overbroad, unduly burdensome and vague.
- b) Defendants object to plaintiff's demand for a copy of the agreement between the defendants and the entity which provides surveillance as irrelevant, overbroad, unduly burdensome and vague.
- c) Defendants object to plaintiff's demand for the equipment name, make and model used at the subject location as irrelevant, overbroad, unduly burdensome and vague.
- d) Defendants object to plaintiff's demand for the exact number of surveillance cameras as the subject location as irrelevant, overbroad, unduly burdensome and vague.
- e) Defendants object to plaintiff's demand for the exact number of cameras at the subject location as irrelevant, overbroad, unduly burdensome and vague.

- f) Defendants object to plaintiff's demand as irrelevant, overbroad, unduly burdensome and vague. Over objection and without waiving same, upon information and belief, defendants, BAY PLAZA COMMUNITY CENTER, LLC i/s/h/a BAY PLAZA COMMUNITY CENTRE, LLC, and SP CENTER, LLC, are not in possession of any surveillance video of the subject bathroom, however, defendants continue to conduct a good faith search, and should same exist defendants reserve the right to supplement this response.
- g) Defendants object to plaintiff's demand as irrelevant, overbroad, unduly burdensome and vague. Over objection and without waiving same, upon information and belief, defendants, BAY PLAZA COMMUNITY CENTER, LLC i/s/h/a BAY PLAZA COMMUNITY CENTRE, LLC, and SP CENTER, LLC, are not in possession of any surveillance video of the subject bathroom, however, defendants continue to conduct a good faith search, and should same exist defendants reserve the right to supplement this response.
- h) Defendants object to plaintiff's demand as irrelevant, overbroad, unduly burdensome and vague. Over objection and without waiving same, upon information and belief, defendants, BAY PLAZA COMMUNITY CENTER, LLC i/s/h/a BAY PLAZA COMMUNITY CENTRE, LLC, and SP CENTER, LLC, are not in possession of any surveillance video of the subject bathroom, however, defendants continue to conduct a good faith search, and should same exist defendants reserve the right to supplement this response.
- i) Defendants object to plaintiff's demand as irrelevant, overbroad, unduly burdensome and vague. Over objection and without waiving same, upon

information and belief, defendants, BAY PLAZA COMMUNITY CENTER, LLC i/s/h/a BAY PLAZA COMMUNITY CENTRE, LLC, and SP CENTER, LLC, are not in possession of any surveillance video of the subject bathroom, however, defendants continue to conduct a good faith search, and should same exist defendants reserve the right to supplement this response.

- j) Defendants object to plaintiff's demand as irrelevant, overbroad, unduly burdensome and vague. Over objection and without waiving same, upon information and belief, defendants, BAY PLAZA COMMUNITY CENTER, LLC i/s/h/a BAY PLAZA COMMUNITY CENTRE, LLC, and SP CENTER, LLC, are not in possession of any surveillance video of the subject bathroom, however, defendants continue to conduct a good faith search, and should same exist defendants reserve the right to supplement this response.
- k) Defendants object to plaintiff's demand as irrelevant, overbroad, unduly burdensome and vague.
- l) Defendants object to plaintiff's demand for the names and last known address of any employee, agent, investigator company, or other individual who recorded materials as irrelevant, overbroad, unduly burdensome and vague.
- m) Defendants object to plaintiff's demand for any transcripts, note, and memoranda of materials referred to in letter (a) above as irrelevant, overbroad, unduly burdensome and vague.

3. INSURANCE

- a) Defendants object to plaintiff's demand as irrelevant, overbroad, unduly burdensome and vague.

- b) Upon information and belief, defendants, BAY PLAZA COMMUNITY CENTER, LLC i/s/h/a BAY PLAZA COMMUNITY CENTRE, LLC, and SP CENTER, LLC were issued a policy of insurance by Philadelphia Indemnity Insurance Company with policy number PHPK560471, with effective dates of April 25, 2010 to April 25, 2011, in the amount of Two Million (\$2,000,000.00) Dollars in the general aggregate limit; and One Million (\$1,000,000.00) Dollars per occurrence.
- c) Upon information and belief, defendants, BAY PLAZA COMMUNITY CENTER, LLC i/s/h/a BAY PLAZA COMMUNITY CENTRE, LLC, and SP CENTER, LLC were issued a policy of insurance by Philadelphia Indemnity Insurance Company with policy number PHPK560471, with effective dates of April 25, 2010 to April 25, 2011, in the amount of Two Million (\$2,000,000.00) Dollars in the general aggregate limit; and One Million (\$1,000,000.00) Dollars per occurrence.
- d) Upon information and belief, defendants, BAY PLAZA COMMUNITY CENTER, LLC i/s/h/a BAY PLAZA COMMUNITY CENTRE, LLC, and SP CENTER, LLC were issued a policy of insurance by Philadelphia Indemnity Insurance Company with policy number PHPK560471, with effective dates of April 25, 2010 to April 25, 2011, in the amount of Two Million (\$2,000,000.00) Dollars in the general aggregate limit; and One Million (\$1,000,000.00) Dollars per occurrence.

- e) Defendants object to plaintiff's demand for any other claims pending or paid against any of the aforementioned insurance coverage as irrelevant, overbroad, unduly burdensome and vague.
- f) Defendants object to plaintiff's demand for any other claims pending or paid against any of the aforementioned insurance coverage as irrelevant, overbroad, unduly burdensome and vague.
- g) Defendants object to plaintiff's demand as irrelevant, overbroad, unduly burdensome and vague.

4. ACCIDENT / INCIDENT REPORTS

- a) Upon information and belief, defendants BAY PLAZA COMMUNITY CENTER, LLC i/s/h/a BAY PLAZA COMMUNITY CENTRE, LLC, and SP CENTER, LLC, are not in possession of any accident / incident reports, however, defendants continue to conduct a good faith search, and should same exist defendants reserve the right to supplement this response.
- b) Upon information and belief, defendants BAY PLAZA COMMUNITY CENTER, LLC i/s/h/a BAY PLAZA COMMUNITY CENTRE, LLC, and SP CENTER, LLC, are not in possession of any accident / incident reports, however, defendants continue to conduct a good faith search, and should same exist defendants reserve the right to supplement this response.

5. WITNESSES

- a) Upon information and belief, defendants BAY PLAZA COMMUNITY CENTER, LLC i/s/h/a BAY PLAZA COMMUNITY CENTRE, LLC, and SP CENTER,

LLC, are unaware of any witnesses other than those disclosed by the parties to this action.

- b) Upon and belief, defendants BAY PLAZA COMMUNITY CENTER, LLC i/s/h/a BAY PLAZA COMMUNITY CENTRE, LLC, and SP CENTER, LLC, are unaware of any witnesses other than those disclosed by the parties to this action.
- c) Defendants object to plaintiff's demand for the name and address of each witness who possesses vital information bearing on the alleged liability issues as irrelevant, overbroad, unduly burdensome and vague.
- d) Upon and belief, defendants BAY PLAZA COMMUNITY CENTER, LLC i/s/h/a BAY PLAZA COMMUNITY CENTRE, LLC, and SP CENTER, LLC, are unaware of any witnesses other than those disclosed by the parties to this action.
- e) Defendants object to plaintiff's demand for the name and address of each witness who will testify to the existence of an alleged defective condition as irrelevant, overbroad, unduly burdensome and vague.
- f) Defendants object to plaintiff's demand for the names and address of each witness who was a res gestae witness as irrelevant, overbroad, unduly burdensome and vague.
- g) Defendants object to plaintiff's demand for the names and address of each witness who defendants will call at trial to testify in connection with plaintiff's alleged injuries as irrelevant, overbroad, unduly burdensome and vague.
- h) Defendants object to plaintiff's demand as irrelevant, overbroad, unduly burdensome and vague.

- i) Defendants object to plaintiff's demand for the identities of all investigators and/or photographs who filmed, photographed or tape recorded plaintiff as irrelevant, overbroad, unduly burdensome and vague.
- j) Defendants object to plaintiff's demand for the name, position, date of birth and last known address of each person who defendant will call to testify at trial as to plaintiff's alleged condition as irrelevant, overbroad, unduly burdensome and vague.

6. EXPERT WITNESSES

- a) Upon information and belief, defendants BAY PLAZA COMMUNITY CENTER, LLC i/s/h/a BAY PLAZA COMMUNITY CENTRE, LLC, and SP CENTER, LLC, have exchanged Dr. Allen E. Rubenstein on October 29, 2015, and Dr. Benjamin E. Rosenstadt on October 29, 2015, pursuant to CPLR §3101(d).
- b) Upon information and belief, defendants BAY PLAZA COMMUNITY CENTER, LLC i/s/h/a BAY PLAZA COMMUNITY CENTRE, LLC, and SP CENTER, LLC, have exchanged Dr. Allen E. Rubenstein on October 29, 2015, and Dr. Benjamin E. Rosenstadt on October 29, 2015, pursuant to CPLR §3101(d).
- c) Upon information and belief, defendants BAY PLAZA COMMUNITY CENTER, LLC i/s/h/a BAY PLAZA COMMUNITY CENTRE, LLC, and SP CENTER, LLC, have exchanged Dr. Allen E. Rubenstein on October 29, 2015, and Dr. Benjamin E. Rosenstadt on October 29, 2015, pursuant to CPLR §3101(d).
- d) Upon information and belief, defendants BAY PLAZA COMMUNITY CENTER, LLC i/s/h/a BAY PLAZA COMMUNITY CENTRE, LLC, and SP CENTER, LLC, have exchanged Dr. Allen E. Rubenstein on October 29, 2015, and Dr.

- Benjamin E. Rosenstadt on October 29, 2015, pursuant to CPLR §3101(d).
- e) Upon information and belief, defendants BAY PLAZA COMMUNITY CENTER, LLC i/s/h/a BAY PLAZA COMMUNITY CENTRE, LLC, and SP CENTER, LLC, have exchanged Dr. Allen E. Rubenstein on October 29, 2015, and Dr. Benjamin E. Rosenstadt on October 29, 2015, pursuant to CPLR §3101(d).
 - f) Upon information and belief, defendants BAY PLAZA COMMUNITY CENTER, LLC i/s/h/a BAY PLAZA COMMUNITY CENTRE, LLC, and SP CENTER, LLC, have exchanged Dr. Allen E. Rubenstein on October 29, 2015, and Dr. Benjamin E. Rosenstadt on October 29, 2015, pursuant to CPLR §3101(d). Annexed hereto as **Exhibit "A"** are copies of defendants' CPLR §3101(d) exchanges.

7. PHOTOGRAPHS

- a) Upon information and belief, defendants BAY PLAZA COMMUNITY CENTER, LLC i/s/h/a BAY PLAZA COMMUNITY CENTRE, LLC, and SP CENTER, LLC, are not in possession of any photographs of the scene of the incident other than those which may have been provided by the parties to this action.
- b) Defendants object to plaintiff's demand for photographs of the condition of the subject incident site immediately after plaintiff's alleged incident as irrelevant, overbroad, unduly burdensome and vague. Over objection and without waiting same, upon information and belief, defendants BAY PLAZA COMMUNITY CENTER, LLC i/s/h/a BAY PLAZA COMMUNITY CENTRE, LLC, and SP CENTER, LLC, are not in possession of any photographs of the scene of the

incident other than those which may have been provided by the parties to this action.

- c) Upon information and belief, defendants BAY PLAZA COMMUNITY CENTER, LLC i/s/h/a BAY PLAZA COMMUNITY CENTRE, LLC, and SP CENTER, LLC, are not in possession of any photographs of the scene of the incident other than those which may have been provided by the parties to this action.

8. DISCOVERABLE RECORDS AND INFORMATION

- a) Defendants object to plaintiff's demand as irrelevant, overbroad, unduly burdensome and vague. Over objection and without waiving same, upon information and belief, defendants, BAY PLAZA COMMUNITY CENTER, LLC i/s/h/a BAY PLAZA COMMUNITY CENTRE, LLC, and SP CENTER, LLC, do not have a residence, however, defendants address is 2100 Bartow Ave, Bronx, New York 10475.
- b) Defendants object to plaintiff's demand as irrelevant, overbroad, unduly burdensome and vague. Over objection and without waiving same, upon information and belief, defendants, BAY PLAZA COMMUNITY CENTER, LLC i/s/h/a BAY PLAZA COMMUNITY CENTRE, LLC, and SP CENTER, LLC, do not have a date of birth.
- c) Defendants object to plaintiff's demand for any medical, hospital or other health care provider reports as irrelevant, overbroad, unduly burdensome and vague, and same would be in the possession of plaintiff.

- d) Defendants object to plaintiff's demand for the results of any investigation by any bureau, agency, department, outside consultant concerning the subject incident as irrelevant, overbroad, unduly burdensome and vague.
- e) Defendants object to plaintiff's demand for transcripts of any hearing, boards of inquiry, safety review, or any governmental entities concerning the subject incident as irrelevant, overbroad, unduly burdensome and vague.
- f) Defendants object to plaintiff's demand as irrelevant, overbroad, unduly burdensome and vague. Over objection and without waiving same, upon information and belief, defendants, BAY PLAZA COMMUNITY CENTER, LLC i/s/h/a BAY PLAZA COMMUNITY CENTRE, LLC, and SP CENTER, LLC, are conducting a good faith search of any procedures, practices, manuals, rules and regulations, guidelines and instructions setting forth and governing the maintenance and repair work at the subject bathroom, and should same exist defendants reserve the right to supplement this response.

9. INTERNAL RULES AND REGULATIONS

- a) Defendants object to plaintiff's demand as irrelevant, overbroad, unduly burdensome and vague. Over objection and without waiving same, upon information and belief, defendants, BAY PLAZA COMMUNITY CENTER, LLC i/s/h/a BAY PLAZA COMMUNITY CENTRE, LLC, and SP CENTER, LLC, are conducting a good faith search of any internal store / franchise rules, regulations, guidelines, safety guidelines, notices and pamphlets relating to the repair, maintenance, inspection, replacement, management, supervision, demolition, construction, renovation, cleaning, sweeping, mopping, waxing, snow-removal

and/or security of the subject bathroom, and should same exist defendants reserve the right to supplement this response.

- b) Defendants object to plaintiff's demand as irrelevant, overbroad, unduly burdensome and vague. Over objection and without waiving same, upon information and belief, defendants, BAY PLAZA COMMUNITY CENTER, LLC i/s/h/a BAY PLAZA COMMUNITY CENTRE, LLC, and SP CENTER, LLC, are conducting a good faith search of any materials, sessions, or representatives of any training programs concerning the subject bathroom, and should same exist defendants reserve the right to supplement this response.

10. LEASES

- a) Defendants object to plaintiff's demand as irrelevant, overbroad, unduly burdensome and vague. Over objection and without waiving same, upon information and belief, defendants, BAY PLAZA COMMUNITY CENTER, LLC i/s/h/a BAY PLAZA COMMUNITY CENTRE, LLC, and SP CENTER, LLC, are not in possession of the lease agreement between BAY PLAZA COMMUNITY CENTER, LLC AND SP CENTER, LLC and Personal Touch allegedly in effect on August 16, 2010. Over further objection and without waiving same, upon information and belief, defendants, BAY PLAZA COMMUNITY CENTER, LLC i/s/h/a BAY PLAZA COMMUNITY CENTRE, LLC, and SP CENTER, LLC, are conducting a good faith search of any leases for the subject bathroom, and should same exist defendants reserve the right to supplement this response. As a courtesy, annexed hereto as **Exhibit "B"** are the leases between defendant, BAY PLAZA COMMUNITY CENTER, LLC i/s/h/a BAY PLAZA COMMUNITY

CENTRE, LLC, and Bay Plaza Apple LLC, and the lease between defendant, BAY PLAZA COMMUNITY CENTER, LLC i/s/h/a BAY PLAZA COMMUNITY CENTRE, LLC, and Daffy's, Inc.

- b) Defendants object to plaintiff's demand for license agreements for the subject bathroom as irrelevant, overbroad, unduly burdensome and vague.

11. MAINTENANCE, REPAIR AND CONSTRUCTION RECORDS

- a) Defendants object to plaintiff's demand as irrelevant, overbroad, unduly burdensome and vague. Over objection and without waiving same, upon information and belief, defendants, BAY PLAZA COMMUNITY CENTER, LLC i/s/h/a BAY PLAZA COMMUNITY CENTRE, LLC, and SP CENTER, LLC, are not in possession of any records of maintenance, repair, construction, contractors, work records, permits, bids, applications, engineering plans, or surveys regarding the subject bathroom. Although previously exchanged by co-defendant, Accolade Building Maintenance Corp., on September 16, 2014, as a measure of good faith, annexed hereto as **Exhibit "C"**, is a contract for janitorial services between Defendants and Accolade Building Maintenance Corp.
- b) Defendants object to plaintiff's demand as irrelevant, overbroad, unduly burdensome and vague. Over objection and without waiving same, upon information and belief, defendants, BAY PLAZA COMMUNITY CENTER, LLC i/s/h/a BAY PLAZA COMMUNITY CENTRE, LLC, and SP CENTER, LLC, are not in possession of any records of maintenance, repair, construction, contractors, work records, permits, bids, applications, engineering plans, or surveys regarding the subject bathroom.

- c) Defendants object to plaintiff's demand as irrelevant, overbroad, unduly burdensome and vague. Over objection and without waiving same, upon information and belief, defendants, BAY PLAZA COMMUNITY CENTER, LLC i/s/h/a BAY PLAZA COMMUNITY CENTRE, LLC, and SP CENTER, LLC, are not in possession of any records of maintenance, repair, construction, contractors, work records, permits, bids, applications, engineering plans, or surveys regarding the subject bathroom.
- d) Defendants object to plaintiff's demand for the name, address, employment relationship and date of birth of the person or entity responsible for repair or maintenance of the subject bathroom for a 3 year period prior to and including the date of incident, as irrelevant, overbroad, unduly burdensome and vague. Over objection and without waiving same, upon information and belief, co-defendant, Accolade is responsible for repair or maintenance of the subject bathroom at the time of plaintiff's alleged incident.
- e) Defendants object to plaintiff's demand as irrelevant, overbroad, unduly burdensome and vague. Over objection and without waiving same, upon information and belief, defendants, BAY PLAZA COMMUNITY CENTER, LLC i/s/h/a BAY PLAZA COMMUNITY CENTRE, LLC, and SP CENTER, LLC, are not in possession of any records of maintenance, repair, construction, contractors, work records, permits, bids, applications, engineering plans, or surveys regarding the subject bathroom.
- f) Defendants object to plaintiff's demand as irrelevant, overbroad, unduly burdensome and vague. Over objection and without waiving same, upon

information and belief, defendants BAY PLAZA COMMUNITY CENTER, LLC i/s/h/a BAY PLAZA COMMUNITY CENTRE, LLC, and SP CENTER, LLC, are not in possession of any accident / incident reports, however, defendants continue to conduct a good faith search, and should same exist defendants reserve the right to supplement this response.

- g)** Defendants object to plaintiff's demand for post-incident repairs as irrelevant, overbroad, unduly burdensome and vague. Furthermore, defendants object to plaintiff's demand as improper. Neimann v. Luca, 214 A.D.2d 658 (2d Dept. 1995).
- h)** Defendants object to plaintiff's demand as irrelevant, overbroad, unduly burdensome and vague. Over objection and without waiving same, upon information and belief, defendants BAY PLAZA COMMUNITY CENTER, LLC i/s/h/a BAY PLAZA COMMUNITY CENTRE, LLC, and SP CENTER, LLC, are not in possession of any photographs of the scene of the incident other than those which may have been provided by the parties to this action.
- i)** Defendants object to plaintiff's demand for job meeting minutes, safety meeting minutes and/or gang box meeting minutes as irrelevant, overbroad, unduly burdensome and vague.
- j)** Defendants object to plaintiff's demand as irrelevant, overbroad, unduly burdensome and vague. Over objection and without waiving same, upon information and belief, defendants, BAY PLAZA COMMUNITY CENTER, LLC i/s/h/a BAY PLAZA COMMUNITY CENTRE, LLC, and SP CENTER, LLC, are not in possession of any records of maintenance, repair, construction, contractors,

work records, permits, bids, applications, engineering plans, or surveys regarding the subject bathroom.

- k)** Defendants object to plaintiff's demand for a site safety plan as irrelevant, overbroad, unduly burdensome and vague.
- l)** Defendants object to plaintiff's demand for safety manuals, safety memos and other safety materials distributed to employees as irrelevant, overbroad, unduly burdensome and vague.
- m)** Defendants object to plaintiff's demand for the name and address of the person designated as a "site safety officer" for the subject bathroom as irrelevant, overbroad, unduly burdensome and vague.
- n)** Defendants object to plaintiff's demand as irrelevant, overbroad, unduly burdensome and vague. Over objection and without waiving same, upon information and belief, defendants, BAY PLAZA COMMUNITY CENTER, LLC i/s/h/a BAY PLAZA COMMUNITY CENTRE, LLC, and SP CENTER, LLC, are not in possession of any records of maintenance, repair, construction, contractors, work records, permits, bids, applications, engineering plans, or surveys regarding the subject bathroom.
- o)** Defendants object to plaintiff's demand for a copy of the contract between the owner and the architect regarding the subject bathroom as irrelevant, overbroad, unduly burdensome and vague.
- p)** Defendants object to plaintiff's demand for a copy of the contract retaining a consulting engineer as irrelevant, overbroad, unduly burdensome and vague.

- q) Defendants object to plaintiff's demand as irrelevant, overbroad, unduly burdensome and vague. Over objection and without waiving same, upon information and belief, defendants, BAY PLAZA COMMUNITY CENTER, LLC i/s/h/a BAY PLAZA COMMUNITY CENTRE, LLC, and SP CENTER, LLC, are not in possession of any records of maintenance, repair, construction, contractors, work records, permits, bids, applications, engineering plans, or surveys regarding the subject bathroom.
- r) Defendants object to plaintiff's demand for timekeeper records as irrelevant, overbroad, unduly burdensome and vague.
- s) Defendants object to plaintiff's demand as irrelevant, overbroad, unduly burdensome and vague. Over objection and without waiving same, upon information and belief, defendants, BAY PLAZA COMMUNITY CENTER, LLC i/s/h/a BAY PLAZA COMMUNITY CENTRE, LLC, and SP CENTER, LLC, are not in possession of any records of maintenance, repair, construction, contractors, work records, permits, bids, applications, engineering plans, or surveys regarding the subject bathroom.
- t) Defendants object to plaintiff's demand for rental agreements for equipment for the subject bathroom as irrelevant, overbroad, unduly burdensome and vague.
- u) Defendants object to plaintiff's demand for copies of general contractor's or construction manager's project file as irrelevant, overbroad, unduly burdensome and vague.
- v) Defendants object to plaintiff's demand for OSHA correspondence as irrelevant, overbroad, unduly burdensome and vague.

- w) Defendants object to plaintiff's demand for copies of any written complaints received by any party on the job site concerning the subject bathroom as irrelevant, overbroad, unduly burdensome and vague.
- x) Defendants object to plaintiff's demand as irrelevant, overbroad, unduly burdensome and vague. Over objection and without waiving same, plaintiff's demand for copies of any medical records concerning the plaintiff for medical treatment rendered to the plaintiff is best directed at plaintiff.

12. INSPECTION OF INCIDENT SITE

- a) Defendants object to plaintiff's demand for inspection of the subject bathroom as irrelevant, overbroad, unduly burdensome and vague.

13. ACTUAL AND CONSTRUCTIVE NOTICE

- a) Defendants object to plaintiff's demand as irrelevant, overbroad, unduly burdensome and vague. Over objection and without waiving same, upon information and belief, defendants, BAY PLAZA COMMUNITY CENTER, LLC i/s/h/a BAY PLAZA COMMUNITY CENTRE, LLC, and SP CENTER, LLC, are conducting a good faith search of any copies of claims alleging any defective unsafe, dangerous or obstructed condition complained of at the subject bathroom for a period of two years prior, and should same exist defendants reserve the right to supplement this response.
- b) Defendants object to plaintiff's demand as irrelevant, overbroad, unduly burdensome and vague. Over objection and without waiving same, upon information and belief, defendants, BAY PLAZA COMMUNITY CENTER, LLC i/s/h/a BAY PLAZA COMMUNITY CENTRE, LLC, and SP CENTER, LLC, are

not in possession of any records of maintenance, repair, construction, contractors, work records, permits, bids, applications, engineering plans, or surveys regarding the subject bathroom.

- c) Defendants object to plaintiff's demand as irrelevant, overbroad, unduly burdensome and vague. Over objection and without waiving same, upon information and belief, defendants, BAY PLAZA COMMUNITY CENTER, LLC i/s/h/a BAY PLAZA COMMUNITY CENTRE, LLC, and SP CENTER, LLC, are conducting a good faith search of the section and/or individual who inspects and/or monitors the maintenance of the subject bathroom, and should same exist defendants reserve the right to supplement this response.
- d) Defendants object to plaintiff's demand for follow-up reports as irrelevant, overbroad, unduly burdensome and vague.
- e) Defendants object to plaintiff's demand as irrelevant, overbroad, unduly burdensome and vague. Over objection and without waiving same, upon information and belief, defendants BAY PLAZA COMMUNITY CENTER, LLC i/s/h/a BAY PLAZA COMMUNITY CENTRE, LLC, and SP CENTER, LLC, are not in possession of any accident / incident reports, however, defendants continue to conduct a good faith search, and should same exist defendants reserve the right to supplement this response.
- f) Defendants object to plaintiff's demand as irrelevant, overbroad, unduly burdensome and vague. Over objection and without waiving same, upon information and belief, defendants BAY PLAZA COMMUNITY CENTER, LLC i/s/h/a BAY PLAZA COMMUNITY CENTRE, LLC, and SP CENTER, LLC, are

not in possession of any accident / incident reports, however, defendants continue to conduct a good faith search, and should same exist defendants reserve the right to supplement this response.

- g) Defendants object to plaintiff's demand for the names of employees who may have written, prepared, reviewed or provided information and their employment status as irrelevant, overbroad, unduly burdensome and vague.

14. EMPLOYEE/AGENT INFORMATION

- a) Defendants object to plaintiff's demand for the names and shifts of each and every manager, assistant manager, or other person in a management position at the subject bathroom who was actually working as irrelevant, overbroad, unduly burdensome and vague.
- b) Defendants object to plaintiff's demand as irrelevant, overbroad, unduly burdensome and vague. Over objection and without waiving same, upon information and belief, defendants BAY PLAZA COMMUNITY CENTER, LLC i/s/h/a BAY PLAZA COMMUNITY CENTRE, LLC, and SP CENTER, LLC, are conducting a good faith search for names of all maintenance employees/agents at the subject bathroom at the time of plaintiff's alleged incident, and should same exist defendants reserve the right to supplement this response.
- c) Defendants object to plaintiff's demand as irrelevant, overbroad, unduly burdensome and vague. Over objection and without waiving same, upon information and belief, defendants BAY PLAZA COMMUNITY CENTER, LLC i/s/h/a BAY PLAZA COMMUNITY CENTRE, LLC, and SP CENTER, LLC, are conducting a good faith search for names of all security agents/employees present

at the subject bathroom at the time of plaintiff's alleged incident, and should same exist defendants reserve the right to supplement this response.

15. PRIOR CLAIMS

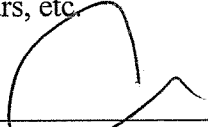
- a) Defendants object to plaintiff's demand as irrelevant, overbroad, unduly burdensome and vague. Over objection and without waiving same, upon information and belief, defendants BAY PLAZA COMMUNITY CENTER, LLC i/s/h/a BAY PLAZA COMMUNITY CENTRE, LLC, and SP CENTER, LLC, are conducting a good faith search for whether there were any prior incidents in the subject bathroom due to substances on the floor for a period of two years prior, and should same exist defendants reserve the right to supplement this response.

- b) Defendants object to plaintiff's demand for whether or not any other action or claim, including a lawsuit, worker's compensation claim, social security claim, disability benefits claim arising out of the alleged condition complained of was instituted as irrelevant, overbroad, unduly burdensome and vague. Over objection and without waiving same, upon information and belief, defendants BAY PLAZA COMMUNITY CENTER, LLC i/s/h/a BAY PLAZA COMMUNITY CENTRE, LLC, and SP CENTER, LLC, are conducting a good faith search for whether there were any prior claims of the subject bathroom due to substances on the floor for a period of two years prior, and should same exist defendants reserve the right to supplement this response.

PLEASE TAKE FURTHER NOTICE, that the defendants hereby deem the above responses to be ongoing in nature and reserve their right to supplement and/or amend the same should further information and/or documentation become available up to the time of trial.

Dated: New York, New York
March 23, 2016

Yours, etc.



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LAW OFFICES OF SAFRANEK, COHEN & KROLIAN
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DAFFY'S INC.
1 Water Street
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(914) 997-0072

EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
JACKELINE MONTOYA,

Index No.: 21612/2011E

Plaintiff,

CPLR 3101D

-against-

EXPERT EXCHANGE

BAY PLAZA APPLE, LLC, BAY PLAZA COMMUNITY
CENTRE, LLC AND SP CENTER, LLC, DAFFY'S, INC., and
ACCOLADE BUILDING MAINTENANCE CORP.,

Defendants.

-----X
C O U N S E L O R S :

PLEASE TAKE NOTICE, that defendants, BAY PLAZA COMMUNITY CENTRE, LLC AND SP CENTER, LLC (referred to hereinafter as "Defendants"), by and through their attorneys, MALAPERO & PRISCO LLP, as and for an Expert Witness Disclosure pursuant to §3101(d) of the Civil Practice Law and Rules ("CPLR"), state as follows:

1. Name of Expert: Dr. Allan E. Rubenstein

2. Subject Matter of Testimony: It is anticipated that Dr. Rubenstein will testify relative to his review of Plaintiff's medical records and relative to his neurologic evaluations and observations of Plaintiff JACKELINE MONTOYA ("Plaintiff"). Annexed hereto as "**Exhibit A**" is a copy of Dr. Rubenstein's report of his examination(s) of the Plaintiff that is incorporated herein by reference.

3. Substance of facts and opinions: The substance of the facts and opinions upon which Dr. Rubenstein is expected to testify are contained in all of Plaintiff's medical records, the pleadings, pretrial and trial testimony of the parties and non-party witnesses, all discovery exchanged by the parties, all trial exhibits and Dr. Rubenstein's examination and observation of Plaintiff. Dr. Rubenstein is expected to testify that his neurologic evaluation of

Plaintiff showed that Plaintiff had a normal neurologic examination and suffers from no neurologically based dysfunction. He will testify in accordance with those items and areas contained in the report and those areas reasonably extending therefrom.

Dr. Rubenstein is further expected to testify as follows:

- a. Dr. Rubenstein is expected to rebut the testimony of the Plaintiff(s) and/or Plaintiff's experts, if any; and
 - b. Dr. Rubenstein is expected to testify and/or comment on the reports of the Plaintiff's and/or Defendants' experts, if any.
4. Qualifications of Dr. Rubenstein: Annexed hereto as "**Exhibit B**" is a copy of Dr. Rubenstein's *curriculum vitae*, the contents of which are incorporated herein by reference.
5. Summary of the Grounds of Dr. Rubenstein's Opinion:
- (1) legal papers filed and/or exchanged in this matter;
 - (2) knowledge and expertise in orthopedics;
 - (3) custom and practice;
 - (4) medical treatment records of Plaintiff;
 - (5) his examination and observations of Plaintiff
 - (6) records of examiners of Plaintiff;
 - (7) authoritative journals and articles; and
 - (8) experience.

PLEASE TAKE FURTHER NOTICE, that this disclosure is pursuant to CPLR §3101(d) and is not intended to limit the scope or substance of any expert called by the Defendant(s) at trial. This disclosure should not be considered all encompassing, as expert

testimony to be offered by Defendant(s) shall depend, of necessity, upon the issues raised at trial by other experts, physicians and witnesses.

PLEASE TAKE FURTHER NOTICE, that Defendant(s) reserves its right to present further testimony as issues are developed at trial.

Dated: New York, New York
October 29, 2015

Yours etc.,



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EXHIBIT A

COMPREHENSIVE NEUROLOGY SERVICES, PC

101 West 79 Street Suite 3B, New York, N.Y. 10024
Tel: (212) 974-3009 Email: arubenstein@cns-pc.com

Allan E Rubenstein, MD, Medical Director

Clinical Professor of Neurology and Pediatrics, NYU Langone Medical Center
Board Certified, American Board of Psychiatry and Neurology (Neurology)
Member, American Academy of Neurology

July 6, 2015

Summary of Neurologic Evaluation of Jackeline Montoya

DOB 11/13/80

Date of Evaluation: July 6, 2015

Records Reviewed: See Attached.

History:

Jackeline Montoya is a 28 year-old right-handed Hispanic woman who was unaccompanied. Ms. Montoya was informed that the examination is being provided at the request of a law firm which represents the defendants in a lawsuit in which she is a plaintiff, and that no doctor-patient relationship is involved or implied. Ms. Montoya understood and agreed.

Ms. Montoya has a cerebral hemorrhage in 2007 due to an AVM for which she had a surgical resection. She has a seizure disorder for which she takes medication as a result.

Ms. Montoya allegedly sustained trauma to her low back and right hip in a slip and fall on 8/16/10. She was 23 weeks pregnant at the time. She was seen at the Montefiore Medical Center ER, given pain medication and sent home. She continued to have low back pain and returned to the Montefiore MC ER on 8/24/10, where she was again given pain medication and sent home. She received physical therapy from 9/27/10 through 4/26/11. On 12/8/10, she had an elective cesarean section and gave birth to a healthy girl. An EMG/NC study 1/14/11 LE's was normal. On 2/17/11 she had a trigger point injection to her lumbar spinal area. Lumbar spine MRI 2/28/11 reported transitional lower intervertebral disc. There was a L2-3 posterior subligamentous disc bulge, L3-4 and L4-5 posterior more prominent disc bulges with flattening of the ventral thecal sac, L5-S1 posterior prominent disc bulge with facet, hypertrophic changes and eccentric right foraminal narrowing and S1-2 left sided osseous productive change, extending toward the peripheral exiting left S1 root. Digital radiographic biomechanical/mensuration 3/3/11 reported angular motion segment integrity and appeared normal. Abnormal motion segment integrity values were indicated for translational values at L3, 4 and 5. Her digital analysis revealed loss of motion integrity at L3, L4 and L5. These findings were highly suggestive of ligament and connective tissue damage. Ligamentous instability was suggested in the lumbar spine. There was an abnormal line of weight bearing of 0.43 mm posterior. Interruptions of the George's Line at L1-2, L2-3, L3-4 and L4-5 were indicative of ligamentous instability or sub failure. On 3/30/11 she had another trigger point injection to her lumbar spine. She received chiropractic therapy from 5/16/11 through 4/27/12. CT scan of head 8/22/11 was normal.

On 9/14/11 Ms. Montoya was admitted to Montefiore Medical Center in acute renal failure after a suicide attempt in which she overdosed on ibuprofen, Lexapro, Naprosyn and Flexeril. She

was noted to have had postpartum depression in the past and a history of sexual abuse by her stepfather. She was discharged home on 9/17/11 and then received four trigger point injections to her lumbar spine and chiropractic therapy from 10/4/11 through 12/14/11.

Ms. Montoya presently complains of persistent non-radiating low back pain. She claims she can only work 3 hours a day as an after school teacher due to her back problems, and that she can no longer wear heels, stand for long periods of time or run. She takes Flexeril and Percoset prn. She no longer receives PT but claims to have started seeing a neurologist in Florida, where she recently moved. She is able to drive short distances and takes public transportation. She denies smoking, alcohol or drug abuse.

PHYSICAL EXAMINATION:

Height: 5'1"

Weight: 147 lbs

Carotid pulses were 2+ without bruits.

All palpation was carried out by using light finger pressure. The claimant was instructed to respond immediately if he felt pain under the examiner's finger by saying 'pain' and to keep repeating the word as many times as pain was experienced. When performing range of motion, the claimant was advised to do the best she was capable of.

CERVICAL SPINE:

The claimant was not using a cervical collar.

Palpation of the cervical spine revealed no vertebral tenderness or spasm of the paraspinal muscles.

The range of motion of the cervical spine showed flexion at 45 degrees (45 degrees normal), extension was 45 degrees (45 degrees normal), right and left lateral bending was 45 degrees (45 degrees normal) and right and left lateral rotation was 80 degrees (80 degrees normal).

THORACIC SPINE:

There was no tenderness over the thoracic spine or thoracic paraspinal muscles. There was no spasm of the thoracic paraspinal muscles.

LUMBAR SPINE:

The claimant was not wearing a lumbosacral support.

Palpation of the lumbar spine revealed no vertebral tenderness. There was no paraspinal muscle spasm on the right or left side.

The range of motion of the lumbar spine showed flexion at 45 degrees (90 degrees normal), extension was 30 degrees (30 degrees normal), right and left lateral bending was 30 degrees (30 degrees normal) and right and left lateral rotation was 30 degrees (30 degrees normal). Sitting straight leg-raising test was at 45 degrees bilaterally (90 degrees normal).

Ms. Montoya wore a L/S elastic support.

GAIT AND STATION:

The claimant had a normal gait. The claimant did not require assistance in getting on and off the examination table. The claimant did not use a cane, walker or crutches to ambulate.

FUNCTIONAL MUSCLE TESTING:

Functional muscle testing revealed muscle strength to be 5/5 in all four extremities. No atrophy noted.

SENSORY EXAMINATION:

Normal pin, light touch, vibratory and position sensation. Tinel's sign and Phalen's sign were negative bilaterally.

REFLEXES:

Deep tendon reflexes were symmetrical and 1-2+ in all four extremities. Plantar responses were flexor bilaterally.

COORDINATION:

Finger-to-nose and heel-to-shin tests were normal bilaterally.

HIGHER MENTAL FUNCTION:

Recent and remote memory, language and affect were normal.

CRANIAL NERVES:

Cranial nerves II through XII are intact. Fundi are normal.

IMPRESSION AND DIAGNOSIS:

Ms. Montoya claims persistent low back pain since an alleged slip and fall almost 5 years ago despite extensive PT, chiropractic treatment and trigger point injections. A previous LE EMG was reportedly normal. Her neurologic examination is normal. She has no evidence for neurologic dysfunction.

There is no evidence for L/S paraspinal muscle spasm.

The above is stated within a reasonable degree of medical certainty.



Allan E. Rubenstein, M.D.

Jackeline Montoya Records Reviewed

8/16/10 Montefiore Medical Center – Triage note.

8/16/10 Weiler Hospital – ED physician notes.

8/24/10 Mary Badillo, MD of Montefiore Medical Center – ED record.

8/25/10 Montefiore Medical Center – Consultation report.

8/30/10 Leslie Plachta, MD of Montefiore Medical Center – Office visit.

9/16/10 Leslie Plachta, MD of Montefiore Medical Center – Office visit.

9/27/10 through 4/26/11 Physical therapy notes.

9/30/10 Leslie Plachta, MD of Montefiore Medical Center – Office visit.

10/26/10 Leslie Plachta, MD of Montefiore Medical Center – Office visit.

11/24/10 through 12/6/10 Leslie Plachta, MD of Montefiore Medical Center – Prenatal visits.

12/8/10 through 12/10/10 Montefiore Medical Center – Hospital care records.

12/8/10 Gavin Somersel, MD of Montefiore Medical Center – Operative report.

12/15/10 Montefiore Medical Center – ED physician note.

1/14/11 Jacob Nir, MD, CPMR – Electromyographic and nerve conduction study.

2/10/11 Corey Stein, DC – Chiropractic examination.

2/17/11 Ellen S. Ginsberg, MD – Procedure note.

2/28/11 R. C. Krishna, MD of Westchester Medical Care, PC – Neurological consultation.

2/28/11 Robert Diamond, MD of Stand-Up MRI of the Bronx, PC – MRI of the lumbar spine.

3/3/11 Steven Brownstein, MD of Park Radiology, PC – Digital radiographic biomechanical/mensuration report.

3/30/11 Ellen S. Ginsberg, MD – Procedure note.

5/16/11 through 4/27/12 Coop City Chiropractic PC – Chiropractic therapy notes.

8/22/11 Keivan Shifteh, MD of Montefiore Advance Imaging – CT scan of the head.

9/14/11 through 9/17/11 Montefiore Medical Center – Hospital care records.

9/14/11 Montefiore Medical Center – EKG report.

9/14/11 Seymour Sprayregen, MD of Montefiore Medical Group – Chest x-ray.

9/14/11 Jeffrey Roberts, MD of Montefiore Medical Group– Sonography of bilateral kidneys.

9/15/11 Montefiore Medical Center – EKG report.

9/15/11 Montefiore Medical Center – Consultation report.

9/16/11 Soo Kim, MD of Montefiore Medical Center – EKG report.

9/21/11 Ellen S. Ginsberg, MD – Procedure note.

10/4/11 through 12/14/11 Bay Plaza Chiropractic, PC – Chiropractic therapy notes.

10/5/11 Ellen S. Ginsberg, MD – Procedure note.

10/12/11 Ellen S. Ginsberg, MD – Procedure note.

10/19/11 Ellen S. Ginsberg, MD – Procedure note.

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ACADEMIC TRAINING:

Cornell University, B.A., 1966

University of Rochester School of Medicine, 1966 – 1968

Tufts University School of Medicine, 1968 – 1970, M.D., 1970

Intern, Medicine, Columbia University College of Physicians and Surgeons,
Harlem Hospital Division, 1970 – 1971

Resident in Neurology, Columbia-Presbyterian Medical Center –
New York Neurological Institute, 1971 – 1974

POST-GRADUATE TRAINING:

Annual Course on Radioassay Techniques, The Endocrine Society,
Bethesda, MD, 1977

Medical Genetics and Experimental Mammalian Genetics, Jackson Laboratory,
Bar Harbor, ME, 1982

SPECIALTY BOARD CERTIFICATION:

American Board of Psychiatry and Neurology, 1976 (Neurology)

American Society for Neuroimaging, Neuro-CT, 1982 (Inactive)

MEDICAL SOCIETIES:

American Academy of Neurology, Fellow 1978 – 2004, Active 2004-Present

American Society for Clinical Oncology

Society for NeuroOncology

American Association for Cancer Research

New York State Medical Society

New York County Medical Society

New York Academy of Sciences (Inactive)

New York Academy of Medicine

Royal Society of Medicine

HONORS, AWARDS AND APPOINTMENTS

HONORS AND AWARDS:

- 1984: Annual Service Award, National Neurofibromatosis Foundation
- 1989: Distinguished Achievement in Medical Research, East Manhattan Chamber of Commerce
- 2013: Juilliard concert series endowed in my honor for children at Hassenfeld Pediatric Cancer Center, NYU Langone Medical Center

ACADEMIC JOURNALS:

- Contributing Editor, Mount Sinai Journal of Medicine, 1976 - 2004
 - Invited Reviewer:

New England Journal of Medicine, Science, Cancer Research, Neurology, Archives of Neurology, Journal of the Autonomic Nervous System, Family Medicine

ACADEMIC ORGANIZATIONS:

- National Neurofibromatosis Foundation:
 - 1978: Co-Founder
 - 1978 - 2003: Medical Director
 - 1987 - 2003: Board of Directors
 - 2003-Present: Medical Director Emeritus
- Dysautonomia Foundation:
 - 1980 - 1992: Medical Advisory Board
- Von Hippel-Lindau Family Alliance
 - 1994 – 2003 Medical Advisory Board
- American Board of Psychiatry and Neurology
 - 1976-1990: Examiner

GOVERNMENTAL AGENCIES:

- **NINDS**
- 1987: Working Group on NF
- 1987: Neurogenetics Study Section, Ad hoc member -- National Cancer Institute
- 1982: U.S. Representative, U.S. – Japan Cooperative Cancer Program, Workshop on Neural Crest Tumors
- **U.S. FDA**
- 1996, 2001 Neurology Study Section, Ad hoc member -- Orphan Products Grant Program

- **U.S. DEPARTMENT OF DEFENSE**
 - 1997 - 2000 Member, Integration Panel, U.S. Army NF Research Program ,
 - 2001: Head, Integration Panel, U.S. Army NF Research Program

HOSPITAL APPOINTMENTS:

- NYU Medical Center: Adult and Pediatric Neurology
- 2009 – Present: Attending
- Mount Sinai Hospital, Neurology:
 - 1974 - 1981: Assistant Attending
 - 1982 - 2009: Associate Attending
- Beth Israel Hospital, Neurology:
 - 1974 - 1976: Assistant Attending
- Catholic Medical Center of Brooklyn and Queens:
 - 1974 - 1986: Consultant in Neurology

MEDICAL SCHOOL APPOINTMENTS:

- **INSTRUCTOR, NEUROLOGY 1974 - 1976**
 - **Department of Neurology, Mount Sinai School of Medicine**
 - **Chief of Neurology, Bernstein Institute at Beth Israel Hospital**
 - **Director of Neurology Rotation, Beth Israel Hospital**
 - Conducted daily teaching rounds with residents.
 - Organized and ran weekly neurology conference.
 - Supervised medical student rotation in neurology.
- **ASSISTANT PROFESSOR, NEUROLOGY 1977 - 1981**
 - **Director, Autonomic Function Laboratory**
 - Developed clinical autonomic function laboratory with physiologic, pharmacologic and pupillometric capabilities.
 - Studied autonomic abnormalities in Shy-Drager syndrome, OPCA, Parkinson's disease, various types of peripheral neuropathy and familial Dysautonomia.
 - Received peer reviewed funding from the Dysautonomia Foundation and appointed to its Medical Advisory Board.
 - Contributor to first textbook on autonomic failure, edited by Sir Roger Bannister.
- **ASSOCIATE PROFESSOR, NEUROLOGY: 1982-2008**
 - **Director, Mount Sinai Neurofibromatosis Research and Treatment Center**

CLINICAL

- Established first interdisciplinary clinic devoted to Neurofibromatosis in the world. The clinic has been a model for over 25 other NF clinics in the U.S. and Europe. The clinic has one of the largest NF populations in the world.
- Contributed to descriptions of numerous clinical phenomena in NF which expanded the spectrum of the disorder, including learning disability, progressive dural ectasia and adult onset meningocele, congenital megacolon, congenital melanocytic nevi, benign brainstem tumors, xanthogranuloma, clustering of severe complications in NF kindreds, familial transmission of segmental NF, post-zygotic mutation in twins with NF, unidentified bright objects (UBO's) on MRI, large deletion phenotype in NF-1, recurrent sporadic mutations in NF-1, and post-radiation malignancy in NF-2.
- Organized first genetic counseling program for NF, which included individual and family counseling, crisis intervention, outreach and support groups.
- Designated by New York State Office of Mental Retardation and Developmental Disabilities as only NF outreach and Crisis intervention center in New York State.
- Designated as participating center in National NF Foundation pilot project on clinical database for NF; participating center in first multi-center clinical trials for the treatment of NF-1.

RESEARCH

- Developed cellular biology laboratory focusing on growth control in neurofibromas. The laboratory had 2 junior faculty Ph.D.s, 1 post-doctoral fellow and 1 M.D. – Ph.D. candidate. The laboratory received funding from the Easter Seals Research Foundation, the National NF Foundation and the NIH.
- Performed first neurotransmitter analysis of neurofibromas, first studies on effects of growth factors on neurofibromas and first identified NGF receptors on neurofibromas. The latter discovery led to the ability to produce pure schwann cell cultures from neurofibromas and to the use of the NGF receptor gene as a candidate gene in the first successful linkage study on NF.
- NF tumor, blood, skin biopsy and autopsy material from the center was a major source of research material for numerous gene linkage, cloning and cancer research laboratories in the U.S. and Europe.

TEACHING

- Provided specialty clinic experience for adult and pediatric neurology, pediatrics and genetic residents.
- Developed the first NF specialty rotation for genetic counseling students in the world with Sarah Lawrence College graduate program in Human Genetics and the Mount Sinai Department of Genetics.

2003-2011: NexGenix Pharmaceuticals, CEO, part-time

Privately-held drug development effort for orphan neurologic disorders.

2009-Present:

CLINICAL PROFESSOR OF NEUROLOGY and PEDIATRICS, NYU LANGONE SCHOOL OF MEDICINE

Co-Director, NYU Neurofibromatosis-1 Program

PATENT APPLICATIONS

1. Heck, J., N. Winssinger, J. Chabala, S. Barluenga, R. Chen, A.E. Rubenstein, X. Shen, J. Yu, M. Giovannini, "Macrocyclic Prodrug Compounds Useful as Therapeutics," International Patent Application, 2009, Application No. PCT/US09/34878.
2. Chen, R., A.E. Rubenstein, X. Shen, and J. Yu, and M. Giovannini, "Treatment of Neurofibromatosis with Radicol and its Derivatives," International Patent Application, Publication No. WO 08/150302.
3. Chen, R., A.E. Rubenstein, and X. Shen, "Local Treatment of Epidermal and Dermal Hyperproliferative Lesions," International Patent Application, Publication No. WO 08/021981.
4. Chen, R., A.E. Rubenstein, X. Shen, and J. Yu, and M. Giovannini, "Treatment of Neurofibromatosis with HSP90 Inhibitors," International Patent Application, Publication No. WO 07/143630.
5. Chen, R., A.E. Rubenstein, X. Shen, and J. Yu, and M. Giovannini, "Treatment of Neurofibromatosis with Inhibitors of a Signal Transduction Pathway," International Patent Application, Publication No. WO 07/143629.

PUBLICATIONS

1. Rubenstein AE, Boyle J, Odoroff CL and Kunitz SJ: Effects of improved sanitary facilities on infant diarrhea in a Hopi village. Public Health Reports 84: 1093 – 1097, 1969.
2. Rubenstein AE and Brust JCM: Parkinsonian syndrome as a complication of post-thyroidectomy hypoparathyroidism. NY State J. Med. 74: 2029 – 2030, 1974.
3. Rubenstein AE, Lovelace RE, Behrens MD and Weisburg, LA: Moebius syndrome in association with peripheral neuropathy and Kallman syndrome. Arch. Neurol. 32: 480-482, 1975.
4. Rubenstein AE and Yahr MD: Adult onset autonomic dysfunction coexistent with familial dysautonomia in a consanguineous family. Neurol. 27: 168-170, 1977.
5. Rubenstein AE and Wainapel SF: Acute hypokalemic myopathy in alcoholism. Arch. Neurol. 35: 553-555, 1977.

6. Yahr MD and Rubenstein AE: Extrapyrarnidal disorder of the central nervous system. In: Tice's Practice of medicine. Vol. 10, Chap. 12, Harper and Row, New York, NY 1977.
7. Rubenstein AE, Yahr MD, Mytilineou C, et al: Peripheral catecholamine depletion in amyloid autonomic neuropathy. Mt. Sinai J. Med. 45 (6): 782-789, 1978.
8. Rubenstein AE, Horowitz SH and Bender AN: Cholinergic dysautonomia in the myasthenic (Lambert-Eaton) syndrome. Neurol. 29: 720-723, 1979.
9. Rubenstein AE, Mytilineou C, Yahr MD, Sivak M, Mindel J. and Frontera AT: Orthostatic hypotension in the Holmes-Adie syndrome. Mt. Sinai J. Med. 47: 15-23, 1980.
10. Gleicher N, Milano CL, Rubenstein AE and Deligdisch L: Phakomatoses in reproductive medicine. Mt. Sinai J. Med. 47: 311-316, 1980.
11. Korczyn AD, Rubenstein AE, Yahr MD and Axelrod F: The pupil in familial dysautonomia. Neurol. 31 (5): 628-629, 1981.
12. Rubenstein AE, Mytilineou C, Yahr MD, Pearson J. and Goldstein M: Neurotransmitter analysis of dermal neurofibromas: implications for the pathogenesis and treatment of Neurofibromatosis. Neurol. 31 (9): 1184-1188, 1981.
13. Mindel JS, Rubenstein AE and Franklin B: Ocular erotamine tartrate troxicity during treatment of vacor-induced orthostatic hypotension. Am. J. Ophthalm. 92: 492-296, 1981.
14. Businaro R, Butler R, Rubenstein AE and Revoltella R: Monoclonal antibodies to mouse nerve growth factor produced by somatic cell hybrids. J. Neurosci. Res. 6: 89-98, 1981.
15. Wulfsohn M and Rubenstein AE: The management of Shy-Drager syndrome with propantheline and intermittent self-catheterization. J. Urology 126: 122-123, 1981.
16. Rubenstein AE, Mytilineou C, Yahr MD and Revoltella R: Neurologic aspects of Neurofibromatosis. Adv. Neurology 29: 11-23, 1981.
17. Riccardi V, Rubenstein AE, Fitzpatrick TB, et al: Clinical Diagnosis of Neurofibromatosis. Adv. Neurology 29: 86-89, 1981.
18. Rubenstein AE, Korczyn AD, Rayfield EJ and Thornton JC: Symposium on Diabetic Autonomic Neuropathy: Neurophysiology. NYS J. of Med. 82 (6): 588-589, 1982.
19. Korczyn AD and Rubenstein AE: Autonomic complications of therapy. In: Silverstein, A. ed: Neurologic Complications of Drugs. Plenum Press, New York, 1982.
20. Rubenstein AE: Amyloid neuropathy, In: Bannister, R., ed. Autonomic Failure. Oxford University Press, London, 1983.
21. Spence AM, Bader JL, Parry DL, Field LL, Funderburk SJ, Rubenstein AE, Gilman A and Sparkes RS: Linkage analysis of Neurofibromatosis. British Journal of Medical Genetics 25: 334-337, 1983.
22. Rubenstein AE: Neurofibromatosis. World Book Encyclopedia 22: 1173, 1983.
23. Rubenstein AE and Yahr F: Neurofibromatosis Information Booklet. Published by the National Neurofibromatosis Foundation, 1983.
24. Rubenstein AE, Gudesblatt M and Yahr MD: Acute autonomic neuropathy. Int. J. Neurology 31: 41-43, 1984.
25. Sobue G, Sonnenfeld KH, Rubenstein AE, Pleasure D: Tissue culture studies of Neurofibromatosis: Effects of axolemmal fragments and cyclic adenosine 3', 5' - monophosphate analogues on proliferation of Schwann-like and fibroblast-like neurofibroma cells. Ann. Neurol. 18: 68-73, 1985.
26. Sonnenfeld KH, Bernd P, Sobue G, Lebowhl M and Rubenstein AE. Nerve growth factor receptors on dissociated neurofibroma Schwann-like cells. Cancer Res, 76: 117, 1986.
27. Rubenstein AE: Neurofibromatosis: A Review of the clinical problem. Ann. NY Acad. Sci. 486: 1-13, 1986.
28. Sonnenfeld KH, Bernd P, Rubenstein AE and Sobue G: Nerve growth factor binding to cells derived from Neurofibromatosis. Ann. NY Acad. Sci. 486: 107-114, 1986.

29. Pleasure D, Kreider B, Sobue G, Ross A, Koprowski H, Sonnenfeld K and Rubenstein AE: Schwann-like cells cultured from human dermal neurofibromas: immunohistological identification and response to Schwann cell mitogens. *Ann NY Acad. Sci.* 486: 227-240, 1986.
30. Rubenstein AE: Neurofibromatosis. *Medicine in the News* 5:98, 1986.
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53. David F. Carney¹, Shyama Sidique,² Mira Sastri^{1,3}, Srinivasa Reddy Nataala¹, Jeffrey W. Stebbins^{1,5}, Li Yang,² Pooi San Lee,² Daniel Brimberry,² Robert Ardecky,² Peter Teriete², Allan E. Rubenstein^{1,4}, Nicholas D.P. Cosford², and G. Sridhar Prasad¹:
Efficacy of Dual-acting Inhibitors Targeting Hsp90 and TRAP1 in a Glioblastoma Cell Line.
Submitted to PLOS1 9/14

ABSTRACTS

1. Rubenstein AE, Yahr MD and Mytilineou C: peripheral adrenergic hypersensitivity in orthostatic hypotension: The effects of denervation versus decentralization. *Neurology* 28: 376, 1978.
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BOOKS

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2. Neurofibromatosis: A Handbook for Patients, Families and Health Care Professionals. Edited by Allan E. Rubenstein and Bruce R. Korf. Thieme-Stratton, NY, 1990.

3. Neurofibromatosis: A Handbook for Patients, Families and Health Care Professionals. 2nd Edition. Bruce R. Korf and Allan E. Rubenstein, Thieme, NY, 2005.

**INVITED LECTURES AND NON PUBLISHED PAPERS
PRESENTED AT NATIONAL CONFERENCES**

1. Columbia-Presbyterian Medical Center, NY, Neurology Grand Rounds: Acute Autonomic Neuropathy, 1981.
2. Massachusetts General Hospital, Boston, Neurofibromatosis Symposium, Department of Neurosurgery: Theoretical Aspects of Neurofibromatosis, 1982.
3. National Institute of Health, Bethesda, Interdepartmental Genetics Conference: A Possible Double Dose Family with Neurofibromatosis, 1982.
4. National Cancer Institute, U.S. – Japan Cooperative Cancer Program: Workshop on Neural Crest Tumors, Honolulu, 1982.
5. Yale University School of Medicine, New Haven, Neurofibromatosis Symposium, Department of Genetics: Neurofibromatosis: An Overview, 1984.
6. University of California at San Diego, San Diego, Neurofibromatosis Symposium, Department of Genetics: Neurofibromatosis Aspects of Neurofibromatosis, 1985.
7. University of Medicine and Dentistry of New Jersey, Rutgers, Neurology Grand Rounds: Neurofibromatosis, 1985.
8. North Shore University Hospital, Great Neck, Neurofibromatosis Symposium, Department of Genetics: Current Research in Neurofibromatosis, 1986.
9. Israel Neurological Society Annual Meeting, Tel Aviv, Invited Guest Lecture: Current Research in Neurofibromatosis, 1986.
10. Tulane University School of Medicine, New Orleans, Neurofibromatosis Symposium, Department of Genetics: Current Research in Neurofibromatosis, 1986.
11. Albany Medical College, Albany, Neurofibromatosis Symposium, Department of Rehabilitation Medicine: A Clinical Review of Neurofibromatosis, 1986.
12. University of Medicine and Dentistry of New Jersey, Newark, Neurology Grand Rounds: Neurofibromatosis, 1987.
13. 1st European Conference on Neurofibromatosis Sponsored by the British Neurofibromatosis Foundation: Neurofibromatosis: An Overview, 1987.
14. University of Indiana Medical Center, Indianapolis, Visiting Professor in Neurology, Neurology Grand Rounds: Neurologic Aspects of Neurofibromatosis, 1987.
15. University of Cincinnati Medical Center, Cincinnati, Department of Genetics: Review of Current Research in Neurofibromatosis, 1987.
16. The Salk Institute, La Jolla, Department of Neurosciences: Neurofibromatosis: the Clinical Problems, 1987.
17. University of South Florida Medical School, Tampa, Department of Genetics, Neurofibromatosis Symposium: Current Research in Neurofibromatosis, 1987.
18. Columbia-Presbyterian medical center, New York, Orthopedic Grand rounds: Orthopedic Aspects of Neurofibromatosis, 1987.
19. National Institute of Health, Bethesda, Consensus Development Conference on Neurofibromatosis: Variant Forms of Neurofibromatosis, 1987.
20. Booth Memorial Hospital, Queens, Pediatric Grand Rounds: Neurofibromatosis in Children, 1988.

21. The Cleveland Clinic, Cleveland, Department of Neurology, Neurofibromatosis Symposium: Neurologic Aspects of Neurofibromatosis, 1989.
22. Hackensack Medical Center, Hackensack, Pediatric Grand Rounds: Neurofibromatosis: Current Status, 1989.
23. Memorial Sloane-Kettering Hospital, New York, Pathology Seminar: Neurofibromatosis: An Update, 1990.
24. California Chapter NNF Symposium, Los Angeles: Neurologic Aspects of Neurofibromatosis, 1990.
25. National Association for Research in Neurologic Disorders, Washington, D.C." Research in Neurofibromatosis: The Next Decade, 1990.
26. First German Symposium on Neurofibromatosis, Sponsored by the German Neurofibromatosis Foundation, Hamburg: Neurofibromatosis Research: An Overview, 1990.
27. Cold Spring Harbor Conference, Cold Spring Harbor, Research Directions in Neurofibromatosis: Sympathetic Influences on Development of the Neurofibromatosis Phenotype, 1990.
28. University of Washington Medical Center, Seattle, Visiting Professor in Genetics: Phenotype Diversity in Neurofibromatosis, 1990.
29. Society for Neuroscience Annual Meeting, St. Louis, Neurofibromatosis Symposium: Neurofibromatosis – The Clinical Problem, 1990.
30. Rockefeller University, New York, Department of Dermatology: Neurofibromatosis: A Clinical Overview and Research Update, 1990.
31. Albert Einstein School of Medicine, New York, Neurology Grand Rounds: Neurofibromatosis, 1991.
32. World Health Organization Conference on Neurofibromatosis, Jacksonville, Neurofibromatosis: Incidence and Distribution, 1991.
33. Medical Center of Delaware, Wilmington, Neurology Grand Rounds: Neurofibromatosis, 1991.
34. American Academy of Neurology Annual Meeting, Boston, Seminar: Neurofibromatosis; From Clinical Phenotypes to the Genes, 1991.
35. University of Medicine and Dentistry of New Jersey, Rutgers, Neurology Grand Rounds: Neurofibromatosis update, 1992.
36. University of Medicine and Dentistry of New Jersey, Newark, Neurology Grand Rounds: Neurofibromatosis Update, 1992.
37. 2nd European Conference on Neurofibromatosis, Vienna: NF: A Clinical Overview, 1992.
38. International Congress of Dysmorphology, Strasbourg: Historical Aspects of NF1 and NF2, 1993.
39. International NF Association Conference, Hong Kong: Neurological Aspects of NF-1, 1994.
40. Jikei University, Tokyo: Neurological Aspects of NF-1, 1994.
41. Fifth European Neurofibromatosis Symposium, University of Leuven, Belgium: Recent Advances in NF-1 and NF-2, 1995.
42. Fifth European Neurofibromatosis Symposium, University of Leuven, Belgium: Post-radiation malignancy in NF-2, 1995.
43. Beijing University, Beijing: NF-1: A Clinical Overview, 1995.
44. Cold Spring Harbor Banbury Conference, Cold Spring Harbor, Developing Therapies for Neurofibromatosis: NF-1 Treatment: Data and Data Collection, 1995.
45. Neuro-otology New York 1996 (CME Conference) NF-2: An Update.
46. UCSD, Children's Hospital, San Diego: Mini Seminar LVII: NF – Overview and Recent Developments, 1995.
47. Sarah Lawrence College, New York, Graduate Program in Human Genetics: NF: An Update, 1997.

48. Manhattan Eye, Ear and Throat Hospital, New York. Otolaryngology Grand Rounds: NF-2, 1997.
49. Lenox Hill Hospital, New York, Pediatric Grand Rounds: NF: An Overview, 1998.
50. NYU Medical Center. Neurology Grand Rounds: Advances in genetic diagnosis of NF-1 and NF-2, 1998.
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53. Panday, U., Cha, J., Jaffer, Z.M., Chen, R., Durham, H., Taylor, J.P., Winssinger, N., and Rubenstein, A.E. Proof-of-concept for a novel small molecule Hsp90 inhibitor for aging-related diseases. 13th Congress of the International Association of Biomedical Gerontology, 2009, Quebec City, Canada
54. Third International Research Workshop on Frontotemporal Dementia in ALS. Sunday June 21 - Thursday June 25, 2009. London, Ontario, Canada. Inhibitors as Potential Therapeutic Agents in ALS
55. Cha, J., Pandey, U., Zhu, H., Jaffer, Z. M., Chen, R., Charest, A., Taylor, J. P., Durham, H. D., Winssinger, N., and Rubenstein, A.E. A novel small molecule Hsp90 inhibitor: Applications for diseases of the nervous system. Gordon Conference: Stress Proteins in Growth, Development & Disease, 2009, Proctor Academy, Andover, NH.
56. Lukyanov, E., Chen, R., Zaffer, Z.M., Winssinger, N., Rubenstein, A.E., Zagzag, D., and Newcomb, E.W. Hsp90 inhibitor NXD30001 increased survival of GL261 glioma bearing mice. Joint Meeting of the Society for Neuro-Oncology and the AANS/CNS Section on Tumors, 2009, New Orleans, Louisiana.
57. Pandey, U., Jaffer, Z.M., Chen, R., Taylor, J. P., Winssinger, N., and Rubenstein, A.E. Proof-of-concept for a novel small molecule Hsp90 inhibitor for SBMA. Motor Neurone Disease Association, International Symposium on ALS/MND, 2009, Berlin, Germany.
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60. Chen, R., Tanaka, K., Jaffer, Z.M., Winssinger, N., Giovannini, M. and Rubenstein, A.E. Targeting a chaperone for Neurofibromatosis Type 2. House Ear Institute and Children's Tumor Foundation, NF2 – State of the Clinical Trial Meeting, 2010, Las Vegas, Nevada.
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AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

BRIANA GREENIDGE, being duly sworn, deposes and says:

That I am not a party to this action, and am over 18 years of age.

On the 30th day of October 2015, I served the within CPLR 3101(d) EXPERT EXCHANGE upon the attorneys whose names and addresses are set forth below, by enclosing a true copy thereof in a securely sealed envelope/container, with proper postage, addressed to its respective offices, and by depositing the same in an official box of the U.S. Post Office regularly maintained by the United States Government at 295 Madison Avenue, New York, New York 10017.

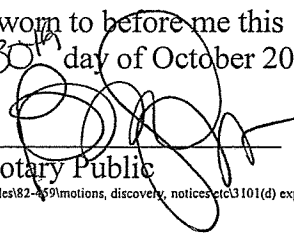
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Sworn to before me this
30th day of October 2015.

Notary Public

h:\files\82-459\motions, discovery, notices etc\3101(d) expert exchange - rubenstein.doc



BRENNA SANABRIA
Notary Public, State of New York
No. 01SA6259534
Qualified in Kings County
Commission Expires 04/16/2016


BRIANA GREENIDGE

MNL 82-459

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
JACKELINE MONTOYA,

Index No.: 21612/2011E

Plaintiff,

CPLR 3101D

-against-

EXPERT EXCHANGE

BAY PLAZA APPLE, LLC, BAY PLAZA COMMUNITY
CENTRE, LLC AND SP CENTER, LLC, DAFFY'S, INC., and
ACCOLADE BUILDING MAINTENANCE CORP.,

Defendants.

-----X
C O U N S E L O R S :

PLEASE TAKE NOTICE, that defendants, BAY PLAZA COMMUNITY CENTRE, LLC AND SP CENTER, LLC (referred to hereinafter as "Defendants"), by and through their attorneys, MALAPERO & PRISCO LLP, as and for an Expert Witness Disclosure pursuant to §3101(d) of the Civil Practice Law and Rules ("CPLR"), state as follows:

1. Name of Expert: Dr. Benjamin E. Rosenstadt
2. Subject Matter of Testimony: It is anticipated that Dr. Rosenstadt will testify relative to his review of Plaintiff's medical records and relative to his orthopedic evaluations and observations of Plaintiff JACKELINE MONTOYA ("Plaintiff"). Annexed hereto as "**Exhibit A**" is a copy of Dr. Rosenstadt's report of his examination(s) of the Plaintiff that is incorporated herein by reference.

3. Substance of facts and opinions: The substance of the facts and opinions upon which Dr. Rosenstadt is expected to testify are contained in all of Plaintiff's medical records, the pleadings, pretrial and trial testimony of the parties and non-party witnesses, all discovery exchanged by the parties, all trial exhibits and Dr. Rosenstadt's examination and observation of Plaintiff. Dr. Rosenstadt is expected to testify that his orthopedic evaluation of

Plaintiff showed that Plaintiff suffers from no orthopedically based disability and needs no further orthopedic treatment. He will testify in accordance with those items and areas contained in the report and those areas reasonably extending therefrom.

Dr. Rosenstadt is further expected to testify as follows:

- a. Dr. Rosenstadt is expected to rebut the testimony of the Plaintiff(s) and/or Plaintiff's experts, if any; and
 - b. Dr. Rosenstadt is expected to testify and/or comment on the reports of the Plaintiff's and/or Defendants' experts, if any.
4. Qualifications of Dr. Rosenstadt: Annexed hereto as "**Exhibit B**" is a copy of Dr. Rosenstadt's *curriculum vitae*, the contents of which are incorporated herein by reference.
5. Summary of the Grounds of Dr. Rosenstadt's Opinion:
- (1) legal papers filed and/or exchanged in this matter;
 - (2) knowledge and expertise in orthopedics;
 - (3) custom and practice;
 - (4) medical treatment records of Plaintiff;
 - (5) his examination and observations of Plaintiff
 - (6) records of examiners of Plaintiff;
 - (7) authoritative journals and articles; and
 - (8) experience.

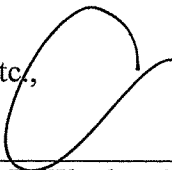
PLEASE TAKE FURTHER NOTICE, that this disclosure is pursuant to CPLR §3101(d) and is not intended to limit the scope or substance of any expert called by the Defendant(s) at trial. This disclosure should not be considered all encompassing, as expert

testimony to be offered by Defendant(s) shall depend, of necessity, upon the issues raised at trial by other experts, physicians and witnesses.

PLEASE TAKE FURTHER NOTICE, that Defendant(s) reserves its right to present further testimony as issues are developed at trial.

Dated: New York, New York
October 29, 2015

Yours etc.,



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Attorneys for Defendant
ACCOLADE BUILDING MAINTENANCE CORP.
600 Front Street
Hempstead, New York, 11550-4494
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EXHIBIT A



Riverside Orthopaedic
and Sports Medicine

A S S O C I A T E S

Orthopaedic Surgery

Jeffrey V. Dermksian, M.D.
Arthroscopic Surgery and
Sports Medicine
General Orthopaedic Surgery

Benjamin E. Rosenstadt, M.D.
Shoulder, Elbow and Hand Surgery
Treatment of Complex Fractures

Elias Kassapidis, M.D.
Hip and Knee Replacement

Louis P. Re, M.D.
Shoulder and Knee,
Arthroscopic Surgery

William Schell, M.D.
Arthroscopic Surgery and
Sports Medicine
General Orthopaedic Surgery

Pain Management

Jonathan Levin, M.D.
Pain Management
Neck and Back Disorders

Joe Vongvorachoti, M.D.
Pain Management
Spine and Sports Medicine

July 10, 2015

Malapero & Prisco LLP
295 Madison Ave.
New York, New York 10017
ATTN: Jennifer Guobis

re: Jackeline Montoya v. Bay Plaza Apple, LLC, et al.
Date of Incident: August 16, 2010
File No.: 82-459

Dear Ms. Guobis:

At your request, Jackeline Montoya was examined in this office on July 10, 2015, for the purpose of orthopedic evaluation.

HISTORY

Ms. Jacqueline Montoya is a 28-year-old female who states that on August 16, 2010 she slipped on a wet floor, while in a bathroom while at work, falling and landing on her back. She apparently was brought by ambulance to the emergency room of Einstein Hospital in the Bronx and was treated and released that same day. She subsequently came under the care of a chiropractor and was treated with a course of manipulation and tens units. She additionally went for pain management and underwent a series of injections which she indicates caused increased pain afterwards. She additionally underwent a course of acupuncture. She presently undergoes no treatment for the current conditions.

PAST MEDICAL HISTORY

Ms. Montoya's past history is notable for history of CVA secondary to a ruptured AVM in 2007. She additionally notes history of epilepsy.

PRESENT COMPLAINTS

At present, Ms. Montoya complains of constant low back pain. She states that when sitting she has to sit in a semi-reclined position due to pain which is exacerbated by sitting upright. She notes no lower extremity numbness or tingling. She indicates no lower extremity weakness.

SOCIAL HISTORY

Ms. Montoya currently works as a teacher's aide, approximate 3 hours per day. She was doing clerical work at the time of the original incident.

www.riversideorthopaedics.com

5 Columbus Circle, 10th Floor • New York, N.Y. 10019 • Tel 212.265.2828 • Fax 212.265.3130
31-11 31st Avenue • Astoria, N.Y. 11106 • Tel 718.278.5839 • Fax 718.956.8267

A Professional Corporation



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Spine and Sports Medicine*

PHYSICAL EXAM

Examination of bilateral hips show symmetric and full active range of motion There is no crepitus with motion. Examination of the bilateral knees shows symmetric and full range of motion. There is full strength in hip and knee flexion and extension.

Examination of the lumbar spine shows is mild tenderness to palpation along the paraspinal muscles. She demonstrates active forward flexion with the fingertips to 30" from the ground with complaints of pain. She demonstrates limited rotation and extension with complaints of pain. She complains of tenderness to palpation over the right buttock area. She demonstrates the ability to toe and heel walk with minimal assistance with balance. There is full strength in foot and ankle flexor and extensor muscles as well as great toe flexion and extension. Straight leg raising is negative to 60 degrees in both sitting and supine positions. She notes normal sensation to light touch throughout the both lower extremities with no sensory deficits. Deep tendon reflexes are present and symmetric bilaterally in both lower extremities.

REVIEW OF MEDICAL RECORDS

Emergency room notes, Weiler Hospital, 8/16/10. States complaining of right hip pain after slipping and falling today. Triage note states complaining of pain to right buttock and down leg. Emergency room note indicates patient fell on buttocks, not back.

Outpatient clinic notes, 8/30/10-12/14/10.

Office notes, Co-Op City Chiropractic, 9/27/10-4/27/12.

Hospital notes, Montefiore Hospital, 12/8/10- 12/11/10. Notes document cesarean section delivery.

Electrodiagnostic studies, Jacob Nir, M.D., 1/14/11. Report of bilateral lower extremity EMG/NCV indicates no electrophysiologic abnormalities. Normal motor nerve conduction. States clinical examination of paraspinal spasm.

Chiropractic examination, Corey A. Stein, D. C., 2/10/11. Indicates no chiropractic disability. No need for any further treatment. No need for diagnostic testing. Maximum medical improvement has been reached. No disability noted.

MRI of Lumbar Spine, 2/26/11, Standup MRI of the Bronx. Indicates bulging discs, hypertrophic facet change, foraminal narrowing.

Office notes, Westchester Medical Care, R. C. Krishna, M.D., 2/28/11. Recommends continuation of chiropractic treatment, physiotherapy and pain management.



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Pain Management
Spine and Sports Medicine

“Digital Radiographic Biomechanical/Mensuration Report”, 2/28/11. States findings of “ligament and connective tissue damage”. “Ligamentous instability is suggested”.

Office notes, Bay Plaza Chiropractic, Ellen Ginsberg, M.D., 2/9/11- 11/2/11 . Complaining of numbness and tingling in right leg as well as low back and right buttock pain. Notes document multiple trigger point injections.

Hospital notes, Montefiore hospital, 9/13/11-9/17/11. Notes document medication overdose secondary to depression.

Verified Bill of Particulars, Index No.: 21612/2011E, 5/9/12.

Examination Before Trial, Jackeline Montoya, 10/3/14.

SUMMARY

In summary then, Ms. Jackeline Montoya possibly sustained an injury to the lower back and right buttocks secondary to a fall which occurred on August 16, 2010. She was treated in the emergency room of Montefiore Hospital that same day, at which time she was treated and released. She subsequently underwent extensive chiropractic treatment, pain management, and further diagnostic studies.

Based upon my review of the medical records and examination of Ms. Jackeline Montoya, it would appear that Ms. Montoya possibly sustained a contusion of the buttocks and lower back secondary to a fall which occurred on August 16, 2010. There are no objective findings on physical examination of the neurological deficit with regard to this injury. MRI scan demonstrated mild chronic changes of bulging discs, facet hypertrophy and foraminal narrowing. Electrodiagnostic studies of the lower extremities were unremarkable.

It appears that any injuries which occurred at the time of this incident have healed uneventfully. There is no indication of any residual disability with regard to function. There is no indication of any injury resulting from this incident which would be expected to cause any deterioration in function over time, nor is there nor is there any indication of any condition resulting from this injury which would be expected to cause chronic or increasing pain over time. There is no indication of any injury which would be expected to require any further treatment at any time.

Respectfully,

Benjamin E. Rosenstadt, M.D.

EXHIBIT B

Benjamin E. Rosenstadt, M.D.

*Riverside Orthopaedic & Sports Medicine
Associates, P.C.*

*5 Columbus Circle, 10th Floor
New York, NY 10019
(212) 265-2828*

EDUCATION

Undergraduate:

Colgate University
Hamilton, New York
B.A. June 1979

Medical:

Chicago Medical School
North Chicago, Illinois
September 1981 - May 1983

Columbia University, College of Physicians and Surgeons
New York, New York
June 1983 - June 1985
M.D. June 1985

Internship and
Residency:

St. Luke's - Roosevelt Hospital Center
New York, New York
General Surgery
July 1985 - June 1987

Residency:

St. Luke's-Roosevelt Hospital Center
New York, New York
Orthopaedic Surgery
July 1987 - June 1991

Fellowships:

Tampa General Hospital
Tampa, Florida
Musculoskeletal Trauma
September 1991 - December 1991

The Roosevelt Hospital
New York, New York
Hand Surgery
January 1992 - December 1992

FACULTY APPOINTMENTS

Senior Attending, Department of Orthopaedic Surgery
St. Luke's-Roosevelt Hospital Center (SLR), New York, NY

Assistant Clinical Professor of Orthopaedic Surgery, SLR

Assistant Attending, Department of Orthopaedic Surgery
Lenox Hill Hospital

BOARD CERTIFICATION

Board Certified in Orthopaedic Surgery, American Board of Orthopaedic Surgery, July 1995

Certificate of Added Qualification in Hand Surgery, American Board of Orthopaedic Surgery, October 1997

Recertification in Orthopaedic and Hand Surgery, August 2007

MEDICAL LICENSURE

New York, #166991, July 1986

Florida, #0065121, January 1994

PRESENTATIONS

Palmar Fracture-Subluxation of the PIP Joint. Presented at the annual meeting of the American Society for Surgery of the Hand, Kansas City, MO., October 1993

PUBLICATIONS

Palmar Fracture Dislocation of the Proximal Interphalangeal Joint. *Journal of Hand Surgery* 1998; 23:811-820

Degenerative Arthropathy of the Hand and Wrist: Rheumatoid Involvement and Basal Joint Arthritis. In: Craig EV, ed. *Clinical Orthopaedics*. Philadelphia: Lippincott Williams & Wilkins

PROFESSIONAL ORGANIZATIONS

Fellow, American Academy of Orthopaedic Surgeons

Diplomate, American Board of Orthopaedic Surgery

Member, New York Society for Surgery of the Hand

EXHIBIT B

LEASE
BETWEEN
BAY PLAZA COMMUNITY CENTER, LLC,
LANDLORD,
AND
DAFFY'S, INC.,
TENANT

Bay Plaza
The Bronx, New York

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SECTION 1. BASIC LEASE PROVISIONS AND ENUMERATION OF EXHIBITS.

1.1 Basic Lease Provisions.

(a) DATE: July 6, 2010

(b) LANDLORD: BAY PLAZA COMMUNITY CENTER, LLC, a New York limited liability company

Address: c/o Prestige Properties & Development Co., Inc.
546 Fifth Avenue, 15th Fl.
New York, New York 10036

(c) TENANT: DAFFY'S, INC., New Jersey corporation
Address: One Daffy's Way
Secaucus, New Jersey 07094

TAX IDENTIFICATION NUMBER: 22-167123

(d) LEASED PREMISES: As shown on Exhibit A; containing approximately 27,715 square feet of Gross Leasable Area consisting of 24,520 square feet on the upper level and 3,195 square feet on the lower level, and designated as Space #4 thereon.

(e) TENANT'S TRADE NAME: Daffy's, or such other name under which the majority of Tenant's stores now known as "Daffy's" are then operating in the New York City metropolitan area.

(f) LEASE TERM:

(i) INITIAL TERM: The period from the Commencement Date (as hereinafter defined) through the 31st of January next following the tenth anniversary of the Commencement Date.

(ii) EXTENSION PERIOD(S): Three periods of sixty (60) months each.

(g) MINIMUM RENT:

<u>PERIOD</u>	<u>ANNUAL MINIMUM RENT</u>	<u>MONTHLY PAYMENT</u>
Commencement Date Through Month 60	\$789,877.50	\$65,823.13
Month 61 through Month 120	\$868,865.25	\$72,405.44
First Extension Period	\$955,751.78	\$79,645.98
Second Extension Period	\$1,051,326.95	\$87,610.58
Third Extension Period	\$1,182,742.82	\$98,561.90

- (h) PERCENTAGE RENT RATE: Three (3%) per cent (See Section 5.2)
- (i) COMMON AREA CHARGE: Tenant's Pro Rata Share of the total Operating Costs (See Section 6.4).
- (j) TENANT'S TAXES: Tenant's Pro Rata Share of the total annual Taxes (See Section 5.6).
- (k) INSURANCE CHARGE: Tenant's Pro Rata Share of the annual Insurance Premiums (See Section 5.7).
- (l) PERMITTED USE: For the display and retail sale of apparel, fashion accessories, shoes, home furnishings, gift items and/or such other goods and services that are then being sold from time to time in the majority of Tenant's other stores located in New York City and operating under the same trade name as the Leased Premises, subject to variations thereto to reflect the local demographic and economic environment of the Shopping Center, and for no other use.
- (m) PROMOTIONAL FUND CHARGE: \$2,771.50 per annum, payable in equal monthly installments concurrently with the Minimum Rent. (See Section 9.3)
- (n) GUARANTOR: N/A
- (o) SECURITY DEPOSIT: N/A
- (p) [INTENTIONALLY DELETED]

1.2 Significance of a Basic Lease Provision. Each reference in this Lease to any of the Basic Lease Provisions contained in Section 1.1 shall be deemed and construed to incorporate all of the terms provided under each such Basic Lease Provision.

1.3 Enumeration of Exhibits. The exhibits enumerated are attached to and are to be construed as a part of this Lease. Landlord and Tenant shall perform any and all obligations stated in such exhibits within any time period set forth therein.

EXHIBIT A. Leasing Plan of the Building.

EXHIBIT A-1 Legal Description of Shopping Center

EXHIBIT A-2 Shopping Center Site Plan

EXHIBIT B. Description of Tenant's Work, Submission of Tenant's Plans and Work Requirements; Sign Criteria.

EXHIBIT C. Landlord Work

EXHIBIT C-1. Building Elevations

EXHIBIT D. Rules and Regulations

EXHIBIT E. Commencement Date Memorandum

EXHIBIT F. Form of Estoppel Certificate

EXHIBIT G. Use Restrictions

SECTION 2. DEFINITIONS.

As used in this Lease, the following terms have the meanings set forth below:

(a) Building: The building in which the Leased Premises is located as shown on Exhibit A-2.

(b) Commencement Date: The day upon which the Lease Term commences, as provided in Section 3.3.

(c) Common Areas: The interior and exterior areas and facilities within the Shopping Center which are by nature not leasable to a tenant for the purpose of the sale of merchandise or the rendition of services to the general public. The Common Areas shall include without limitation the following to the extent the same serve more than one occupant: truck ramps, roof, down spouts, fire corridors, service corridors, loading facilities and docks, all automobile parking areas, access roads, sidewalks, traffic lanes, bus stations, taxi stations, parcel pickup areas, entrances and exits from and to public roads, landscaping, rest rooms, and Utility Facilities.

(d) Delivery of Possession: The tender by Landlord to Tenant of possession of the Leased Premises with Landlord's Work (excluding the work on the exterior of the Building) Substantially Complete in accordance with Section 4.1 hereof.

(e) Gross Leasable Area: With regard to the premises occupied by any tenant, the actual number of square feet of floor space of the premises on all levels, measured to the exterior faces of exterior walls and to the center lines of all interior walls dividing tenants' premises; provided that there shall be excluded from the Gross Leasable Area of the Leased Premises any portion thereof that is used exclusively for the benefit of other tenants (such as, for example, ducts and vents providing services to such other tenants).

(f) Ground Floor Area: With regard to the premises occupied by any tenant, the actual number of square feet of Gross Leasable Area on the ground floor of the premises, measured to the exterior faces of exterior walls and to the center lines of all interior walls dividing tenants' premises.

(g) [INTENTIONALLY DELETED]

(h) HVAC: The Utility Facilities involved in providing air-conditioning, ventilation and heating.

(i) Insurance Requirements: All terms of any insurance policy covering or applicable to the Leased Premises, Shopping Center or any part thereof, all requirements of the issuer of any such policy, and all orders, rules, regulations and other requirements of the National Board of Fire Underwriters (or any other body exercising similar functions) known to Tenant and applicable to or affecting the Leased Premises, Shopping Center or any part thereof, or any use or condition of the Leased Premises, Shopping Center or any part thereof.

(j) Interest: As used in this lease, the words "Interest" or "with Interest" shall mean the Prime Rate plus 3%; but in any event, not less than 8% per annum or higher than 12% per annum, and not more than the highest legal rate of interest then chargeable to tenants in the State of New York on unsecured loans. "Prime Rate" shall mean the annual rate of interest published from time to time as the Prime Rate in The Wall Street Journal.

(k) Lease Term: The period set forth in Subsection 1.1(f) commencing in accordance with the provisions of Section 3.3.

(l) Lease Year: The calendar year (January 1 to December 31). In order to achieve uniformity in the operation of the Shopping Center, Landlord reserves the right to designate and change the beginning and ending day of the Lease Year, notice of which shall be given to Tenant.

(m) Leased Premises: As described in Section 3.1.

(n) Legal Requirements: All laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, certificates of occupancy, authorizations, directions and requirements of all government departments, commissions, boards, courts, authorities, agencies, officials and officers, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Leased Premises or any part thereof, or any of the adjoining sidewalks, streets or ways, or any use or condition of the Leased Premises or any part thereof.

(o) Minimum Rent: As set forth in Subsection 1.1(g).

(p) Mortgage: Any deed of trust or mortgage constituting a lien on the interest of Landlord in the Shopping Center, or any part thereof, or any rent therefrom, or any estate, right or interest of Landlord therein, including any ground or underlying leases, sale and leaseback agreement or lease and subleaseback agreement, whereby Landlord sells and simultaneously acquires a possessory interest under a lease from, or other agreement with, such transferee.

(q) Mortgagee: Any trustee or mortgagee under a Mortgage, including any landlord under a sale and leaseback agreement, or lease and subleaseback agreement.

(r) Operating Costs: As defined in Section 6.4.

(s) Partial Lease Year: A portion of the Lease Term that is less than a calendar year. All Rent and other charges shall be pro-rated accordingly in any Partial Lease Year.

(t) Percentage Rent: As set forth in Subsection 1.1(h).

(u) Permittees: All partners, officers, directors, employees, agents, contractors, customers, licensees and invitees of Landlord, Tenant, or any occupant of the Shopping Center.

(v) Project Manager: The Project Manager designated as such, from time to time, by Landlord.

(w) Rent: The term "Rent" shall include the Minimum Rent, Percentage Rent, and all other charges or payments which Tenant is or becomes obligated to make hereunder, including without limitation, monies owed Landlord as a result of any default by Tenant, or arising out of Landlord's performance of any obligation of Tenant hereunder.

(x) Shopping Center: The property commonly known as the Bay Plaza Community Center, The Bronx, New York described in Exhibit A-1 hereto. Landlord may, however, from time to time, add to, remove from, or sever the ownership of the various sections or parcels comprising the Shopping Center, and designate other land together with the buildings and improvements thereon, if any, as part of the Shopping Center, but the same shall remain as part of the Shopping Center for so long as such designation remains unrevoked by the Landlord.

(y) Stores: Any portion of a building (including the Leased Premises) located in the Shopping Center intended to be used by a tenant or occupant thereof.

(z) Taking: A taking during the Lease Term of all or any part of the Leased Premises, the Shopping Center, or any interest therein or right accruing thereto, as the result or in lieu or in anticipation of the exercise of the right of condemnation or eminent domain, or any similar action by a governmental authority.

(aa) Tenant's Pro Rata Share: A fraction, the numerator of which is the Gross Leasable Area of the Leased Premises, and the denominator of which is the Gross Leasable Area of the Stores. Such fraction shall be modified to reflect conditions existing as of the first day of any month during the Lease Term. The Gross Leasable Area of any free-standing or so-called out-parcel or pad building owned by Landlord, or included in the Shopping Center but not owned by Landlord, may be excluded from the Gross Leasable Area of the Stores for the purpose of determining Tenant's Pro Rata Share, but only to the extent that the occupant thereof maintains its own Common Area, and/or provides its own insurance, and/or pays for its Taxes by a separate assessment, as the case may be. If pursuant to a separate agreement, any component or part of the costs or amounts included in the Common Area Charge, Insurance Charge or Taxes is paid by any tenant or owner directly to a public utility, municipality or supplier of goods or services (and not to Landlord), Landlord shall not include the amount so paid in its computation of such charges to Tenant, and Tenant's Pro Rata Share of that component of the expense shall be adjusted accordingly.

(bb) Tenant's Work: The work to be performed by Tenant as provided in Section 4 and Exhibit B.

(cc) Utility Facilities: The equipment and network of pipes, lines, conduits, wires and other interconnecting facilities within the Shopping Center through which HVAC, water, sewage, storm drainage, telephone, electricity, gas and other utility services utilized by

any occupant in the Shopping Center are received, transmitted or discharged at any time and from time to time during the Lease Term.

SECTION 3. LEASED PREMISES AND TERM.

3.1 Leased Premises. Landlord hereby leases and demises to Tenant and Tenant hereby accepts from Landlord on the terms set forth herein, the Leased Premises designated in Subsection 1.1(d) together with all appurtenances specifically granted in this Lease, including the non-exclusive right to use the Common Areas. Landlord, without limiting its rights hereunder: (i) retains and excludes from this demise (a) the exterior faces of the walls (not including Tenant's storefront) of the Leased Premises, (b) the roof (provided that Landlord may not place any signs on the roof without Tenant's prior written consent), and (c) the land under the Leased Premises; and (ii) reserves unto itself the right to install, maintain, use, repair, relocate and replace the Utility Facilities located in the Leased Premises in locations and in a manner which will not materially interfere with Tenant's use of the Leased Premises; provided that such Utility Facilities to the extent possible will be located above the ceiling, below the floor or in any columns. This latter reservation shall include without limitation the right to connect appropriate water-related Utility Facilities in and near the Leased Premises to the municipal or county sewer system, if and when such system is approved and constructed in the vicinity of the Shopping Center. There is no basement space included in the Leased Premises. Either party, at any time before the thirtieth (30th) day following Delivery of Possession, may cause the Gross Leasable Area of the Leased Premises to be remeasured at such party's cost. If the Gross Leasable Area of the Leased Premises, as so measured, is more or less than the number of square feet attributed to the Leased Premises by the provisions of this Lease, and the non-electing party agrees with such remeasurement, then the Minimum Rent, the Promotional Fund Charge and the rents and charges payable hereunder based upon the Gross Leasable Area of the Leased Premises shall be adjusted in proportion to the Gross Leasable Area of the Leased Premises as so measured, provided that in no event shall any such adjustment cause an increase in Rent of more than ten (10%) percent. Any disagreement as to such requirement shall be resolved by a mutually acceptable licensed architect familiar with retail measurements.

3.2 Modifications of Exhibits. Landlord hereby reserves, during the term of this Lease, the right from time to time to make such changes to the Shopping Center and to make such modifications in the locations within or among the various components of the Shopping Center as Landlord shall in the exercise of its commercially reasonable discretion deem desirable and to construct additional buildings in the Shopping Center which need not be limited to retail store uses (but in no event may any portion of the Shopping Center be used for any of the uses prohibited by Section 8.6). Such changes and modifications may also include (without limitation) alterations, additions, or both, to any existing or new buildings or improvements in or on the Shopping Center; provided that in no event may the Building be expanded except within the Building Expansion Area shown on Exhibit A-2 and by more than 12,000 square feet on the existing two levels (with no more than 6,000 square feet on either level). In no event, however, may: (i) any such buildings or improvements be constructed within the area shown on Exhibit A-2 as "Tenant's Protected Parking Area"; (ii) the number of parking spaces be reduced within the Tenant's Protected Parking Area from that shown on Exhibit A-2; (iii) the location of the delivery road to the rear of the Leased Premises or the canopy and lift being constructed as part of Landlord's Work be changed or modified; (iv) the circulation patterns within the Tenant's

Protected Parking Area be changed; (v) any such change or modification adversely affect the entrance or visibility of or access to the Leased Premises; and (vi) any parking deck be constructed except within the "Permissible Deck Area" shown on Exhibit A-2. The annexation hereto of Exhibit A-2 shall not constitute a warranty, or representation, express or implied, of the retention, development or future expansion of the Shopping Center or any part thereof. The naming of any tenant or occupant of the Shopping Center on Exhibit A-2 or the presence of a tenant or occupant in the Shopping Center shall not constitute a warranty, express or implied, of the continued presence or occupancy of such tenant or occupant in the Shopping Center.

3.3 Lease Term.

(a) Tenant shall have and hold the Leased Premises for the Initial Term commencing on the earlier to occur of: (i) the day Tenant opens for business in the Leased Premises; and (ii) the 150th day following the later to occur of (x) Delivery of Possession and (y) the date the Building Permit (as defined below) is available to be issued to Tenant, provided that in no event shall any Rent be payable by Tenant for the period prior to the 120th day following Delivery of Possession, and ending at midnight on the last day of the Initial Term as provided in Subsection 1.1(f), unless sooner terminated as hereinafter provided; provided that in no event shall the Initial Term commence between November 15 and the immediately succeeding March 15th or between July 15 and the immediately succeeding August 15 unless Tenant opens for business in the Leased Premises during such period.

(b) Landlord grants to Tenant three (3) successive options to extend the Lease Term for a period of sixty (60) months each (each, an "Extension Period"). Tenant's right to exercise each option is expressly conditioned upon Tenant (i) not being in default at the time the option is exercised, and (ii) not being in default at the start of the Extension Period, in each case, notice of which default having been given to Tenant and time to cure as provided in this Lease having expired. Tenant may exercise an extension option only by tendering written notice (an "Extension Notice") to Landlord at least one hundred eighty (180) days and at most three hundred sixty (360) days prior to the expiration of the Lease Term (as then extended) (the "Expiration Date"), as to which time shall be of the essence (subject to the following provisions of this paragraph). If Tenant shall not have given such an Extension Notice to Landlord by such 180th day in respect of any Extension Period, Landlord shall give notice to Tenant that Tenant has failed to give such an Extension Notice to Landlord (hereinafter called the "Reminder Notice"), and Tenant's time to give an Extension Notice for an Extension Period shall continue until 30 days time after receipt of Landlord's Reminder Notice for that Extension Period, and as to said 30-day period time shall be of the essence. If the notice to extend is not timely given as herein prescribed, Tenant shall have no further right to extend the Lease Term for such Extended Term, and this Lease shall terminate as of the later of (i) the 90th day after the date of the Reminder Notice, or (ii) the last day of the then term of this Lease. If Tenant timely exercises an option to extend the Lease Term for an Extension Period, the Lease Term shall be automatically so extended in accordance with its terms without the necessity of any amendment of the Lease.

3.4 Statement As To Lease Term. When the Commencement Date has been determined, Landlord and Tenant shall exchange a written statement in the form of Exhibit E hereto specifying the commencement and expiration dates of the Lease.

SECTION 4. CONSTRUCTION.

4.1 Construction by Landlord. Landlord shall diligently perform and complete Landlord's Work at Landlord's sole expense as set forth in Exhibit C hereto annexed. Landlord's Work shall be deemed "Substantially Complete" for purposes of this Lease as of the date that Landlord's Work (excluding the work on the exterior of the Building) is complete, subject to reasonable punch list items, including minor details of mechanical adjustment which will not materially interfere with Tenant's Work. Landlord shall give Tenant notice of the date when Landlord believes that Landlord's Work is Substantially Complete, and the parties shall agree on a date within five (5) days thereafter whereon representatives of Landlord and Tenant shall meet at the Leased Premises to inspect Landlord's Work and agree on the schedule of punch list items to be completed by Landlord. If the parties' representatives are unable to agree on a schedule of punch list items or on whether Landlord's Work is in fact Substantially Complete, then the parties shall designate an independent licensed architect who shall not have worked for Landlord or Tenant (the "Architect"), whose determination shall be binding upon the parties. The cost of the Architect shall be borne equally by Landlord and Tenant. The date that is the later of the date on which Landlord's Work is deemed to be Substantially Complete and the date on which such schedule of punch list items is determined shall be deemed to be the date of Delivery of Possession for purposes of this Lease. Landlord agrees that, following Delivery of Possession, Landlord shall diligently complete the punch list items and the work to the exterior of the Building and the Leased Premises in such a manner which will not materially interfere with Tenant's Work and shall complete the same no later than the opening of the Leased Premises for business to the public.

4.2 Construction by Tenant. (a) Tenant shall perform and complete Tenant's Work at Tenant's sole expense in accordance with Exhibit B. Tenant will commence construction of Tenant's Work promptly following Delivery of Possession and issuance of the Building Permit. Tenant shall diligently prosecute to completion Tenant's Work in a manner that will not intentionally interfere with the completion of Landlord's Work or the operation of the Shopping Center, in compliance with all reasonable rules and regulations established by the Project Manager, all Legal Requirements and all Insurance Requirements. Tenant shall, prior to commencement of Tenant's Work, deposit with Landlord certificates of insurance to evidence compliance with the provisions of Section 9.2 and Exhibit B.

(b) Tenant shall apply for all permits and other approvals from the New York City Department of Buildings necessary to commence and complete Tenant's Work (the "Building Permit") including, without limitation, by engaging an experienced expeditor and promptly filing all additional information necessary or helpful in obtaining the Building Permit and coordinating the same with Landlord. Landlord will cooperate with Tenant in connection with such applications and will promptly execute all documents necessary for Tenant to obtain the Building Permit. Tenant shall promptly notify Landlord of the date on which Tenant applies for the Building Permit and shall provide a copy of the same to Landlord when issued. If Tenant fails to duly apply for the Building Permit within sixty (60) days following the date of this Lease, notwithstanding the provisions of Section 3.3(a) hereof, the Commencement Date shall be the earlier to occur of: (i) the day Tenant opens for business in the Leased Premises; and (ii) the 150th day following Delivery of Possession.

SECTION 5. RENT

5.1 Minimum Rent. Tenant shall pay to Landlord the Minimum Rent provided in Subsection 1.1(g) in equal monthly installments in advance on the first day of each calendar month during the Lease Term. For any portion of a calendar month included at the beginning of the Lease Term, Tenant shall pay on the commencement of the Lease Term the prorated portion of the Minimum Rent for such month.

5.2 Percentage Rent. In addition to the Minimum Rent, Tenant shall pay to Landlord as Percentage Rent for each Lease Year or Partial Lease Year an amount equal to the product of the Gross Sales transacted in such period in excess of the Percentage Rent Breakpoint (as hereinafter defined) multiplied by the Percentage Rent Rate. As used herein, Percentage Rent Breakpoint shall mean the following:

<u>Period</u>	<u>Percentage Rent Breakpoint</u>
Commencement Date through Month 60	\$19,746,937.50 per annum
Month 61 through Month 120	\$21,721,631.25 per annum
First Extension Period	\$23,893,794.50 per annum
Second Extension Period	\$26,283,173.75 per annum
Third Extension Period	\$29,568,570.50 per annum

Any Percentage Rent Breakpoint hereunder shall be subject to adjustment if during the applicable Lease Year Minimum Rent shall abate for any reason, and, in such event, the Percentage Rent Breakpoint shall be reduced in proportion to the percentage reduction of the Minimum Rent. Percentage Rent payable hereunder for any Lease Year or Partial Lease Year in which there is an abatement of Minimum Rent as aforesaid, shall be computed or re-computed based upon the Percentage Rent Breakpoint as adjusted.

5.3 Statements As To Gross Sales. On or before the 20th day of each month during the Lease Term, Tenant shall submit to Landlord a written statement signed by Tenant showing Tenant's Gross Sales for the preceding month. Within 90 days after the expiration of each Lease Year or Partial Lease Year, Tenant shall deliver to Landlord a statement certified without material qualification by an officer of Tenant setting forth the amount of Tenant's Gross Sales for each such Lease Year. Tenant's payment of Percentage Rent for the applicable Lease Year or Partial Lease Year, if any, shall accompany such certified statement. Tenant's Gross Sales statements shall include all of the Gross Sales of any subtenant, licensee or concessionaire made during the same period.

5.4 Maintenance of Records. Tenant shall keep and maintain at the Leased Premises or general offices of Tenant (provided the same is located within 100 miles of the Leased Premises) a complete, permanent and accurate set of books and records conforming to generally accepted accounting principles and containing all supporting evidence from which Gross Sales and all revenue derived from the conduct of business upon or from the Leased Premises can be

determined. Such books and records shall include all pertinent original sales books and records, which records shall include such records as would normally be required to be kept and examined by an independent accountant in accordance with generally accepted auditing practices in performing an audit of Tenant's Gross Sales. Such books, records and evidence shall be kept for at least 36 months after the expiration of the Lease Year to which the same pertain and if Landlord shall inspect and/or audit Tenant's statement for such Lease Year, such books, records and evidence shall continue to be kept until such inspection and/or audit shall have been concluded. Landlord may, once per calendar year, upon reasonable advance notice, inspect and/or audit any or all of Tenant's books of accounts, documents, records, sales tax returns, papers and files which relate to Gross Sales, and at Landlord's request Tenant shall make all such data available for such examination at such reasonable times during business hours as Landlord shall specify. Landlord may review only those records of Tenant specifically related to Gross Sales. Without limiting the foregoing, Landlord may not review any other leases or agreements, nor Tenant's tax returns or financial statements. Landlord may not remove any documents from Tenant's offices or make copies of any records made available to Landlord for such audit. Landlord will deliver to Tenant a true and complete copy of the audit report and all accompanying data if any claim for an underpayment is made. The audit shall be conducted in accordance with generally accepted rules of auditing practices. Landlord may not subject any Lease Year to more than one audit. No audit shall cover a period of time in excess of three (3) calendar years immediately preceding the audit. Landlord shall keep all financial and other non-public information disclosed by such audit strictly confidential and shall not disclose such information to any third party without Tenant's prior written consent, except that Landlord may disclose the same to its lenders, prospective lenders, prospective buyers of the Shopping Center, and to Landlord's accountants and attorneys to the extent necessary to perform their respective services for Landlord, or as may be required by law. Landlord's right to commence such an audit with respect to any Lease Year shall expire 36 months after the end of such Lease Year. In the event that Landlord, after having reasonable opportunity to examine the Gross Sales records as provided herein, shall disagree with Tenant's determination, then Landlord and Tenant shall attempt to adjust such disagreement, and if they are unable to do so, each shall designate an independent certified public accountant who shall not have worked for Landlord or Tenant (the "Percentage Rent Auditor") whose determination shall be binding upon the parties. The cost of the Percentage Rent Auditor shall be borne equally by Landlord and Tenant. However, if the discrepancy disclosed and confirmed by the Percentage Rent Auditor shall equal or exceed five percent (5%) of Gross Sales, Tenant shall be obligated to pay the Percentage Rent Auditor's reasonable costs. If it is determined by any such audit that any statement previously delivered to Landlord by Tenant was not accurate, an adjustment shall be made, and one party shall pay to the other upon demand such sums as may be necessary so that the correct amount of Percentage Rent shall have been paid by Tenant to Landlord.

5.5 Definition of Gross Sales. "Gross Sales" means the total sales price received by Tenant and any subtenants, licensees or concessionaires for all merchandise and services sold from the Leased Premises, including, without limitation, sales made of merchandise stored at the Leased Premises or merchandise shipped from other locations on orders taken in or through the Leased Premises, whether such amounts shall be for cash or on credit, and further including, without limitation, mail and telephone orders received or filled at or from the Leased Premises, sale of gift or merchandise certificates (subject to the following sentence). There shall be excluded from Gross Sales: (i) all credits and refunds made to customers for merchandise returned or

exchanged, the purchase price of which was previously included in Gross Sales; (ii) the amount of all sales, use, excise or similar taxes imposed by any governmental authority on any such sales, provided that such taxes are added to the price thereof and collected from the patron or customer and paid by Tenant or any subtenant to such governmental authority; (iii) the exchange of merchandise and/or supplies between stores or other facilities of Tenant where such exchange is made solely for Tenant's business convenience and does not deprive Landlord of the benefit of a sale which otherwise would be included within Gross Sales; (iv) receipts from sales of any fixtures, furniture or other property or assets of Tenant or any subtenant, licensee or concessionaire used in Tenant's business and not normally held for sale; (v) returns to shippers and manufacturers; (vi) sales from vending machines located in non-sales areas and used only by employees of Tenant; (vii) sums and credits received in the settlement of claims for loss of, or damage to, merchandise; (viii) charges for repairs, alterations, gift-wrapping, postage and deliveries to the extent paid by Tenant to third parties; (ix) interest, service or sales carrying charges collected separately from the selling price and paid by customers to Tenant for extension of credit; (x) bulk sales of out-of season merchandise to jobbers or other retailers at or below Tenant's cost; (xi) bad checks and/or debts not to exceed a total of two percent (2%) of Tenant's Gross Sales in any Lease Year, unless and until collected; (xii) fees paid by Tenant to third-party credit card companies (specifically excluding captive credit card companies) and/or banking institutions in accordance with credit card purchase plans; (xiii) gift certificates or like vouchers, until such time as the same shall have been converted into a sale by redemption; (xiv) check guarantee fees; and (xv) rent or other consideration received in connection with an assignment, subletting or other transfer of this Lease or Tenant's interest therein. Each sale on an installment basis (such as so-called lay-away sales) or otherwise involving the extension of credit shall be treated as a sale for the full price in the period in which occurs the earliest of the following: (a) Tenant first considers the same a sale for accounting purposes and (b) the sale is completed or the deposit is abandoned by the customer.

5.6 **Taxes.** (a) Tenant shall, in all instances, pay Tenant's Pro Rata Share of all Taxes, as hereinafter defined, ("Tenant's Taxes") paid by Landlord which may be levied or assessed by the lawful taxing authorities against the land, buildings and all other improvements and betterments in the Shopping Center which are not separately levied or separately identified on the tax bills as assessments against any one building or occupant of the Shopping Center. If the Gross Leasable Area of any building shall change during any tax year, the Gross Leasable Area existing on the day on which the real estate taxes are assessed for such tax year shall control in the foregoing computation. The term "Taxes" shall mean and include all real estate taxes, assessments, license and permit fees, charges for any easement maintained for the exclusive benefit of the Shopping Center, water and sewer rents and other governmental levies and charges of every kind and nature whatsoever, general and special, extraordinary as well as ordinary, foreseen and unforeseen, and each and every installment thereof, which shall or may during the Term of this Lease be levied, assessed, imposed, become due and payable out of, or for, the Shopping Center or any part thereof, or any rent or income received therefrom, or any land, buildings or other improvements therein (as initially constructed, or as the same may at any time thereafter be enlarged or reduced), including all costs and fees (including attorneys' fees) incurred by Landlord in contesting Taxes, and/or negotiating with the public authorities as to the same and shall include any "flat" or annual charge imposed as a standby charge for the availability of water or other utilities during period of no usage thereof. The amounts required to be paid by Landlord pursuant to any payment in lieu of tax agreement entered into with a taxing authority having

jurisdiction over the Shopping Center shall be considered for the purposes of this Lease to be included within the definition of Taxes. Nothing herein contained shall be construed to include as "Taxes" any special assessment or taxes in the nature of improvement or betterment taxes, or any inheritance, estate, succession, transfer, gift, franchise, corporation, or capital levy that is or may be imposed upon Landlord, or any interest or penalty resulting from Landlord's failure to timely pay, provided, however, that if at any time during the Lease Term the methods of taxation prevailing at the commencement of the Lease Term shall be altered so that in lieu of or as a substitute for the whole or any part of the Taxes now levied, assessed or imposed on real estate as such, there shall be levied, assessed or imposed (i) a tax on the rents received from such real estate, or (ii) a license fee measured by the rents receivable by Landlord for the Shopping Center or any portion thereof, or (iii) a tax or license imposed upon Landlord which is otherwise measured by or based in whole or in part upon the Shopping Center or any portion thereof, then the same shall be included in the computation of Taxes, computed as if the amount of such tax or fee so payable were that part due if the Shopping Center were the only property of Landlord subject thereto. The term "Tax Year" shall mean each twelve-month period imposed by the taxing authorities having lawful jurisdiction over the property comprising the Shopping Center. Taxes shall be equitably prorated during any partial Tax Years.

(b) On the Commencement Date, Tenant shall pay to Landlord Tenant's Pro Rata Share of the semi-annual Taxes that are payable for the half year period of the tax year in which the Commencement Date occurs, prorated on a per diem basis from the Commencement Date until the end of such half year. Without any representation as to the same, the estimated amount of Tenant's Pro Rata Share of Taxes for 2011 is \$4.93 per square foot of Gross Leasable Area of the Leased Premises. During each Tax Year or partial Tax Year, Tenant shall pay to Landlord, as additional rent, monthly in advance in equal installments, the amount estimated by Landlord as Tenant's Taxes subject to adjustment when the amount of Tenant's Taxes for such period shall be determined. If the amount of such monthly payments paid by Tenant exceeds the actual amount thereafter due, the overpayment shall be credited to the next payment of Rent due hereunder. If the amount of such monthly payments paid by Tenant shall be less than the actual amount due, Tenant shall promptly pay to Landlord the difference between the amount paid by Tenant and the actual amount due. If any Mortgagee of Landlord should require Tax escrow deposits, in advance of the due date, then Tenant shall deposit with Landlord, in advance, its share of such Taxes. Landlord shall timely pay or cause to be paid all taxes, and upon Tenant's request, shall provide Tenant a copy of receipts for bills or other evidence of payment.

(c) Tenant, in addition to the foregoing, agrees to pay, prior to delinquency, any and all taxes and assessments levied or assessed during the Lease Term as a separate and identifiable item upon or against (i) all furniture, fixtures, equipment and any other personal property installed or located within the Leased Premises, (ii) all alterations, additions, betterments or improvements of whatever kind or nature made by Tenant to the Leased Premises, including such improvements mentioned in Exhibit B as Tenant's Work; and (iii) the rentals payable hereunder by Tenant to Landlord (other than Landlord's Federal and State income taxes thereon).

(d) Should any governmental authority require that a tax, other than the Taxes above mentioned, be paid by Tenant, but collected by Landlord, for and on behalf of said governmental authority, and from time to time forwarded by the Landlord to said governmental authority, the same shall be paid by Tenant to Landlord, and be collectable by Landlord, and

payment thereof enforced in the same fashion as provided for the enforcement of payment of Rent hereunder; and for the purpose of enforcing payment thereof, shall be deemed additional rent hereunder, payable monthly.

(e) Landlord shall have the right but not the obligation, if permitted by law, to make installment payments of any assessments levied against the Shopping Center and in such event Tenant's Taxes shall be computed upon the installments and interest thereon paid by Landlord in each Tax Year. Landlord shall have the sole, absolute and unrestricted right, but not the obligation, to contest the validity or amount of any Tax by appropriate proceedings, and if Landlord shall institute any such contest on its own volition, it shall have the sole, absolute and unrestricted right to settle any contest, proceeding or action upon whatever terms Landlord may, in its sole discretion, determine. In the event Landlord receives any refund of such Taxes, Landlord shall pay such proportion of such refund as shall be allocable to payments of Taxes actually made by Tenant (less costs, expenses and attorneys' fees) to Tenant.

(f) Any amount payable by Tenant to Landlord under this Section 5.6 shall be paid by Tenant to Landlord within 15 days after receipt by Tenant from Landlord of a bill setting forth such amount. Landlord's failure to provide such statement to Tenant shall not relieve Tenant of its obligations generally hereunder or for Tenant's Taxes due for such Tax Year (or any portion of any Tax Year) in which any failure occurs. The failure of Tenant to pay any such amount within said 15 day period shall carry with it the same consequences as the failure to pay any installment of Rent. In the event of any dispute, Tenant shall pay the amount of Taxes in accordance with the applicable bill or statement, and such payment shall be without prejudice to Tenant's position. If the dispute shall be determined in Tenant's favor, by agreement or otherwise, Landlord shall pay to Tenant the amount of Tenant's overpayment resulting from compliance with such bill or statement. If the dispute shall result in the determination that the amount collected from Tenant was less than the amount actually due, Tenant shall pay to Landlord the difference between the amount paid and the amount actually due with the next installment of Minimum Rent. Any bill or statement under this Section 5.6 shall be deemed binding and conclusive if Tenant fails to object thereto within 3 years after receipt thereof.

5.7 Insurance Charge. (a) Tenant shall pay as Tenant's Insurance Charge in each Lease Year and Partial Lease Year during the Lease Term as additional rent hereunder, Tenant's Pro Rata Share of Landlord's premiums and costs for such Lease Year or Partial Lease Year for loss of rent insurance and such other insurance as may be maintained by Landlord pursuant to Section 8.2 hereof, including all endorsements thereon, covering the Shopping Center exclusive of the Common Areas.

(b) During each Lease Year or Partial Lease Year, Tenant shall pay to Landlord, monthly in advance in equal installments, the amount estimated by Landlord as Tenant's Insurance Charge for such period, subject to adjustment when the amount of Tenant's Insurance Charge for such period shall be determined. Without representation as to the same, the estimated amount of Landlord's Insurance Charge for 2011 is \$0.67 per square foot of Gross Leasable Area of the Leased Premises. Following the end of each Lease Year or Partial Lease Year, Landlord submit a statement to Tenant setting forth the actual amount of Tenant's Insurance Charge for the previous Lease Year or Partial Lease Year which shall set forth Landlord's computations in arriving at Tenant's Insurance Charge. If the amount of such monthly payments paid by Tenant

exceeds the actual amount thereafter due, the overpayment shall be credited to the next succeeding payment of Rent due hereunder. If the amount of such monthly payments paid by Tenant shall be less than the actual amount due, Tenant shall promptly pay to Landlord the difference between the amount paid by Tenant and the actual amount due with the next installment of Rent.

5.8 Payment of Rent. All Rent and other charges which Tenant is obligated to pay shall be paid to Landlord without demand therefor and shall be delivered to Landlord at Landlord's address or such other place as Landlord may from time to time direct. In the event that any check in payment of Rent is not honored when first presented by Landlord for payment, in addition to any remedy which Landlord may otherwise have for failure of Tenant to pay Rent when due, Tenant shall be obligated to pay the sum of \$100.00 to Landlord within five (5) days after notice to Tenant that its check was dishonored, in reimbursement of Landlord's additional administrative costs caused by Tenant's "bad check".

5.9 No Set-Off, etc. All Rent and other charges which Tenant is obligated to pay Landlord under any provision of this Lease shall, except as otherwise specifically provided herein, be paid timely to Landlord without any set-off, counterclaim or deduction whatsoever.

5.10 Past Due Rents. If during the term of this Lease Tenant fails to pay the full amount of the Minimum Rent, Percentage Rent or any other item of Rent when the same is due and payable, in addition to Landlord's rights and remedies pursuant to Section 11 hereof, Interest shall accrue on the unpaid amount from and after the date on which any sum shall be due and payable, and such Interest, together with a one-time Late Charge of \$500.00 for each payment that is more than five days past due to cover the extra expense involved in handling such delinquency, shall be paid to Landlord at the time of payment of the delinquent sum. Any payment to be made by Tenant under this Lease shall be deemed to have been paid upon the date that it is received by Landlord. The provision for interest herein shall not be deemed to grant Tenant any grace period or extension of time or prevent Landlord from exercising its other rights under this Lease.

5.11 Accord and Satisfaction. No payment by Tenant or receipt by Landlord of an amount less than any payment of Rent then due and payable shall be deemed to be other than on account of the Rent then due and payable, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as Rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such Rent or pursue any other remedy provided for in this Lease or available at law or in equity. Landlord's failure during the term of this Lease to prepare and deliver any of the tax bills, statements, notices and/or any other bill, statement or notice referred to in this Lease, and/or the Landlord's failure to make a demand for payment, shall not in any way cause the Landlord to forfeit or surrender its rights to collect any of the items of rent and/or additional rent otherwise due pursuant to the terms of this Lease. The provisions of this Section shall survive the expiration or cancellation of this Lease.

SECTION 6. COMMON AREAS

6.1 Common Areas. Landlord shall make available within the Shopping Center the Common Areas, or any portion thereof, subject, however, to Landlord's right to, from time to time, and at

any time, change or modify the same pursuant to Section 3.2 and to without limitation erect and install from time to time, and at any time within the Common Areas, parking areas, signs, kiosks, planters, pools and/or sculptures, subject to the provisions set forth in Section 3.2. Landlord shall operate, manage, equip, police, light, repair and maintain the Common Areas for their intended purposes in a first class manner and as Landlord shall in the exercise of its commercially reasonable discretion determine to be in the best interests of the Shopping Center.

6.2 Use of Common Areas. Tenant and its Permittees shall have the right and easement to use the Common Areas without charge in common with the Landlord and all other Permittees subject to such reasonable, non-discriminatory rules and regulations as Landlord may from time to time impose. Tenant agrees, after notice thereof, to abide by such rules and regulations and to use its commercially reasonable efforts to cause its Permittees to conform thereto. Landlord may at any time temporarily close any Common Area to make repairs or changes therein or to effect construction, repairs or changes within the Shopping Center, to prevent the acquisition of public rights therein, or to discourage non-customer parking, provided that such acts should be carried out so as to minimize their duration and their effect on the visibility of and access to the Leased Premises. Landlord agrees that no parking charges will be imposed for the use of the parking area within the Shopping Center except for use of a parking deck(s) which may be constructed within the "Permissible Deck Area" shown on Exhibit A-2.

6.3 Tenant Parking. Landlord may designate specific areas within the Shopping Center in which vehicles owned or operated by Tenant or its Permittees (other than its customers) must park and may prohibit the parking of any such vehicles in any other part of the Common Areas. All handicap parking spaces shall be equitably distributed throughout the Shopping Center, subject to compliance with Legal Requirements.

6.4 Common Area Charge.

(a) Tenant shall pay to Landlord as Tenant's Common Area Charge in each Lease Year and Partial Lease Year during the Lease Term as additional rent hereunder, Tenant's Pro Rata Share of the Operating Costs (as hereinafter defined). "Operating Costs" shall mean all reasonable costs and expenses incurred in operating, maintaining and repairing the Common Areas of the Shopping Center for the general benefit of the tenants in the Shopping Center and their Permittees, including those driveways, roads, walkways and curbs which are not within the Shopping Center but which are used for access to the Shopping Center, and such maintenance, repair, replacement and remodeling as shall be required in Landlord's commercially reasonable judgment to preserve the utility of the Common Areas and the Shopping Center in the same condition and status as existed at the time of completion of the original construction and installation and to provide for the safety and convenience of the tenants and occupants of the Shopping Center and their Permittees, including, without limitation, the roof and down spouts, the cost of all materials, supplies and services purchased or hired therefor; the cost and expense of landscaping, gardening and planting, cleaning, painting (including line painting), decorating, paving, lighting, energy usage monitoring and control, sanitary control, removal of snow, trash, garbage and other refuse, fire protection and sprinkler maintenance, water and sewerage charges attributable to the Common Areas, all Taxes (as defined in Section 5.6(a)) attributable to the Common Areas (to the extent not included in Taxes); the cost of all insurance carried by Landlord covering the Common Areas, including, without limitation, public liability, personal

and bodily injury and property damage liability and automobile coverage, fire and extended coverage, vandalism and malicious mischief and all broad form coverages, sign insurance and any other insurance that may be carried by Landlord covering the Common Areas, all in limits selected by Landlord (to the extent not included in Tenant's Insurance Charge); the cost of operation of loudspeakers and any other equipment supplying music, if any, to the Common Areas, or any parts thereof; the cost of operation of public toilets, if any; the cost of installing and renting of signs; the cost of maintenance, repair and replacement of Utility Facilities serving the Shopping Center, depreciation of machinery and equipment owned and used in the operation, maintenance and repair of the Shopping Center or the rental charges for such machinery and equipment; the cost of policing and security services of the Common Areas and the directing of traffic and parking of automobiles on the parking areas thereof, parking surcharges, if any, and the cost incurred in implementing or complying with orders, rules and regulations of Local, State and Federal environmental protection agencies and agencies and bodies of similar jurisdiction; the cost of personnel (including applicable payroll taxes, workers' compensation insurance and disability insurance) to implement all of the foregoing, and administrative costs equal to 10% of the total Operating Costs, in accordance with consistently applied accepted principles of sound management and accounting practices. Landlord may, however, cause any or all of said services to be provided by an independent contractor or contractors on a competitive basis. If any of the Operating Costs is incurred by Landlord as part of the costs of operating the common areas of other property adjacent to the Shopping Center that is owned by Landlord or an affiliated entity of Landlord, an equitable portion of the costs of the same shall be attributable to the Shopping Center as "Operating Costs."

(b) Notwithstanding the foregoing, the Operating Costs shall not include:

(1) the cost of the initial construction of the Common Areas, buildings and other structures and the cost of construction, operation, modifications, renovations and redevelopment of future Common Areas, buildings and other structures (it being agreed that modifications, renovations and redevelopment of the existing Common Areas may be included in Operating Costs, subject to compliance with subsection (2) below if same constitute capital expenditures);

(2) capital expenditures for repairs and replacements (including the cost of any installation or alteration which under generally accepted accounting principles would be generally classified as a capital expenditure) and all rental payments in connection with any item which, if purchased, would be deemed to be a capital expenditure under generally accepted accounting principles, provided however that Operating Costs shall include depreciation (or amortization for tangible items only) of all such capital expenditures for repairs and replacements over the useful life of the improvement as used for federal income tax purposes;

(3) depreciation (other than is above specified);

(4) deleted;

(5) costs of repairs and replacements to the extent covered by warranty, guaranty and/or service contract;

- (6) costs of structural repairs and replacements except to the extent same are capital expenditures (in which case same are subject to the provisions hereof relating to the inclusion of capital expenditures in Operating Costs);
- (7) costs of advertising, marketing and promotional expenses;
- (8) costs and expenses incurred in connection with any financing or refinancing of the Shopping Center;
- (9) costs and expenses incurred in connection with leasing (including, but not limited to, legal fees, leasing commissions, space planning, tenant fit-up work, construction allowance, moving allowance and "buy-out" payments);
- (10) costs and expenses for work which Landlord performs for Tenant or any other tenant in the Shopping Center as opposed to for all tenants at the Shopping Center as a whole;
- (11) legal and accounting fees and disbursements other than reasonable accounting fees and disbursements relating to preparation and delivery of periodic statements for additional rent obligations under leases;
- (12) costs of repairs and replacements incurred by reason of fire or other casualty or by reason of condemnation;
- (13) refundable deposits;
- (14) contributions for off-site improvements;
- (15) charitable or political contributions;
- (16) purchase or rental costs attributable to art work or sculptures;
- (17) salary and fringe benefits for employees above the grade of on site maintenance personnel and managers, and to the extent any employee, whose salary and fringe benefits are included in Operating Costs, does not devote his/her entire time to the Shopping Center, said salary and fringe benefits shall be included only in proportion to the amount of time spent at the Shopping Center;
- (18) deleted;
- (19) to the extent any service is provided by an affiliate or subsidiary of Landlord, the cost of such service shall not exceed the reasonable and customary cost charged by an independent third party performing the same services;

- (20) the cost of rent, telephone service, postage, office supplies, maintenance and repair of office equipment and other similar administrative costs relating to the operation of any sales/leasing office within the Shopping Center;
- (21) all payments of fines and penalties;
- (22) all contributions to reserves;
- (23) and any costs and expenses relating to any concessions operating within the Shopping Center;
- (24) franchise or income taxes imposed on Landlord;
- (25) the cost of painting, repainting, decorating and redecorating within the premises of any tenant, including Tenant, of the Shopping Center;
- (26) the cost of any items for which Landlord is, and to the extent Landlord is, actually reimbursed by insurance, condemnation, refund, rebate or otherwise;
- (27) interest and amortization on any mortgage or deed of trust and any rent paid or any ground or underlying lease;
- (28) legal expenses arising out of the construction or expansion of the Shopping Center or the enforcement of the provisions of any leases affecting the Shopping Center including without limitation this Lease;
- (29) increases in premiums for insurance required to be carried by Landlord pursuant to this Lease when such increase is caused by use of the Shopping Center by Landlord or any other tenant of Landlord which is extra hazardous on account of fire or otherwise;
- (30) the cost of all tools and equipment used in the construction or expansion (as opposed to repair or maintenance) of the Shopping Center;
- (31) the cost of overtime and other expenses to Landlord in curing its defaults;
- (32) the cost of abatement of pollutants and/or hazardous substances and/or materials;
- (33) legal fees, accountants fees and other expenses incurred in connection with disputes with tenants or other occupants or associated with the enforcement of any leases or defense of Landlord's title to or interest in the Shopping Center or any part thereof;
- (34) costs incurred due to violation by Landlord or any other tenant in the Shopping Center under the terms and conditions of this Lease and/or any other lease;

(35) the cost of any services which are other than customary for the operation of similar retail shopping centers in the vicinity of the Shopping Center;

(36) costs that are reimbursable to Landlord by tenants as a result of provisions contained in their specific leases, such as excessive use of utilities;

(37) all items and services for which tenants reimburse Landlord or pay third persons or which Landlord provides selectively to one or more tenants without reimbursement and not generally available to the tenants and occupants of the Shopping Center and their Permittees;

(38) the cost of correcting any code violations (including "ADA" compliance) by Landlord in the Shopping Center;

(39) costs attributable to any environmental clean-up; and/or

(40) costs due to the negligence or intentional acts of Landlord or its agents, contractors or employees.

(c) During the first Lease Year or Partial Lease Year, Tenant shall pay to Landlord, monthly in advance in equal installments, the amount reasonably estimated by Landlord as Tenant's Common Area Charge subject to adjustment when the amount of Tenant's Common Area Charge for such period shall be determined. Thereafter, and for the balance of the term of this Lease, Tenant shall pay to Landlord monthly in advance an amount equal to one-twelfth (1/12) of Tenant's Common Area Charge which shall be based upon Landlord's estimate of Tenant's Common Area Charge for the immediately preceding Lease Year. Without representation as to the same, the estimated amount of Tenant's Common Area Charge for 2011 is \$5.45 per square foot of Gross Leasable Area of the Leased Premises. If the amount of such monthly payments paid by Tenant exceeds the actual amount thereafter due, the overpayment shall be promptly paid to Tenant. If the amount of such monthly payments paid by Tenant shall be less than the actual amount due, Tenant shall pay to Landlord the difference between the amount paid by Tenant and the actual amount due with the next installment of Rent. Any adjustment for Tenant's Common Area Charge shall be paid within fifteen (15) days after Landlord's written demand therefor accompanied by an annual statement that shall set forth Landlord's computations in arriving at Tenant's Common Area Charge. Notwithstanding anything herein to the contrary, Tenant's annual Common Area Charge for any Lease Year after the first full Lease Year shall not exceed 105% of Tenant's annual Common Area Charge for the immediately preceding Lease Year ("CAM Cap"), excluding from Operating Costs for purposes of such calculation, the costs of snow removal and utilities.

(d) In the event of any dispute, Tenant shall pay the amount of Landlord's bill or statement hereunder, and such payment shall be without prejudice to Tenant's position. If the dispute shall be determined in Tenant's favor, by agreement or otherwise, Landlord shall pay to Tenant the amount of Tenant's overpayment resulting from such compliance by Tenant. Any such bill or statement shall be deemed binding and conclusive if Tenant fails to object thereto within 36 months after receipt thereof.

(e) Landlord shall keep and maintain at the Shopping Center or at its general offices a complete, permanent and accurate set of books and records conforming to generally accepted accounting principles consistently applied and containing all supporting evidence from which Operating Costs and the calculation of Tenant's Pro Rata Share thereof can be determined. Such books and records shall include all records as would normally be required to be kept and examined by an independent accountant in accordance with generally accepted auditing practices in performing an audit of Operating Costs and the calculation of Tenant's Pro Rata Share thereof. Such books, records and evidence shall be kept for at least 36 months after the expiration of the Lease Year to which the same pertain and if Tenant shall inspect and/or audit Operating Costs and the calculation of Tenant's Pro Rata Share thereof for such Lease Year, such books, records and evidence shall continue to be kept until such inspection and/or audit shall have been concluded. Tenant, or its regularly employed auditing or accounting firm not conducting such audit on a contingency basis, shall have the right, at its own cost and expense, for a period of thirty-six (36) months after receipt of a Landlord's statement of Tenant's Common Area Charge, to (i) dispute the correctness of such statement, and (ii) begin an audit and/or inspection of Landlord's books and records relating to such statement and the Operating Costs relating thereto. Such audit and/or inspection shall be conducted during normal business hours at a location designated by Landlord and shall be for the sole purpose of verifying the amount of such Operating Costs and the calculation of Tenant's Pro Rata Share thereof. Tenant shall give Landlord not less than thirty (30) days' written notice of its intention to conduct any such audit. If such audit discloses that the amount payable by Tenant as Tenant's Pro Rata Share of Operating Costs has been overstated, Tenant's obligation for Operating Costs shall be recalculated and Landlord shall rebate to Tenant the overcharge within thirty (30) days after demand therefor or, at Tenant's election, Tenant may offset the amount of the overcharge against Operating Costs thereafter becoming due. If it is determined by any such audit that any statement previously delivered by Landlord to Tenant was not accurate, an adjustment shall be made, and one party shall pay to the other upon demand such sums as may be necessary so that the correct amount of Operating Costs shall have been paid by Tenant to Landlord. Tenant shall have no right to schedule or commence an audit at such time as Tenant has not paid the full amount of Operating Costs theretofore billed, nor at such time as Tenant is in default of any of its obligations under this Lease, notice of which having been given and time to cure having expired. Tenant may review only those records of Landlord specifically related to Operating Costs. Without limiting the foregoing, Tenant may not review any other leases or agreements, nor Landlord's tax return or financial statements. Tenant may not remove any documents from Landlord's offices or make copies of any records made available to Tenant for such audit. Tenant will deliver to Landlord a true and complete copy of the audit report and all accompanying data if any claim for an overpayment is made by Tenant. Tenant will keep confidential all agreements involving the rights provided in this Section and the results of any audits conducted hereunder, provided however that Tenant shall be permitted to furnish said information to its attorneys, accountants and auditors to the extent necessary to perform their respective services for Tenant or as required by law. The audit shall be conducted in accordance with generally accepted rules of auditing practices. Tenant may not conduct an audit more than once each calendar year, and may not subject any Calendar Year to more than one audit. No audit shall cover a period of time in excess of three (3) calendar years immediately preceding the audit. Any audit that does not take place within three (3) years of the Lease Year being audited by Tenant shall be deemed to have been waived. In the event that Tenant, after having

reasonable opportunity to examine the Operating Cost and Insurance records as provided herein, shall disagree with Landlord's determination, then Landlord and Tenant shall attempt to adjust such disagreement, and if they are unable to do so, each shall designate an independent certified public accountant who shall not have worked for Landlord or Tenant (the "Auditor") whose determination shall be binding upon the parties. The cost of the Auditor shall be borne equally by Landlord and Tenant. However, if the discrepancy disclosed and confirmed by the Auditor shall be equal to or exceed five percent (5%) of Operating Costs, Landlord shall be obligated to pay the Auditor's reasonable costs.

SECTION 7. UTILITY SERVICES

7.1 Utility Connections. Unless otherwise provided in Exhibit C, Tenant shall pay all installation and service charges required to initially connect, or thereafter to provide such additional or substitute utilities to the Leased Premises including, without limitation, energy, gas, electricity, telephone, water, sewage and drainage system connections as may be hereafter from time to time offered or provided in the sole discretion of Landlord to one or more of the Stores. Tenant covenants that its use of any utilities shall not exceed the capacity of the Utility Facilities initially installed by Landlord or by Tenant, and Landlord shall have the right to inspect and test Tenant's utility systems to determine if Tenant's utility systems exceed such capacity. In the event Tenant's utility systems exceed the capacity of the Utility Facilities installed by Landlord or Tenant, Tenant shall correct its utility systems so that the same shall not exceed the permitted capacity; provided, however, that Tenant may increase the capacity of the Utility Facilities if: (i) Tenant pays for and performs all necessary work therefor; (ii) Tenant receives Landlord's prior approval for such work; (iii) such work results in no increased expense to Landlord; and (iv) such work does not disrupt utility services to other occupants of the Shopping Center or interfere with the business of the other occupants of the Shopping Center. Landlord shall not be under any responsibility or liability in any way whatsoever for the quality, impairment, interruption, stoppage, or other interference with service involving any of services or utilities provided to the Leased Premises.

7.2 Utility Services and Charges. Except as otherwise provided in Section 7.3 below, Tenant shall arrange directly with the local utility services for the commencement of all necessary utilities to take effect on the day Landlord delivers the Leased Premises to Tenant for Tenant's Work, and from and after that day, Tenant shall pay all bills for water, gas, electricity, fuel, light, heat and power furnished to or used by Tenant on or about the Leased Premises, and all sewage disposal or sewerage service charges for the Leased Premises whether the charges for same are separately metered, "flat charged", or otherwise computed directly to such companies. If Tenant does not pay the above bills when due, Landlord may pay all or any of the same, and such payment, with Interest thereon computed as provided in Section 5.10 hereof, shall be deemed additional rent for the Leased Premises.

7.3 Charges For Domestic Water. Landlord shall supply domestic water to the Leased Premises, and Tenant agrees to accept same and to pay the charges billed by Landlord therefor from time to time on a sub-metered basis based on the rate charged to Landlord by the governmental authority or utility company providing domestic water service to the Shopping Center. Any bill or statement received by Tenant for such water consumption shall be paid by Tenant within fifteen (15) days following its receipt thereof.

SECTION 8. LANDLORD'S ADDITIONAL COVENANTS

8.1 Repairs by Landlord. Subject to the provisions of Section 10, Landlord shall keep the roof and the foundations of the Leased Premises and the structure and exterior of the Leased Premises, and the common Utility Facilities located outside of and serving the Leased Premises installed by Landlord (but not including Tenant's service connections therewith), in good condition; provided, however, that if any damage is caused by any act, negligence or omission of Tenant or Tenant's Permittees, Tenant shall upon demand by Landlord pay for any necessary repairs. Landlord shall also be responsible for any repairs that are its responsibility pursuant to Section 9.1(e) below or that are the result of the act, negligence or omission of it or its Permittees, subject to Section 12.11 hereof. In no event shall Landlord be responsible for the following except to the extent set forth in Exhibit C, which shall be Tenant's responsibility:

- (a) Repair of damage caused by the act or omission of Tenant or its Permittees;
- (b) Repair of any loading areas not used in common with others and not caused by defects in Landlord's Work; and
- (c) Repairs that are the responsibility of Tenant in accordance with Section 9.1(e) hereof.

Landlord shall not be required to commence any repairs required hereunder until after notice from Tenant that the same is necessary, which notice (except in the case of emergency) shall be in writing and allow Landlord a reasonable time in which to commence such repair. Landlord shall prosecute to completion with due diligence any repair commenced pursuant to this Section 8.1.

8.2 Insurance. Landlord shall, during the Term of this Lease, cause the buildings and other improvements now or hereafter located within the Shopping Center (the "Improvements") to be insured for the benefit of Landlord and any and all mortgagees of Landlord, under "All Risk" or "Special Form" property insurance policies for the full replacement value of the Improvements for damage or loss typically covered by All Risk property insurance and rent loss insurance. Landlord shall also maintain (i) commercial general liability insurance in standard form in the minimum amount of \$5,000,000.00 combined single limit for bodily injury, death, personal injury and property damage arising out of any one occurrence, accident or disaster and which will further include by duly executed endorsement as part of the policy an agreement indemnifying Tenant in accordance with the provisions of Section 8.5 hereof, and (ii) insurance against loss or damage by the explosion or rupture of pressure vessels, if any such vessels shall be utilized, in an amount not less than \$100,000.00 per accident, such insurance to be written on a replacement cost basis. Such policies shall be issued by insurance companies rated A/VIII or better by A.M. Best Company.

8.3 Quiet Enjoyment. Landlord covenants that Tenant, subject to the provisions of this Lease, shall peacefully and quietly have, hold and enjoy the Leased Premises throughout the Lease Term (including any Extension Period), or until this Lease is terminated as herein provided, without interference by Landlord or anyone claiming by or through Landlord.

8.4 Liability. (a) Landlord shall not be liable, except in case of Landlord's negligence or willful misconduct, for any damage or loss resulting from any accident or occurrence in, or upon, the Leased Premises or other portions of the Shopping Center sustained by any person claiming through the Tenant.

(b) If Landlord named herein shall be in breach or default with respect to any obligation hereunder or otherwise, Tenant agrees to look for satisfaction solely to the equity of Landlord in the Shopping Center. No other assets of such Landlord (or any partners, venturers, stockholders, beneficiaries, trustees or officers of Landlord) shall be subject to levy, execution or other procedures for the satisfaction of Tenant's remedies. In the event Landlord transfers this Lease, other than as security for a Mortgage, the Landlord (and, in case of any subsequent transfers or conveyances, the then grantor) shall, upon such transfer, be relieved from all liability and obligations hereunder arising after such transfer.

8.5 Indemnity. (a) Landlord shall indemnify and hold harmless Tenant, its successors, assigns, related companies, officers, directors, partners, members, agents and employees, from and against any and all claims, lawsuits, liabilities, losses, damages and expenses (including, without limitation, reasonable attorneys' fees and disbursements arising by reason of any of the aforesaid (including attorneys' fees and disbursements incurred by Tenant in any action or proceeding between Landlord and Tenant or between Tenant and any third party or otherwise), in an action against Landlord under this indemnity) in connection with loss or life, personal injury and/or damage to property arising from any occurrence in or upon the Common Areas except such that may be caused by the negligence or intentional acts of Tenant or its agents, contractors or employees.

(b) With respect to any matter for which Landlord shall indemnify Tenant hereunder, Landlord shall not settle or compromise such matter without the consent of Tenant, such consent not to be unreasonably withheld or delayed, and if Landlord shall not be resisting and defending such action or proceeding, then Tenant shall use counsel reasonably satisfactory to Landlord, and Landlord's or Tenant's insurance company counsel shall be deemed satisfactory.

(c) The provisions of this Section shall survive the expiration or sooner termination of this Lease.

8.6 Landlord's Restrictive Covenant. (a) Landlord covenants and agrees that, except for the Leased Premises, and so long as Tenant is open and operating substantially all of the Leased Premises for the Permitted Use, it shall not hereafter lease, rent or occupy or permit any premises in the Building to be occupied for the operation of any off price apparel specialty retail store containing more than 10,000 square feet of Gross Leasable Area or for the operation of any off price specialty retail children's apparel store or off price specialty retail shoe store (the "Exclusive Uses"); provided, however, Landlord shall have the right to lease space in the Building to (x) "Carter's" or division thereof, and its successors and assigns, or to another similar quality children's apparel store not to exceed 10,000 square feet of Gross Leasable Area, and (y) a quality shoe store similar, but not limited, to Aldo, and to an off-price shoe store that sells primarily name brand and designer label shoes similar, but not limited, to DSW and Famous Footwear, not to exceed 5,000 square feet of Gross Leasable Area. During such time as Tenant is entitled to the benefit of the Exclusive Uses, Landlord covenants that it will include, in all

leases of space in the Building executed after the execution of this Lease, a provision prohibiting such future tenants from using their leased premises in violation of the Exclusive Uses. If Landlord fails to do so and/or if such tenant(s) use their leased premises in violation of the Exclusive Uses, Tenant shall have the right to seek an injunction and/or a judgment against Landlord for damages from a court of competent jurisdiction.

(b) Landlord further covenants and agrees that it shall not lease, rent or occupy or permit any premises in the Shopping Center (to the extent that Landlord presently has such right) to be occupied (i) for any pornographic, noxious or offensive use, or (ii) for any so-called "army and navy store", or (iii) for the primary use as a so-called "game room" open to the public for the use of pinball machines, video or other electronic games, except if incidental to another use, or (iv) for the following uses:

- (A) fire sale, auction, fictitious going out-of-business sale or bankruptcy sale;
- (B) sale, rental or display for sale or rent of any pornographic, x-rated or obscene material, or as an "adult book store" or adult video store, or as a so-called "sex shop", or as an establishment which permits or presents obscene, nude or semi-nude performances or modeling;
- (C) manufacturing purposes;
- (D) billiards or pool hall except if incidental to another use;
- (E) swap show selling merchandise that is used, damaged or discontinued;
- (F) ballroom, dance hall or discotheque except if incidental to another use;
- (G) funeral parlor;
- (H) sale of paraphernalia for use with illicit drugs;
- (I) arcade except if incidental to another use; and
- (J) any business which emits or causes strong, unusual or obnoxious odors, fumes, dust or vapors (except for normal restaurant odors) or objectionable noises or sounds (which noises or sounds can be unreasonably heard outside of the subject premises) or which is a public or private nuisance.

(c) If Landlord defaults in the performance of any obligation under this Section, Tenant may give Landlord a notice specifying the nature of the default. If Landlord does not, within thirty (30) days after receipt of such notice, commence to cure the default, Tenant shall have the right in addition to any other rights that it may have under this Lease, at law or in equity to seek damages or an injunction.

SECTION 9. TENANT'S ADDITIONAL COVENANTS

9.1 Affirmative Covenants. Tenant covenants that, at its own cost and expense, and at all times during the Lease Term:

(a) General Performance. Tenant shall perform promptly all of Tenant's obligations set forth in this Lease and in the Exhibits attached hereto, such performance to be in conformity with all Legal Requirements and Insurance Requirements and the rules and regulations set forth in Exhibit D.

(b) Use of Leased Premises. Tenant shall use the Leased Premises only for the Permitted Uses. Tenant covenants and agrees that in no event shall the Leased Premises be used for any of the uses set forth in Exhibit G hereto annexed to the extent such use would violate any exclusive use provision contained in leases of other tenants in the Shopping Center in effect at the time of the first occasion of such use by Tenant or for any of the uses set forth in Section 8.6 (b) hereof. Landlord represents that the uses set forth in Exhibit G are uses prohibited by exclusive use provisions in leases of other tenants in the Shopping Center or property adjacent to the Shopping Center that are in full force and effect and that there are no other uses prohibited by exclusive use provisions in any such leases that affect the Leased Premises. Landlord shall, from time to time, provide Tenant, within twenty (20) days after demand therefor, with a certification by Landlord as to those restrictions in Exhibit G that are then still in effect under such leases.

(c) Opening Covenant. Tenant covenants and agrees to open for business to the public for at least one day under Tenant's Trade Name (or under the trade name under which a majority of the stores operated under the name Daffy's in the New York City metropolitan area on the date hereof are then being operated), fully stocked and staffed in a manner substantially similar to the majority of stores operated under the name "Daffy's" in the New York City metropolitan area on the date hereof no later than the Commencement Date.

(d) Signs and Advertising. Tenant shall provide and maintain in good condition, identification signs in accordance with Exhibit B. Tenant shall keep its store front sign lit during such hours as are reasonably determined by the Project Manager. In all advertisements, stationery or printed material specifically relating to Tenant's activities in the Leased Premises, Tenant shall refer to the Shopping Center as the Bay Plaza Shopping Center and shall include the address and telephone number of the Leased Premises wherever the address and telephone numbers of similar business activities conducted by Tenant in the New York City area are mentioned.

(e) Repair and Maintenance. (i) Tenant shall keep the Leased Premises (excluding the structure and exterior thereof, except to the caused by the acts or omissions of Tenant), including without limitation, the entire storefront, including the light boxes on the sides of the entrance to the Leased Premises, all glass, doors, fixtures and improvements in good condition (including all necessary painting). Tenant shall also keep all Utility Facilities, plumbing, electrical and mechanical installations, equipment and facilities including vertical transportation, exclusively serving the Leased Premises (the Landlord shall be responsible for all Utility Facilities, plumbing, electrical and mechanical installations, equipment and facilities located in the Leased Premises but serving other parts of the Shopping Center) in good condition, and shall

keep any sidewalk (but not the curb) or service area immediately contiguous to the Leased Premises free of snow, ice, debris and garbage. Tenant shall, at its own cost and expense, keep all of the drains, waste and sewer pipes and all other plumbing and/or other connections with mains exclusively servicing the Leased Premises free from obstruction to the reasonable satisfaction of Landlord and all authorities having jurisdiction. Tenant, at its own cost and expense, will be responsible for the repair and/or replacement of any and all plumbing and/or plumbing fixtures in the Leased Premises and exclusively serving the Leased Premises, including any such fixtures and plumbing which originally may have been installed by Landlord or a prior occupant. Landlord shall cause all restaurant tenants in the Building to have and maintain grease traps and shall provide Tenant with direct access to main lines. Tenant shall promptly reimburse Landlord for all costs and expenses if the Landlord makes any plumbing or waste line repairs or replacements that Tenant is responsible for. If the Leased Premises are used for the sale of food, Tenant shall store all trash, refuse and garbage in a garbage storeroom or compartment which Tenant shall install and keep in good repair at its sole expense. Landlord may require that the Leased Premises be periodically treated against pest, rodents or vermin, and in such event, Tenant will, at its sole cost and expense, enter into a contract with a professional pest control service for the performance of such work, which service shall be subject to Landlord's prior reasonable approval. Landlord hereby approves Assured Environments as Tenant's pest control service. Any work performed by Tenant during the Lease Term shall be done in conformity with Exhibit B. To the extent that any repairs which are Tenant's responsibility under this lease are necessitated by Landlord's alterations or by the negligence or misconduct of Landlord or any agent, employee, contractor, licensee or invitee of Landlord, then such repairs shall be at Landlord's expense. Landlord shall be responsible for all structural repairs to the Leased Premises including structural repairs to the floor thereof, repairs to the roof and repairs to the utility lines serving the Leased Premises to the point of entry thereof (provided that if such utility lines service both the Leased Premises and other space in the Shopping Center (i.e. such lines do not run solely between the demised premises and the point at which such service enters the building), Landlord shall be responsible for such utility lines within the Leased Premises as well). The provisions of this paragraph with respect to the making of repairs shall not apply to repairs necessitated by defects in Landlord's Work (which shall be the responsibility of Landlord) or reasonable wear and tear or in the case of fire or other casualty which are dealt with in Section 10.1 hereof.

(ii) During the entire Lease Term, Tenant agrees to maintain, at Tenant's sole cost, a service and maintenance contract approved by Landlord (such approval not to be unreasonably withheld) with an independent HVAC contractor approved by Landlord covering the HVAC system serving the Leased Premises as are recommended by the manufacturer of such systems. Landlord hereby approves Environmental Engineering as Tenant's HVAC contractor. Tenant agrees to provide Landlord with a copy of a signed HVAC service contract within thirty (30) days following the Commencement Date. Further, Tenant agrees during the entire Lease Term to use the sprinkler system service company designated by Landlord for any repairs or maintenance required for Tenant's sprinkler, provided that the cost thereof at all times shall be reasonable and competitive.

(iii) Tenant further agrees at its own expense to make all alterations, additions or replacements to the Leased Premises required by Legal Requirements, to the extent arising out of Tenant's specific method or manner of use of the Leased Premises (all other

alterations, additions and replacements to be the obligation of Landlord); to keep the Leased Premises equipped with all safety appliances so required; to procure any licenses and permits required for any use of the Leased Premises by Tenant; and to comply with the orders and regulations of all governmental authorities. Landlord shall comply with or use its diligent efforts to cause the other tenants in the Shopping Center to comply with all laws, orders and regulations with respect to the remainder of the Shopping Center. Nothing herein shall require Tenant to make structural repairs or alterations required by Legal Requirements, which shall be the responsibility of Landlord. Tenant shall be responsible for the timely payment of all ECB (and/or successor or other similar and/or related agency) violations, fines and/or penalties which may be issued as the result of a failure to comply with the provisions of this paragraph, and the fines and/or penalties for such violations may be collected by Landlord as additional rent in the event Tenant fails to make such payments, though this shall not be construed as granting Tenant permission to avoid making such payments in a timely fashion when due.

(iv) Tenant agrees that Tenant's furnishings, flooring, walls, fixtures, equipment and other appointments in the Leased Premises shall at all times be maintained in a first class condition.

(f) Taxes and Liens. Tenant shall pay, before delinquency, all municipal, county, regional, state and federal taxes levied, assessed, or unpaid on any leasehold interest, any investment of Tenant in the Leased Premises, or any personal property of any kind owned, installed, or used by Tenant or on Tenant's right to occupancy of the Leased Premises. Tenant shall also pay promptly when due the entire cost of any work affecting the Leased Premises done by or for the account of Tenant, so that this Lease and the Leased Premises shall at all times be free of liens for labor and materials, all such work to be done in accordance with all Legal Requirements and Insurance Requirements and in a good and workmanlike manner reasonably acceptable to Landlord. If a notice of mechanic's lien is filed against the Leased Premises for labor or material alleged to have been furnished, or to be furnished, at the Leased Premises, to or for the Tenant, or to or for someone claiming under the Tenant, and if the Tenant shall fail to take such action as shall cause such lien to be discharged of record within thirty (30) days after notice thereof, Landlord, at its option, may discharge such lien by deposit or by bonding. Any amount paid or expense incurred by the Landlord by reason of the failure of the Tenant to comply with the foregoing or any other provision of the Lease, or in defending or prosecuting any such action or proceeding, shall be due and payable by the Tenant to the Landlord on the first day of the next following month, or, at the option of the Landlord, on the first day of any succeeding month. Tenant shall, within five (5) days of request by Landlord, provide documentation demonstrating compliance with the provisions of this and/or any other provision, obligation and/or requirement of this Lease to Landlord as Landlord may reasonably require and/or demand.

(g) Indemnification.

(i) Tenant will defend, indemnify and hold harmless Landlord, its successors, assigns, related companies, officers, directors, partners, members, agents and employees, from and against any and all claims, lawsuits, liabilities, losses, damages and expenses (including, without limitation, reasonable attorneys' fees and disbursements arising by reason of any of the aforesaid (including attorneys' fees and disbursements incurred by Landlord in any action or proceeding between Landlord and Tenant or between Landlord and any third party or otherwise)

in an action against Tenant under this indemnity) in connection with loss of life, personal injury and/or damage to property arising from any occurrence in or upon the Leased Premises except such that may be caused by the negligence or intentional acts of Landlord or its agents, contractors or employees.

(ii) With respect to any matter for which Tenant shall indemnify Landlord hereunder, Landlord shall not settle or compromise such matter without the consent of Tenant, such consent not to be unreasonably withheld or delayed, and if Tenant shall not be resisting and defending such action or proceeding, Landlord shall use counsel reasonably satisfactory to Tenant, and Landlord's or Tenant's insurance company counsel shall be deemed satisfactory.

(iii) The provisions of this Section shall survive the expiration or sooner termination of this Lease.

(h) Inspection of Premises; Repairs by Landlord. Tenant shall permit the Landlord, upon reasonable prior notice (except in an emergency when no such notice shall be required), to enter the Leased Premises during normal business hours and at other reasonable times to inspect the Leased Premises and to make such repairs, improvements, or additions in the Leased Premises or in the Building as may be necessary or appropriate, and to take onto the Leased Premises all materials that may be required therefor without the same constituting an eviction of Tenant in whole or in part; provided that Landlord proceeds with due diligence, uses reasonable efforts to minimize the duration thereof and any interference with Tenant's use and occupancy of the Leased Premises and repairs any damage caused thereby. Except as provided in Section 10.1, Tenant's Rent shall not, during the prosecution of such work, abate because of any business loss or interruption. Landlord shall also have the right to enter upon the Leased Premises, upon reasonable prior notice, during normal business hours and at other reasonable times to show the same to prospective purchasers or Mortgagees. During the six months prior to the expiration of the Lease Term, Landlord may, upon reasonable prior notice and upon appointment with the Tenant, show the Leased Premises to prospective tenants.

(i) Surrender of Premises. Upon any termination of the Lease Term, Tenant shall quit and surrender to Landlord the Leased Premises, broom clean, in good order and condition, normal wear and tear and damage by casualty excepted. Tenant shall (unless otherwise directed by Landlord) remove at Tenant's expense all trade fixtures, inventory, stock in trade, furniture and other personal property installed by Tenant and shall repair all damage to the Leased Premises caused by such removal. Any property not so removed shall be deemed to have been abandoned by Tenant and may be retained or disposed of by Landlord free of any and all claims of Tenant, as Landlord shall desire. All other installations or improvements (including all Utility Facilities, paneling, decorating, partitions, railings, mezzanine floors, galleries and the like) made by either party shall be and become upon installation, the property of Landlord and shall be surrendered with the Leased Premises as a part thereof at the termination of this Lease.

(j) Subordination. (i) The rights and interest of Tenant under this Lease shall be subject and subordinate to any Mortgage now or hereafter placed upon all or any part of the Shopping Center and to any advances made thereunder, and to the interest thereon, and all renewals, modifications, consolidations, replacements and extensions thereof. Any Mortgagee may elect also to give the rights and interest of Tenant under this Lease priority over the lien of

its Mortgage. In either event and upon notice by such Mortgagee to Tenant to that effect, the rights and interests of Tenant under this Lease shall be deemed to be subordinate to, or to have priority over, as the case may be. Tenant agrees that in the event of a sale, transfer or assignment of the Landlord's interest in the Shopping Center or any part thereof which includes the Leased Premises, or in the event any proceedings are brought for the foreclosure of or for the exercise of any power of sale under any Mortgage made by Landlord covering the Shopping Center or any part thereof which includes the Leased Premises, or in the event of a cancellation or termination of any ground or underlying lease covering the Shopping Center or any part thereof which includes the Leased Premises, to attorn to and to recognize such transferee, purchaser or Mortgagee as Landlord under this Lease.

(ii) With reference to any assignment by Landlord of Landlord's interest in this Lease, or the rents payable hereunder, conditional in nature or otherwise, which assignment is made to the holder of a mortgage or ground lease on property which includes the Leased Premises, Tenant agrees:

(1) That the execution thereof by Landlord, and the acceptance thereof by the holder of such mortgage or the ground lessor, shall never be treated as an assumption by such holder of any of the obligations of Landlord hereunder, unless such holder or ground lessor shall, by notice sent to Tenant, specifically otherwise elects; and

(2) That except as aforesaid, such holder or ground lessor shall be treated as having assumed Landlord's obligations hereunder only upon and as of foreclosure of such holder's mortgage and the taking of possession of the Leased Premises, or, in the case of a ground lessor, the assumption of Landlord's position hereunder by such ground lessor.

Where a party acquires Landlord's interest in property (whether land only, or land and buildings) which includes the Leased Premises, and simultaneously leases the same back, such acquisition shall not be treated as an assumption of Landlord's position hereunder, and this Lease shall thereafter be subject and subordinate at all times to such lease.

(iii) The subordination by Tenant described in this subsection (j) is subject to and conditioned upon Landlord's obtaining for the benefit of Tenant, and Landlord so covenants and agrees to use commercially reasonable efforts to obtain for the benefit of Tenant, a non-disturbance agreement in form and substance reasonably acceptable to Tenant from any future ground lessor, lessor in a sale and leaseback or lease and sublease back, or holder of any Mortgage which may hereafter affect the real property of which the Leased Premises are a part. Landlord shall use good faith diligent efforts to obtain non-disturbance agreements for the benefit of Tenant from all existing Mortgagees prior to the Commencement Date. Any fees or charges imposed by the Mortgagee in connection therewith shall be paid as follows: Tenant shall pay up to the first \$1,000.00, Landlord shall pay any such amount above \$1,000.00 up to an additional \$1,000.00 and Tenant shall pay the balance, if any.

(k) Financial Statements. Once in each calendar year, Tenant shall promptly furnish to Landlord, upon request, a certified current balance sheet reflecting Tenant's then current financial condition as of the date of that balance sheet. Landlord covenants and agrees to keep such financial and other non-public information strictly confidential and will not disclose such

financial and other non-public information to any third party without Tenant's prior written consent, except to Landlord's lenders, prospective lenders, and prospective buyers of the Shopping Center, as may be required by law, and to Landlord's accountants and attorneys to the extent necessary to perform their respective services for Landlord.

(l) Hazardous Materials. Tenant shall, at all times, comply with all local, state and federal laws, rules and regulations governing its use, handling and disposal of Hazardous Material in the Leased Premises including, but not limited to Section 1004 of the Federal Reserve Conservation and Recovery Act, 42 U.S.C. Section 6901 et. seq. (42 U.S.C. Section 6903) and any additions, amendments, or modifications thereto. As used herein, the term "Hazardous Material" shall mean any hazardous or toxic substance material or waste which is, or becomes, regulated by any local or state government authority in which the Leased Premises is located or the United States Government. Landlord and its agents shall have the right, but not the duty, to inspect the Leased Premises, upon reasonable prior notice and at reasonable times, to determine whether Tenant is complying with the terms of this paragraph. If Tenant is not in compliance with this paragraph, Landlord shall have the right to immediately enter upon the Leased Premises and take whatever actions reasonably necessary to comply including, but not limited to the removal from the Leased Premises of any Hazardous Material and the restoration of the Leased Premises to a clean, neat, attractive, healthy and sanitary condition. Tenant shall pay all such costs incurred by Landlord within ten (10) days following receipt of a bill therefor plus 5% thereof for administrative costs. Landlord represents and warrants to Tenant that, as of the date hereof, and to Landlord's knowledge, there are no Hazardous Material, asbestos or mold located within, upon or under the Leased Premises or the Building.

9.2 Insurance.

(a) In addition to the Insurance Requirements of Exhibit B hereof, Tenant shall, at its sole cost and expense maintain with responsible companies licensed to do business in the State of New York, insurance policies duly endorsed with respect to (i) and (ii) below by the insurer to name each of Landlord, Tenant and any Mortgagee, as their respective interests may appear, and providing not less than the following protection:

(i) Commercial general liability insurance against all claims on account of personal injury and property damage for which Tenant may as a result of its business in the Shopping Center become liable with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate and such policies shall, with respect to any instance of property damage, including water damage and sprinkler leakage legal liability in the same policy limits; and excess or umbrella liability insurance with limits of \$5,000,000 in excess of the comprehensive general liability limits set forth in this paragraph; and which will further include by duly executed endorsement as part of the policy an agreement indemnifying Landlord in accordance with the provisions of Section 9.1(g) hereof; and

(ii) Steam boiler and machinery insurance with limits of not less than \$300,000.00 if there is a boiler or other similar equipment in the Leased Premises;

(iii) All-risk insurance with such extended coverage or other endorsements as Landlord may from time to time reasonably require, covering all of Tenant's stock in trade,

fixtures, personal property, and all installations and improvements made by Tenant (including Tenant's installations and improvements made pursuant to Exhibit B) in, on, or about the Leased Premises in an amount not less than 80% of the then full insurable value (actual replacement cost without deduction for physical depreciation), but in any event in an amount sufficient to prevent Landlord and Tenant from becoming co-insurers under provisions of the applicable policy;

(iv) Workers' compensation or similar insurance affording statutory coverage if the nature of Tenant's business is such as to place any or all of its employees under the coverage of local workers' compensation or similar statutes;

(v) [Intentionally deleted]

(vi) Business interruption insurance in an amount sufficient to compensate for loss of income for the then-current Lease Year; and

(vii) Such other insurance against other insurable hazards as from time to time are commonly insured against in the case of premises similarly situated; provided Landlord gives Tenant reasonable notice of the type of such required insurance.

(b) The insurance policies or duly executed certificates thereof, together with satisfactory evidence that the premium has been paid, shall be deposited with Landlord on the day Tenant begins Tenant's Work and thereafter evidence of continuing insurance (in the form of a renewal policy or certificate of insurance endorsed by the insurer) and premium payment shall be given to Landlord not less than 30 days prior to the expiration of each policy required to be in force hereunder. All insurance carried by Tenant shall be in form satisfactory to Landlord and shall provide that the policy shall not be subject to cancellation, termination or material change except after at least 30 days prior written notice to the Landlord and to any Mortgagee to whom a loss thereunder may be payable. If Tenant fails to maintain the required insurance, Landlord may, but shall not be obligated to, obtain such insurance and Tenant shall pay Landlord the premium upon demand.

(c) If, as a result of Tenant's specific method or manner of use or occupancy of any portion of the Shopping Center, Landlord is charged any increase in premium on insurance carried by Landlord, Tenant shall promptly pay on demand the amount of such increase or reimbursement and the amount so paid shall not be considered an increase in Landlord's insurance premiums for the purpose of Section 5.7. Landlord acknowledges that Tenant's current business operations will not result in an increase in Landlord's insurance premiums.

9.3 Promotional Fund. Landlord may establish a fund ("Promotional Fund") for the purposes of developing, producing and placing advertising for the general benefit of the Shopping Center, and Tenant shall pay to Landlord, for deposit in and use by the Promotional Fund, the amount set forth in Subsection 1.1(m) ("Promotional Fund Charge"), subject to adjustment as hereinafter provided, in equal monthly installments on the dates and in the manner provided for the payment of Minimum Rent and administrative costs equal to 5% of the total amount of Tenant's Promotional Fund Charge. Tenant agrees that the mention or non-mention of Tenant's trade name in the general advertising hereunder shall be in Landlord's sole discretion; however, at times when such advertising is to include tenant advertising, Tenant shall, upon request, furnish

copy, pictures or an example of its merchandise, or all three, describing Tenant's business or merchandise for promotion in such advertising. The Promotional Fund Charge shall be adjusted at the beginning of the sixty-first (61st) month of the Lease Term and every sixty (60) months thereafter in accordance with the following computation: by multiplying the Promotional Fund Charge payable for the immediately preceding 60-month period by 115%, and Tenant shall pay the result thus obtained in lieu of the then current Promotional Fund Charge. Landlord hereby disclaims any warranty, express or implied, that the Promotional Fund will benefit Tenant or Tenant's Gross Sales.

9.4 Negative Covenants.

(a) Prohibited Conduct. Tenant shall not, without the written consent of Landlord: (i) conduct any auction, fire, "going-out-of-business" or bankruptcy sales; (ii) operate any coin or token-operated vending machine or similar device for the sale of any goods, foods, beverages or services, including, without limitation, pay telephones, pay toilets, scales, amusement devices and vending machines but excluding coin-operated clothes washers and dryers, except for the exclusive use by Tenant's employees; (iii) sell or display merchandise on, or otherwise obstruct the Common Area or the vestibule or entry thereto; (iv) distribute handbills, advertising material or otherwise solicit or conduct business in the Common Areas; (v) permit deliveries to the Leased Premises to be made primarily other than through the receiving area of the Leased Premises; (vi) except for sale events and other special occasions, be open for business in the Leased Premises during periods other than between 10:00 a.m. and 9:00 p.m.

(b) Alterations: Maintenance. Tenant shall not, without on each occasion obtaining Landlord's prior written consent: (i) alter or change the exterior or architectural treatment of the exterior of the Leased Premises or any part thereof, except for signage, or install any awnings on the exterior of the Leased Premises; (ii) paint or decorate any part of the exterior of the Leased Premises, except for signage; (iii) make any structural alterations or additions to the Leased Premises, except for signage; or (iv) injure, overload, deface or otherwise harm the Leased Premises or any part thereof or any equipment or installation therein. Tenant shall present to Landlord plans and specifications for such work at the time Landlord's approval is sought and shall pay to Landlord a design review fee of \$500.00 to cover the cost of review by Landlord's architect and a review fee of \$500.00 for Landlord's engineer. Any alterations by Tenant in the Leased Premises shall be subject to the provisions of Exhibit B hereto, and in no event shall the location or size of Tenant's exterior signs differ from that shown on Exhibit C-1, and the same shall be subject to the criteria in Exhibit B hereto.

(c) Advertising. Tenant shall not: (i) use any advertising medium such as loudspeakers, sound amplifiers, phonographs or flashing lights which may be heard or seen outside the Leased Premises; (ii) attach or locate interior signs, advertising placards or other objects to the windows, doors or ceiling in such a manner as to obstruct the view of Tenant's store from the outside and shall not be located closer than six (6) inches from the storefront glass; (iii) install any awning, canopy, banner, flag or the like on the exterior of the Leased Premises; and (iv) place in the windows or display windows any sign, decoration, letter, advertising matter, shade or blind or other thing of any kind, other than professionally lettered signs of reasonable size identifying articles offered for sale and the price thereof.

(d) Nuisances. Tenant shall not permit the emission from the Leased Premises of (and Landlord shall use diligent efforts not to permit other tenants to emit from their premises) any objectionable noise, vibration or odor (other than normal restaurant odors), nor commit any nuisance or illegal activity of any kind in the Leased Premises or elsewhere in the Shopping Center. Landlord shall ensure that all premises of restaurant tenants in the Building are fully vented and no such venting shall be installed through the Leased Premises.

(e) Outside Services. Tenant shall not permit, except by a person or company of which Tenant has provided Landlord with prior notice: (i) the extermination of vermin in, on or about the Leased Premises; (ii) laundry to be collected and serviced, (iii) collection of rubbish and trash throughout the Lease Term, including during the performance of Tenant's Work, other than in compliance with local governmental health requirements and in accordance with the rules and regulations established by Landlord, which shall minimally provide that Tenant's rubbish and trash shall be kept in containers located so as not to be visible to members of the public; or (iv) window cleaning, janitorial services or similar work in the Leased Premises (except by Tenant's own employees).

(f) Assignment and Subletting. (i) Except as provided below, Tenant shall not voluntarily, involuntarily or by operation of law assign, sell, mortgage, pledge or in any manner transfer this Lease or any interest therein, grant to any concessionaire or licensee the right to occupy the Leased Premises or any portion thereof or sublet the Leased Premises (each of which is hereinafter referred to as a "Transfer" and the grantee herein referred to as the "Transferee"). Landlord's consent to any Transfer shall not be construed to relieve Tenant from obtaining the express consent of Landlord to any further Transfer, and the collection of Rent by Landlord from any Transferee or other occupant, after default by Tenant, shall not be deemed a waiver of this covenant or the acceptance of the Transferee or occupant as Tenant or as a release of Tenant from the further performance by Tenant of any or all of the covenants in this Lease. For purposes of this Section, any sublease of all or substantially all of the Leased Premises for the remainder of the Lease Term shall be deemed an assignment.

(ii) If at any time during the Lease Term, Tenant intends to assign this Lease or sublet the entire Leased Premises, other than a Permitted Transfer as defined below, and otherwise does not intend to include in the same transaction a transfer of any other store locations of Tenant operating under the same trade name as the Leased Premises (or under which the Leased Premises were last operated), Tenant shall notify Landlord in writing of such intended Transfer (a "Single-Store Transfer") and shall offer to vacate the entire Leased Premises and to surrender this Lease to Landlord as of a date specified in said offer (the "Surrender Date"), which date shall be the last day of any calendar month during the Lease Term and not earlier than sixty (60) days and not later than one hundred eighty (180) days after the giving of such notice by Tenant. Landlord may accept such offer by written notice to Tenant ("Landlord's Notice") given within thirty (30) days after the receipt of such notice from Tenant, provided that said Landlord's Notice shall be accompanied by the following:

(a) A release duly executed by Landlord, in form and substance reasonably satisfactory to Tenant, wherein Landlord releases Tenant from all obligations and liability under this Lease accruing from and after the Surrender Date; and

(b) A release or consent executed by the Mortgagee of any Mortgage to which this Lease may be subordinate, if required by the terms of the non-disturbance agreement between Tenant and such Mortgagee, with no conditions, obligations or liability (whether actual or contingent) imposed on Tenant thereby.

If Landlord accepts such offer, Tenant shall vacate and surrender to Landlord all of Tenant's right, title and interest in and to the entire Leased Premises, on the Surrender Date, and the same shall be delivered to Landlord in broom clean condition, free and clear of all tenancies and occupancies. Upon such vacating and surrender by Tenant, this Lease shall be canceled and terminated as of the Surrender Date with the same force and effect as if the Surrender Date were the date hereinbefore specified for the expiration of the term of this Lease. If no Landlord's Notice is sent by Landlord within such 30-day period, then Landlord shall not unreasonably withhold, delay or condition its consent to any Single-Store Transfer proposed by Tenant during the nine (9) month period following the date of Tenant's notice, and in the event of a proposed Transfer of the Leased Premises which is not a Permitted Transfer and is other than a Single-Store Transfer, Landlord agrees not to unreasonably condition, withhold or delay its consent to such proposed Transfer, provided, however, that, in any such case, Landlord shall not in any event be obligated to consent to any such proposed assignment or subletting unless:

(1) the proposed assignee or subtenant is of a financial standing which, in Landlord's good faith reasonable judgment, will allow such proposed assignee or subtenant to meet its monetary obligations under this Lease or under such sublease, as the case may be, as they become due;

(2) neither the proposed assignee, or subtenant, nor any corporation or other entity which controls or is controlled by such assignee or subtenant or is under common control with such assignee or subtenant is then a tenant or occupant of any part of the Shopping Center or a person or entity that is then (or has been in the immediately prior six (6) months) negotiating with Landlord to lease space in any portion of the Shopping Center;

(3) there shall be no material monetary default by Tenant under any of the terms, covenants and conditions of this Lease at the time that Landlord's consent to any such assignment or subletting is requested and on the effective date of the assignment or the proposed sublease which has continued beyond any applicable grace, notice or cure period thereof as provided herein; and

(4) the Leased Premises shall not, without Landlord's prior consent, have been publicly listed or publicly advertised for subletting at a rental rate less than the prevailing rental rate set by Landlord for similarly sized and located retail space in the Shopping Center.

(iii) Any Transfer for which Landlord's consent is required shall be subject to all terms and conditions of this Lease, and shall not be effective or deemed valid until:

(1) a fully executed copy of the instrument of Transfer shall have been submitted to Landlord;

(2) each Transferee shall assume all of the obligations of Tenant under this Lease by executing, acknowledging and delivering to Landlord a written assumption agreement; and

(3) Tenant shall pay the attorneys fees incurred by Landlord in connection with such Transfer, not to exceed \$1,000.00.

In the event of any Transfer for which Landlord's consent is required as provided above, in addition to Rent and other charges due Landlord pursuant to this Lease, Tenant agrees to pay to Landlord, as additional rent, 50% of any amount paid to Tenant by the subtenant or the assignee (including, without limitation, sums paid for the sale or rental of Tenant's furniture, fixtures, equipment, leasehold improvements or other personal property), as and when received, which is in excess of the Rent and other charges reserved and covenanted to be paid by Tenant to Landlord hereunder (and with respect to a sublease of less than the entire premises, at the rate per square foot per annum payable by Tenant hereunder therefor), after Tenant first deducts therefrom all reasonable out-of-pocket costs and expenses actually incurred and paid by Tenant in connection with such sublease or assignment. No Transfer shall be construed to relieve Tenant of its obligations and liabilities under this Lease. The listing of any name other than that of Tenant, whether on the doors of the Leased Premises, or on checks for the payment of Rent and/or additional rent, or otherwise, shall not operate to vest any right or interest in this Lease or in the Leased Premises, nor shall it be deemed to be the consent of Landlord to any assignment, subletting or transfer of this Lease or the Leased Premises, or to the use or occupancy thereof by others. Tenant further agrees that Landlord, in the exercise of its rights hereunder, may proceed against Tenant before, after or simultaneously with any proceeding against Tenant's Transferee, as the case may be, and further that Landlord may, at its option, notify and proceed against Tenant and its Transferee jointly or severally. If Landlord fails to respond to a request from Tenant for consent to an assignment or sublease within fifteen (15) days after Landlord's receipt of such request from Tenant, then Landlord shall be deemed to have consented to such request.

(iv) Notwithstanding any other provisions of this Lease to the contrary, Tenant shall have the right, with written notice to Landlord (except in connection with a Transfer as defined in clause (v) below), but without Landlord's consent, to effect the following Transfer (each a "Permitted Transfer"):

(A) to assign this Lease or sublease all or part of the Leased Premises to an Affiliate of Tenant or to any entity with which or into which Tenant may consolidate or merge. (As used herein, the word "Affiliate" means a Person that controls or is controlled by, or is under common control with, Tenant. The word "control" means the right and power to direct or cause the direction of the management and policies of a corporation, partnership, limited liability company or other entity, through ownership of voting securities or partnership or membership interests, by contract or otherwise. The word "Person" includes individuals, corporations, partnerships, limited liability companies and other forms of business entities);

(B) to assign this Lease or sublease the entire Leased Premises to any entity to which a majority of Tenant's stores in the City of New York, and in any event at least four (4) stores (including the Leased Premises), are transferred, as the result of reorganization,

merger, consolidation or sale of partnership or membership interests, stock or assets or otherwise;

(C) to grant licenses or concessions for the sale of such merchandise and services as are permitted under the terms of this Lease; and

(D) to sublet up to ten (10%) of the Gross Leasable Area of the Leased Premises provided that such sublease shall be subject to all of the terms and conditions of this Lease and the sublet premises shall not have a separate entrance.

With respect to an assignment that is a Permitted Transfer made pursuant to (A) or (B) above (other than a Transfer as defined in clause (v) below), same shall not be deemed effective until there is delivered to Landlord an agreement executed by Tenant and the assignee, wherein such assignee assumes due performance of the obligations of Tenant's part to be performed under this Lease to the end of the term hereof. No permitted sublease shall be deemed effective until there is delivered to Landlord a fully-executed original sublease acknowledging that such sublease is subject to all of the terms and conditions of this Lease. The making of any such assignment or sublease shall not operate to release or discharge the assignor/sublandlord from performance of any of the terms, covenants and conditions of this Lease. Notwithstanding the foregoing, in the event of an assignment of this Lease which is permitted without Landlord's consent in clause (B) above or which is consented to by Landlord, provided the assignee has a net worth of equal to or greater than Twenty-Five Million and 00/100 Dollars (\$25,000,000.00), and (except in connection with a Transfer as defined in clause (v) below) the assignee assumes Tenant's obligations which accrue after the effective date of the assignment, Tenant shall be released forever from any and all liability under the Lease first accruing after the effective date of the assignment.

(v) In the event Tenant is a corporation or other business entity, any transfer, assignment or sale totaling more than fifty (50%) percent of the issued and outstanding stock or other equitable ownership interest of Tenant shall be deemed a Transfer under the terms of this Lease, provided, however, that (a) this Subsection (v) shall in no way limit Tenant's right, without Landlord's consent, to (x) effect a Permitted Transfer (it being agreed, for example, that a transfer of more than 50% of the stock of Tenant shall constitute an assignment of a majority of Tenant's stores in the City of New York so long as Tenant then operates at least four (4) stores in New York City, which transfer shall not be subject to Landlord's consent), (y) make a public offering of its stock, or (z) issue additional stock; and (b) in no event shall this Subsection (v) apply to transfers of stock (i) with respect to shareholders who are individuals, to that shareholder's family members themselves or trusts for the benefit of those family members and/or to other shareholders and/or to the beneficiaries of any shareholders which are trusts, or family members of those beneficiaries or trusts for the benefit of those beneficiaries and family members, and (ii) with respect to shareholders that are trusts, to other shareholders or the family members of such other shareholders themselves or trusts for the benefit of those family members and/or to beneficiaries of the trust, family members of those beneficiaries or trusts for the benefit of those beneficiaries or their family members.

SECTION 10. DESTRUCTION; CONDEMNATION.

10.1 Fire or Other Casualty. (a) Tenant shall give prompt notice to Landlord in case of fire or other damage to the Leased Premises or to any portion of the Shopping Center in the vicinity thereof.

(b) In the event of the happening of any of the following events;

(i) the Leased Premises shall be damaged to the extent of more than 50% of the cost of replacement thereof when less than two (2) years remain in the Lease Term;

(ii) the aggregate Gross Leasable Area of the Building shall be damaged to the extent of more than 50% of the cost of replacement thereof when less than two (2) years remain in the Lease Term and Landlord elects not to rebuild or repair the same;

(iii) the aggregate Gross Leasable Area of the Shopping Center shall be damaged to the extent of more than 50% of the cost of replacement thereof and Landlord elects not to rebuild or repair the same;

(iv) [Intentionally deleted];

(v) [Intentionally deleted];

(vi) a majority of the Stores in the Shopping Center have been damaged or destroyed by a casualty not covered by insurance (and not required to be covered by insurance) and Landlord elects not to rebuild or repair the same; or

(vii) the Leased Premises shall be damaged in whole or in part (other than a de minimis portion) during the last twelve (12) months of the Lease Term;

Landlord, and Tenant in the event of (i), (ii) or (vii) above, may at its option terminate this Lease by giving the other written notice within 90 days after the happening of any of the aforesaid events that it has elected to terminate this Lease, such termination to be on a date specified in the notice of termination, which date shall be not less than 30 nor more than 60 days after the date of such notice; provided that Landlord may not terminate this Lease unless it terminates all other leases in the Building that contain a provision that permits such a termination. Landlord's notice of termination hereunder in the event of (i), (ii) or (vii) above shall be null and void if Tenant, within thirty (30) days after receipt of such notice from Landlord, shall give notice of the exercise of an option to extend the term for the next succeeding Extension Period, but in such case, Landlord shall not be required to begin restoration of the Leased Premises until thirty (30) days after receipt of such notice. Upon the effective date of the termination of this Lease, in accordance with such election, Tenant shall vacate and surrender the Leased Premises in accordance with the provisions of Section 9.1 (i) hereof and pay the Rent to the date of termination, after which Tenant's liability for all future Rent shall cease. If the casualty, or reconstruction necessitated by such casualty, shall render the Leased Premises unusable for Tenant's business as previously conducted, in whole or in part, then from the date when the damage occurred until completion of the reconstruction or, in the event Landlord elects to terminate this Lease, until the date of termination, the Rent shall abate in the proportion which

the portion of the Leased Premises rendered unusable for Tenant's business as previously conducted bears to the Gross Leasable Area of the Leased Premises.

(c) If this Lease shall not be terminated as provided in Section 10.1(b) hereof, Landlord shall, at its expense, proceed with the repair or restoration of the Leased Premises and adjacent areas existing immediately prior to such damage or destruction, provided that Landlord shall not be required to repair or replace Tenant's stock in trade, trade fixtures, furniture, furnishings, floor coverings and equipment. If Landlord is obligated to restore the Leased Premises in accordance with the terms of this Section 10.1 and in fact the Leased Premises are not so restored or rebuilt in fifteen (15) months from the date of the casualty, then this Lease shall be terminable by Tenant by serving written notice upon Landlord. All work of restoration by either party shall restore the Leased Premises to as good a condition as existed prior to the casualty and shall be done in conformity with all applicable Exhibits. If Landlord is required or elects to repair the Leased Premises as herein provided, Tenant shall repair or replace its stock in trade, fixtures, furniture, furnishings, floor coverings and equipment, and if Tenant has closed for business, Tenant shall reopen for business for at least one day reasonably soon after completion of such repairs.

(d) If this Lease is not terminated, as aforesaid, this Lease shall remain in full force and effect and the parties waive the provisions of any law to the contrary. Except for the abatement of the Rent hereinabove set forth, Tenant shall not be entitled to and hereby waives all claims against Landlord for any compensation or damage for loss of use of the whole or any part of the Leased Premises and/or for any inconvenience or annoyance occasioned by any such damage, destruction, repair or restoration. The provisions of any statute or other laws which may be in effect at the time of the occurrence of any such damage or destruction, under which a lease is automatically terminated or a Tenant is given the right to terminate a lease upon the occurrence of any such damage or destruction are hereby expressly waived by Tenant.

(e) Tenant hereby expressly waives the provisions of any rule of law or statute now or hereafter in force giving Tenant any right to terminate this Lease or abate the Rent hereunder or claim partial or total (constructive or actual) eviction because of fire or other casualty or any other peril against which Landlord is required to carry insurance under Section 8.2.

10.2 Taking. (a) In the event of a Taking of the whole of the Leased Premises, or any part thereof which shall in the judgment reasonably exercised by Tenant render the Leased Premises remaining after such Taking unfit for the purposes demised, either party shall have the right to terminate this Lease upon notice to the other party within 30 days after receiving knowledge of the Taking. Should either party elect to terminate this Lease, the Lease Term shall cease as of the day the public authority assumes possession thereof; provided, however, that if such Taking is for a temporary period not exceeding 3 months, neither party may terminate this Lease but all Rent shall abate during such period.

(b) If, following a Taking, this Lease shall continue in effect as to any portion of the Leased Premises, the Minimum Rent shall be reduced by the proportion which the Gross Leasable Area of the Leased Premises Taken bears to the initial Gross Leasable Area of the Leased Premises. In such event, Landlord shall at its expense proceed with the repair and

restoration of the Leased Premises to restore the same to the condition existing immediately preceding such Taking.

(c) In the event of a Taking of 40% or more of the total Gross Leasable Area of the Shopping Center, Landlord may, by giving notice to Tenant within 30 days after receiving notice of the Taking, terminate this Lease as of the date of title vesting in such proceeding; provided that it terminates all the leases in the Building that contain a provision that permits such a termination.

(d) In the event of a Taking of the parking area so that the number of parking spaces provided in the Shopping Center shall be reduced by 20% or more, and in the further event that Landlord does not notify Tenant within 90 days after receiving notice of such Taking of Landlord's intent to restore by means of multilevel or underground parking facilities or by providing additional land in the vicinity of the Shopping Center so that, after such restoration, there shall remain at least 80% of the parking spaces for the Shopping Center as existed immediately prior to such Taking, then either party may, by giving notice between the 90th and 120th day after Landlord first received notice of the Taking, terminate this Lease as of the day the public authority takes physical possession thereof; provided, however, that if such Taking is for a temporary period not exceeding 3 months, neither party may terminate this Lease but the Rent shall abate during such period.

(e) If this Lease is terminated as provided in this Section 10.2, Tenant shall pay all Rent up to the date that possession is so taken by public authority and Landlord shall make an equitable refund of any Rent paid by Tenant in advance and not yet earned.

(f) All compensation awarded for any Taking (including a temporary Taking) shall be the property of Landlord, whether such damages shall be awarded as a compensation for diminution in the value of the leasehold, or to the fee of the Leased Premises, and Tenant hereby assigns to Landlord all of Tenant's right, title and interest in and to any and all such compensation. Tenant shall be entitled to claim, prove and receive in the condemnation proceeding such awards as may be allowed for tenant improvements paid for by Tenant, trade fixtures or for loss of business, "good will," depreciation or injury to and cost of removal of stock-in-trade, but only if such awards shall be made by the condemnation court in addition to, and shall not result in a reduction of, the award made for any interest in the property of the Landlord.

SECTION 11. BANKRUPTCY OF TENANT, DEFAULTS BY TENANT AND REMEDIES OF LANDLORD.

11.1 Bankruptcy. If at any time between the completion of the execution of this Lease and the end of the term hereby demised, there shall be filed by or against Tenant or Guarantor in any court pursuant to 11 U.S.C. Section 1.1 et seq. (the "Bankruptcy Code") or any comparable state statute, a petition in bankruptcy or insolvency or for reorganization or for the appointment of a receiver or trustee of all or a portion of Tenant's or Guarantor's property, or other relief available to it in the court in which such bankruptcy petition is filed ("Bankruptcy Court"), and if within 120 days after the entry of any order for relief issued by the Bankruptcy Court, Tenant or Guarantor fails to assume or reject this Lease pursuant to the terms of the Bankruptcy Code (or

applicable state statute), then, effective immediately upon the expiration of such one hundred twenty (120) day period, Minimum Rent shall be increased by an amount (the "Increase") equal to Twenty (20%) per cent of the amount then payable pursuant to this Lease. Tenant's obligation to pay the Increase may cease, and Minimum Rent shall again become payable as otherwise provided in this Lease, upon the earlier of receipt by Landlord of the order of the Bankruptcy Court having jurisdiction evidencing its approval of (i) Tenant's assumption of this Lease, or (ii) Tenant's assumption of this Lease and assignment of its interest herein to a third party in accordance with Section 9.4(f) hereof.

11.2 Tenant's Defaults. If prior to the Commencement Date or during the Lease Term:

(a) Tenant fails to pay any installment of Rent, or any portion of any such payment, when the same becomes due and payable, and such failure continues for ten (10) days after receipt of written notice from Landlord to Tenant, provided, however, no such notice shall be required during any Lease Year following the second such failure in that Lease Year;

(b) Tenant or Tenant's Guarantor, if any, fails to perform or observe any other requirement of this Lease (not hereinbefore specifically referred to) on the part of Tenant to be performed or observed and such failure continues for thirty (30) days after receipt of written notice from Landlord to Tenant or if the said default or omission complained of shall be of a nature that the same cannot be completely cured or remedied within said thirty (30) day period, and if Tenant shall not have diligently commenced curing such default within such thirty (30) day period, and shall not thereafter with reasonable diligence and in good faith proceed to remedy or cure such default; or

(c) Any petition is filed against Tenant or Tenant's Guarantor, if any, in any court, whether or not pursuant to any bankruptcy, reorganization, composition extension, arrangement or insolvency proceedings, and Tenant or Tenant's Guarantor is thereafter adjudicated bankrupt, or such petition is approved by the Court, or the Court assumes jurisdiction of the subject matter and such proceedings are not dismissed within 120 days after the institution of the same; or any such petition is so filed by Tenant, or Tenant's Guarantor;

(d) In any proceedings, a receiver or trustee is appointed for Tenant's property or the property of Tenant's Guarantor and such receivership or trustee ship is not vacated or set aside within 120 days after the appointment of such receiver or trustee;

Landlord may serve a ten (10) day notice of cancellation of this Lease upon Tenant, and upon the expiration of said ten (10) days, this Lease and the term thereunder shall end and expire as fully and completely as if the date of expiration of such ten (10) day period were the day herein definitely fixed for the end and expiration of this Lease and of the term thereof, and Tenant shall then quit and surrender the Leased Premises to Landlord but Tenant shall remain liable as hereinafter provided.

11.3 Remedies of Landlord.

(a) The remedies provided Landlord under this Lease are cumulative. Landlord shall have all of the remedies for failure to pay any item of Rent as for non-payment of Minimum Rent.

(b) Without terminating this Lease in case of a default, or if this Lease shall be terminated as provided in this Section 11, Landlord may re-enter, remove Tenant, or cause Tenant to be removed from the Leased Premises by summary proceeding or other judicial process. No re-entry or other act performed or omitted by Landlord shall be deemed to have terminated this Lease or any obligation of Tenant hereunder for payment of money or otherwise, unless Landlord shall expressly notify Tenant in writing that Landlord has elected to terminate this Lease. Nothing herein contained shall prevent Landlord from commencing a summary proceeding following a default by Tenant of any of its obligations under this Lease beyond any applicable grace, notice or cure period, and no provision of this Lease shall be construed so as to require more than the statutorily required notice prior to commencement of a non-payment summary proceeding, provided that in no event shall the provisions of this sentence reduce any grace, notice or cure period set forth in this Lease, including without limitation, the 10-day periods set forth in Subsection 11.2(a) and in the final paragraph of Section 11.2 hereof.

(c) If Landlord, without terminating this Lease, shall so re-enter or if this Lease shall be terminated in accordance with subsection 11.3(b) above:

(i) the Rent shall become due thereupon and be paid up to the time of such reentry, dispossession and/or expiration, together with such reasonable expenses as Landlord may incur for legal expenses, attorneys' fees, brokerage and/or putting the Leased Premises in good order, or for preparing the same for re rental, plus Interest thereon from and after the due date of any payment required to be made by Tenant hereunder;

(ii) Landlord may relet the Leased Premises or any part or parts thereof, either in the name of Landlord or otherwise, for a term or terms which may at Landlord's option be less than or exceed the period which would otherwise have constituted the balance of the term of this Lease, and may grant concessions or free rent or charge any rent deemed by Landlord to be reasonable; but Landlord shall not be required so to relet the Leased Premises, either pursuant to this Lease or by any requirements of law or equity, to any person who in Landlord's reasonable judgment shall not be of sound financial standing and ability and possess good reputation, business judgment, or for any use or purpose which, in Landlord's reasonable judgment, shall not be in keeping with the caliber and quality of the Shopping Center and the other occupants of the Stores; provided that Landlord shall use commercially reasonable efforts to relet the Leased Premises on commercially reasonable terms and conditions; and

(iii) If this Lease has not been terminated, Tenant or the legal representative of Tenant shall also pay Landlord, as liquidated damages for the failure of Tenant to observe and perform said Tenant's covenants herein contained, any deficiency between the Rent and the net amount, if any, of the rents collected on account of the lease or leases of the Leased Premises for each month of the period which would otherwise have constituted the balance of the term of this Lease.

(d) In determining the Rent which would be payable by Tenant under subsection 11.3(c)(iii) above, subsequent to default, the annual Rent for each year of the unexpired term shall be equal to the total of the average Minimum and Percentage Rents and all other rents and charges otherwise payable by Tenant pursuant to the terms of this Lease from the Commencement Date to the time of default, or during the preceding three (3) full Lease Years,

whichever period is shorter. The failure of Landlord to relet the Leased Premises or any part or parts thereof despite its commercially reasonable efforts so to do shall not release or affect Tenant's liability for such liquidated damages. In computing such liquidated damages there shall be added to said deficiency such reasonable expenses as Landlord may incur in connection with reletting, such as legal expenses, attorneys' fees, brokerage, and for keeping the Leased Premises in good order or for preparing the same for reletting. Any such liquidated damages shall be paid in monthly installments by Tenant on the day specified in Section 5.1 of this Lease and any suit brought to collect the amount of the deficiency for any month shall not prejudice in any way the rights of Landlord to collect the deficiency for any subsequent month by a similar proceeding.

(e) Landlord at Landlord's option may make such alterations, repairs, improvements and/or decorations in the Leased Premises as Landlord in Landlord's reasonable judgment considers advisable and necessary for the purpose of reletting the Leased Premises, and the making of such alterations and or decorations shall not operate or be construed to release Tenant from liability hereunder as aforesaid. Landlord shall in no event be liable in any way whatsoever for failure to relet the Leased Premises or in the event that the Leased Premises are relet, for failure to collect the rent thereof under such reletting provided that Landlord has used commercially reasonable efforts to relet the Premises and to collect the rent, and in no event shall Tenant be entitled to receive the excess, if any, of such net rents collected over the sums payable by Tenant to Landlord hereunder.

(f) Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event of Tenant being evicted or dispossessed, or in the event of Landlord obtaining possession of the Leased Premises, by reason of the violation by Tenant of any of the covenants and conditions of this Lease or otherwise. The words "re-enter" and "re-entry" as used in this Lease are not restricted to their technical legal meaning.

(g) See also Section 12.22 below.

11.4 [Intentionally Deleted].

11.5 Tenant not to Counterclaim. If Landlord shall commence any proceeding or action for possession, including a summary proceeding for possession of the Premises, Tenant will not interpose any non-compulsory counterclaim of whatever nature or description in any such proceeding and Landlord shall not interpose the defense of res judicata or collateral estoppel therein as a result of Tenant's compliance with this Section 11.5. The foregoing shall not preclude Tenant from asserting a claim in a separate proceeding. Tenant shall, however, be permitted to challenge whether or not Tenant is in default or has breached this Lease.

11.6 Holdover by Tenant. If Tenant shall not immediately surrender possession of the Leased Premises upon any termination of this Lease, Tenant shall thereafter become a tenant from month-to-month at a monthly rental equal to the sum of (i) 150% of the monthly Minimum Rent, (ii) 1/12th of the average annual Percentage Rent payable hereunder for the most recent three Lease Years (or the monthly average for the entire preceding portion of the Lease Term if less than three full Lease Years), and (iii) the average monthly amount of all other items of Rent payable hereunder during the last year of the Lease Term, subject to all other conditions, provisions and obligations of this Lease insofar as the same are applicable to a month-to-month

tenancy, and if Tenant shall not surrender possession of the Leased Premises within forty-five (45) days after a termination of this Lease, Tenant shall indemnify Landlord against loss or liability resulting from Tenant's delay in so surrendering the Leased Premises, including, without limitation, reasonable attorneys' fees, and any claims made by any succeeding tenant founded on such delay.

11.7 Obligations Prior to Lease Term. This Lease has been executed as of the date hereof with the understanding that all of Landlord's and Tenant's obligations contained in this Lease and the Exhibits are effective immediately except for Tenant's obligations to pay Rent which obligations shall not commence until the Commencement Date.

11.8 Landlord's Right to Cure Defaults. Landlord may, but shall not be obligated to, cure, at any time, upon reasonable prior notice, any default by Tenant under this Lease; and whenever Landlord so elects, all costs and expenses incurred by Landlord in curing a default, including, without limitation, reasonable attorneys' fees together with Interest plus a 5% administration fee on the amount of costs and expenses so incurred, shall be paid by Tenant to Landlord on demand, and shall be recoverable as Rent. Any such cure shall be carried out so as to minimize damage to the Leased Premises and Tenant's property and interference with Tenant's business.

SECTION 12. MISCELLANEOUS PROVISIONS.

12.1 Notices. Any notices and other communications hereunder shall be in writing and mailed by first class registered or certified mail, or by overnight courier service (such as, without limitation, Federal Express or Express Mail), postage prepaid, return receipt requested, addressed to the address of Tenant or Landlord, as the case may be, set forth below or to such other address as shall have last been designated by notice in writing to the appropriate party.

To Tenant:

Daffy's, Inc.
One Daffy's Way
Secaucus, New Jersey 07094
Attn: CFO

with a copy to:

Dana B. Cobb, Esq.
Beattie Padovano, LLC
50 Chestnut Ridge Road, P.O. Box 244
Montvale, New Jersey 07645-0244

To Landlord:

Bay Plaza Community Center, LLC
c/o Prestige Properties Development Co., Inc.
546 Fifth Avenue, 15th Floor
New York, New York 10036
Attn: Chairman

with a copy to: Att: Sr. Vice President

A notice shall be deemed to have been given upon actual delivery or refusal to accept delivery or marked by the carrier unable to deliver, whichever shall first occur. Notices may be sent by either party's counsel.

12.2 Notice to Mortgagee. A duplicate copy of all notices from Tenant shall be sent, in the manner provided in Section 12.1, to any Mortgagee at the address furnished to Tenant by such Mortgagee or by Landlord. A Mortgagee shall have the same rights as Landlord to cure any default.

12.3 Brokerage. Landlord and Tenant each represents that it has not dealt with any broker, agent or finder in connection with this Lease other than Welco Realty, Inc. and Arthur I. Burak (collectively, the "Broker"), and Landlord represents that it will pay any commission, fee or other compensation due to the Broker. Each party agrees to defend, indemnify and hold harmless the other party from and against any claims or demands for brokerage commissions and finder's fees or other commission which may, at any time, be asserted against the indemnified party founded upon a claim that the substance of the aforesaid representation of the indemnifying party is untrue, together with any and all losses, damages, costs, and expenses (including reasonable attorneys' fees) relating to such claims or arising therefrom or incurred from the indemnified party in connection with the enforcement of this indemnification provision. The provisions of this Section 12.3 shall survive the expiration or earlier termination of this Lease.

12.4 No Recording. Landlord and Tenant agree that neither this Lease nor any memorandum or short form of lease shall be recorded in the Office of the City Register or other public records.

12.5 Relationship of the Parties. Nothing contained in this Lease shall be construed by the parties hereto, or by any third party, as constituting the parties as principal and agent, partners or joint venturers, nor shall anything herein render either party (other than a guarantor) liable for the debts and obligations of any other party, it being understood and agreed that the only relationship between Landlord and Tenant is that of landlord and tenant.

12.6 Estoppel Certificates. (a) If upon any sale, assignment, or hypothecation of the Leased Premises by Landlord, or at any other time, an estoppel certificate or financial statement shall be requested of Tenant, Tenant agrees, within twenty (20) days afterwards, to deliver the financial statement and /or the estoppel certificate in the form of attached Exhibit F or in such other form as may be reasonably requested addressed to any proposed mortgagee or purchaser and to Landlord. Tenant acknowledges that the mortgagee or purchaser shall have the right to rely on the estoppel certificate or financial statement. Tenant shall in the same manner acknowledge and execute any assignment of rights to receive rents as required by any mortgagee of Landlord; provided that Landlord shall have (i) theretofore authorized and directed Tenant so to do, (ii) released Tenant of any and all liability to Landlord for any and all payment so made, and (iii) agreed to defend, indemnify and hold Tenant harmless from and against any and all claims, demands, losses or liabilities asserted by, through or under Landlord for any and all payments made. Notwithstanding the payment by Tenant of rent to Lender following such demand,

Landlord shall remain liable to perform and observe all of the obligations on Landlord's part to be performed and observed under the Lease.

(b) Landlord shall, from time to time, upon thirty (30) days' written notice, execute and deliver to Tenant, to the extent to which same is correct, a written estoppel certificate stating that this lease is in full force and effect and is unmodified (or, if there have been modifications, specifying same) and specifying the dates to which rental and other charges payable hereunder have been received, and stating that Landlord has not sent Tenant any notice of default which remains uncured and that, to Landlord's knowledge, no default then exists (or if that is not the case, specifying each particular in which Landlord alleges that Tenant is in default).

12.7 Waiver of Trial by Jury. Landlord and Tenant hereby expressly waive trial by jury in any action, proceeding or counterclaim brought by either of them against the other on any matter arising out of this Lease.

12.8 Applicable Law and Construction. The laws of New York shall govern the validity, performance and enforcement of this Lease. The invalidity or unenforceability of any provision of this Lease shall not affect or impair any other provision. If any provision of this Lease is capable of two constructions, one of which would render the provision invalid and the other of which would make the provision valid, then the provision shall have the meaning which renders it valid. All of the covenants, promises, representations and agreements of Tenant herein contained shall be deemed and construed to be "conditions" as well as "covenants" as though the words specifically expressing or imparting covenants and conditions were used in each separate instance. The submission of this document for examination does not constitute an offer to lease and becomes effective only upon execution and delivery thereof by Landlord and Tenant. After the execution and delivery of this Lease by Tenant, Landlord shall have 30 days in which to obtain the approval of Landlord's Mortgagee to the terms of this Lease. If by the expiration of the aforesaid period, Landlord shall not have returned to Tenant a fully executed copy of the Lease, Tenant may notify Landlord of Tenant's intention to cancel this Lease if approval of Landlord's Mortgagee is not forthcoming within 10 days after receipt by Landlord of such notice. If at the expiration of such 10-day period, Landlord still has not returned a fully executed copy of the Lease to Tenant, it shall be conclusively presumed that the parties hereto have canceled this Lease by mutual consent and this Lease shall be of no further force and effect and neither party shall have any right or claim hereunder against the other.

12.9 Cancellation. If for any reason, including Force Majeure, the Lease Term shall not have commenced within 2 years from the date hereof, this Lease will thereupon be automatically null and void and thereupon neither party hereto shall have any further rights against or obligations to the other hereunder. If Delivery of Possession has not occurred by May 15, 2011, Tenant may terminate this Lease by notice to Landlord, in which event neither party shall have any further rights and obligations to the other hereunder.

12.10 Binding Effect of Lease. All provisions of this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors and permitted assigns. Each covenant or other provision of this Lease shall be deemed and construed as a separate and independent covenant of the party bound by, undertaking or making

the same, not dependent on any other provision of this Lease unless otherwise expressly provided.

12.11 Mutual Waiver of Subrogation Rights. The property insurance obtained by Landlord and Tenant shall include a waiver of subrogation by the insurers and all rights based upon an assignment from its insured, against Landlord or Tenant, their officers, directors, employees, managers, agents and invitees, in connection with any loss or damage thereby insured against. Neither party nor its officers, directors, members, partners, shareholders, employees, managers, agents or invitees shall be liable to the other for loss or damage caused by all risk coverable by "all risk" property insurance, or would have been coverable by "all risk" insurance had such "all risk" insurance been maintained, and each party waives any claims against the other party, and its officers, directors, members, partners, shareholders, employees, managers, agents and invitees for such loss or damage. The failure of a party to insure its property shall not void this waiver.

12.12 Force Majeure. Each party shall be excused from performing any obligation or undertaking provided for in this Lease (other than the obligation to make a payment of money) for so long as such performance is prevented or delayed, retarded or hindered by act of God, fire, earthquake, flood, explosion, action of the elements, war, invasion, insurrection, riot, mob violence, sabotage, inability to procure or general shortage of labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strike, lockout, action of labor unions, a Taking, requisition, laws, orders of government or civil or military or naval authorities, or any other cause, whether similar or dissimilar to the foregoing, not within the reasonable control of the party prevented, retarded, or hindered thereby, including reasonable delays for adjustments of insurance.

12.13 Modifications. This Lease embodies the entire agreement and understanding between the parties, supersedes all prior negotiations, agreements and understandings, and any provision of this Lease may be modified, waived or discharged only by an instrument in writing signed by the party against which enforcement of such modification, waiver or discharge is sought. In construing and interpreting this Lease, no consideration or weight shall be given to any prior version of this Lease and/or to any strikeouts or deletions contained in any such prior versions.

12.14 Effect of Notice to Terminate. Any right on the part of Landlord or Tenant to terminate this Lease shall, when exercised, require no further act, to the end that at the expiration of the applicable time period, if any, contained in the particular termination provision, this Lease and the term hereunder shall end and expire as fully and completely as if such termination date was the date herein definitely fixed for the end and expiration of this Lease and the term hereof, and upon such date Tenant shall quit and surrender the Leased Premises to Landlord.

12.15 No Representation by Landlord. Neither Landlord nor any agent of Landlord has made any representations, warranties, or promises with respect to the Leased Premises or the Shopping Center except as herein expressly set forth. TENANT HAS RELIED ON TENANT'S INSPECTIONS AND DUE DILIGENCE IN ENTERING THIS LEASE AND NOT ON ANY REPRESENTATIONS OR WARRANTIES CONCERNING THE CONDITION OR SUITABILITY OF THE LEASED PREMISES OR SHOPPING CENTER FOR ANY PARTICULAR PURPOSE OR CONCERNING ANY OTHER MATTER EXCEPT AS HEREIN SET FORTH.

12.16 Qualification. Each party represents that it is duly authorized to do business in New York and will remain so during the term hereof, and that it has been in all respects duly authorized to enter into and perform this Lease.

12.17 Captions. The captions and headings herein are for convenience and reference only and in no way define or limit the scope or content of this Lease or in any way affect its provisions.

12.18 Gender. Whenever the sense of this Lease so requires, the use of (1) the singular number shall be deemed to include the plural, (2) the masculine gender shall be deemed to include the feminine and neuter gender, and (3) the neuter gender shall be deemed to include the masculine and feminine gender.

12.19 Consent. Wherever it is specifically provided in this lease that a party's consent is not to be unreasonably withheld, a response to a request for such consent shall also not be unreasonably delayed or conditioned.

12.20 No Duplication; Refund at End of Term. Notwithstanding anything to the contrary in this Lease there shall be no duplication of charges to Tenant under this Lease. Whenever Tenant is entitled in accordance with the terms of this Lease to offset excess payments of any item against future payments becoming due (whether by credit or otherwise), Tenant shall be entitled to a refund from Landlord at the expiration or earlier termination of the term of this Lease of any such excess payments not so offset except to the extent that Tenant is in default of any monetary obligation under this Lease, notice of which having been given and time to cure to the extent provided in this Lease having expired.

12.21 Landlord Representations.

(a) Landlord represents, warrants and covenants that:

(i) Except for the restrictions set forth in Exhibit G of this Lease, no restrictive covenant or exclusive use provisions contained in any other lease for a portion of the Shopping Center or in any other instrument, document, writing or agreement which affects the Shopping Center, prohibits Landlord from leasing space in the Shopping Center for, or Tenant from operating its intended business operations for the Permitted Use;

(ii) Unless required by law, Landlord shall not apply for a new certificate of occupancy or a change in the current certificate of occupancy, if any, which would render Tenant's intended use of the Leased Premises unlawful or would require Tenant to undertake any obligations, including the payment of money, to comply with such new or changed certificate of occupancy;

(iii) to Landlord's knowledge, there are presently no violations (whether or not of record) which would prohibit, impair or adversely affect Tenant's ability to use the Leased Premises as permitted in this Lease;

(iv) Landlord owns fee simple title to the Shopping Center;

(v) There exist no mortgages affecting Landlord's fee simple interest in the Shopping Center other than mortgage held by Key Corp Real Estate Capital Markets, Inc., as Master Servicer on behalf of Wells Fargo Bank, N.A., as trustee for the registered Holders of Credit Suisse First Boston Mortgage Securities Corp., Commercial Mortgage Pass-Through Certificates, Series 2004-C1, its successors and assigns;

(vi) There exist no ground leases affecting Landlord's fee simple interest in the Shopping Center, subject to a future conveyance of Landlord's interest in the land only to SP Center LLC, Landlord agreeing to obtain for the benefit of Tenant a non-disturbance agreement from SP Center LLC in form and substance acceptable to Tenant and to deliver same to Tenant simultaneously with the execution and delivery of this Lease to Tenant;

(vii) There are no pending or, to Landlord's knowledge, threatened claims, actions, or legal proceedings affecting the Leased Premises or the Shopping Center which would adversely affect Tenant's rights or obligations under this Lease; and

(viii) This Lease and the consummation of the transaction contemplated herein are valid and binding obligations of Landlord and do not constitute a default (or an event which, with the giving of notice or the passage of time, or both, would constitute a default) under, nor are they inconsistent with, any contract to which Landlord is a party or by which Landlord is bound, subject to obtaining Mortgagee consent.

Landlord hereby agrees to defend, indemnify, and hold Tenant and each of its directors, officers and employees harmless from and against any and all losses, claims or liabilities or damages arising out of or in connection with or founded upon a claim that any of the foregoing warranties and representations of Landlord are untrue in any material respect, together with any and all costs and expenses (including, without limitation, reasonable attorneys' fees) relating to such claim or arising therefrom or incurred by Tenant in connection with the enforcement of this indemnification provision.

12.22 Attorneys' Fees; Injunction. With respect to any dispute between Landlord and Tenant involving this Lease which is resolved through legal or other proceedings, the prevailing party shall be entitled to recover the fees, costs and expenses of the subject proceeding, including, without limitation, reasonable attorneys' fees and costs, from the other party. In the event of any breach or threatened breach by Landlord or Tenant of any of the covenants, agreements, terms or conditions contained in this Lease, Tenant or Landlord, as the case may be, shall be entitled to enjoin such breach or threatened breach.

12.23 Satellite Dish. Tenant shall have the right to place on or about the roof of the Building, at Tenant's sole cost and expense, a satellite dish or dishes and/or antennas (collectively the "Dish") for transmitting and receiving, including without limitation television, data between Tenant's various operations and its headquarters and/or other information used solely in the operation of Tenant's business in the Leased Premises, subject to the following:

(a) Tenant shall give 30 days prior notice to Landlord, including the suggested date and time of the proposed installation and specifications as to height, size, weight load and manner of installation. The location, size, weight and installed height of any installation shall be

in accordance with the requirements and criteria contained in this Section, as well as in compliance with all applicable Legal Requirements and Insurance Requirements.

(b) Any such roof-top installation, including without limitation, cutting of roof, mounting, structural modifications, screens, curbs, and flashing, shall be performed by Landlord's roof contractor at its reasonable and customary charge, which shall be paid by Tenant, and in accordance with all applicable Legal Requirements and Insurance Requirements. Such work shall be performed in a manner which will not affect Landlord's 20 year bondable type roof, nor impair any applicable warranties. Tenant shall be responsible for the maintenance and repair of any such Dish, at its own cost. Additionally, Tenant shall defend, indemnify and hold Landlord harmless from and against any claims, costs or expenses (including, without limitation, additional maintenance or re-roofing costs) incurred by Landlord as a result of such installation by Tenant, except to the extent caused by Landlord's negligence or willful misconduct.

(c) Tenant may periodically inspect its roof-top installation. In each instance of access to the roof by Tenant's agent or employee, prior notice to Landlord and a reasonable opportunity for Landlord's personnel to be present shall be given.

(d) If the presence of Tenant's installation on the roof shall increase the cost of any other work or activity involving the roof or structure of the Building (such as the cost of special supports or temporary removals or relocations during repairs, replacements or other roof installations), payments of such increased cost shall be the responsibility of Tenant.

(e) Any rooftop installation pursuant to this Section shall remain the property of Tenant, and shall be removed upon termination of the Lease by Landlord at Tenant's expense or if Landlord shall so determine, by Tenant.

(f) Tenant shall be responsible for repair of any and all damage (including re-roofing, if necessary) caused by the presence, maintenance, inspection and removal of the rooftop installation and related equipment.

12.24 Counterparts. This Lease may be executed in any number of counterparts, each of which shall be an original, but all of which shall together constitute one and the same instrument. The signature of a party to any counterpart may be attached to any other counterpart. Any counterpart to which is attached the signatures of all parties shall constitute an original of this Lease. Facsimile or email signatures shall constitute originals for all purposes, provided that each party must provide the other with at least two (2) executed "hard copy" original counterparts of this Lease no later than two (2) business days after the transmission of such facsimile signatures.

[The balance of this page is intentionally left blank. Signatures appear on the following page.]

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

LANDLORD:

BAY PLAZA COMMUNITY CENTER, LLC

By: Bay Plaza Community Corp.

By: 

Name: JOSEPH C COMPAGNETTO

Title: SR. VICE PRESIDENT

TENANT:

DAFFY'S, INC., a New Jersey Corporation

By: 

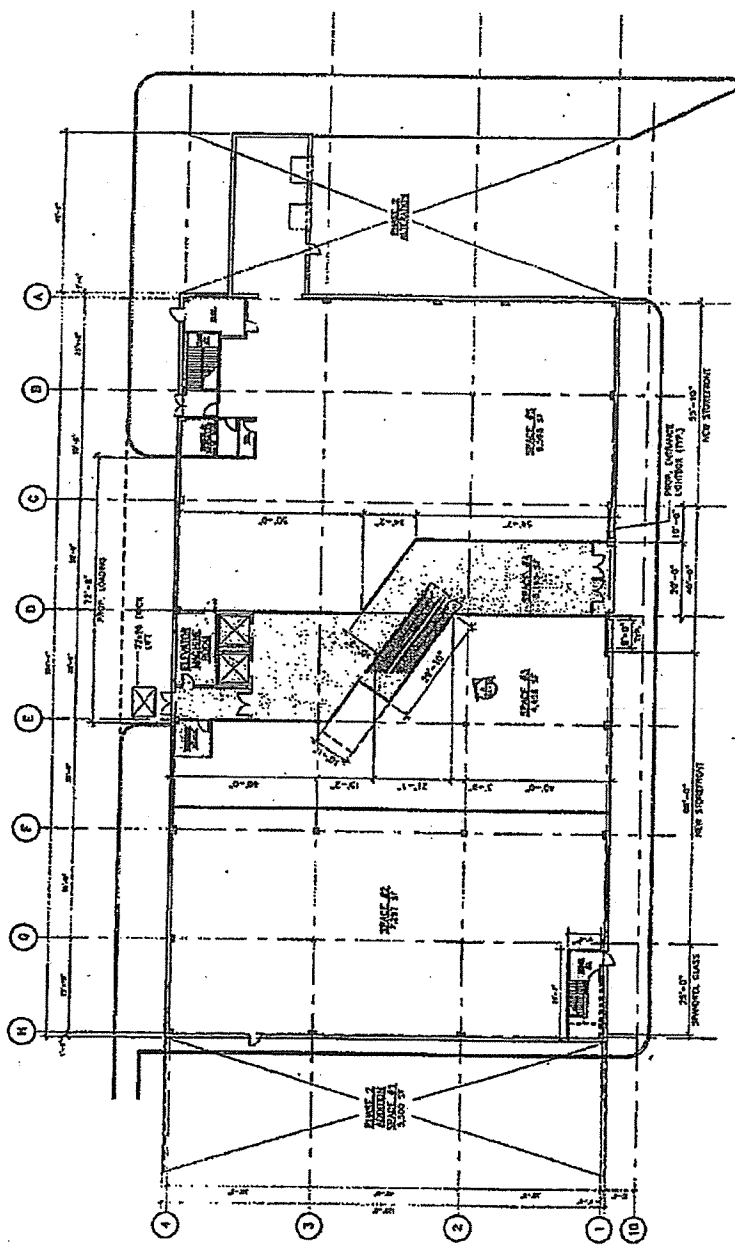
Name: MARCIA WILSON

Title: PRESIDENT + CEO

EXHIBIT A

LEASE PLAN

[attached]

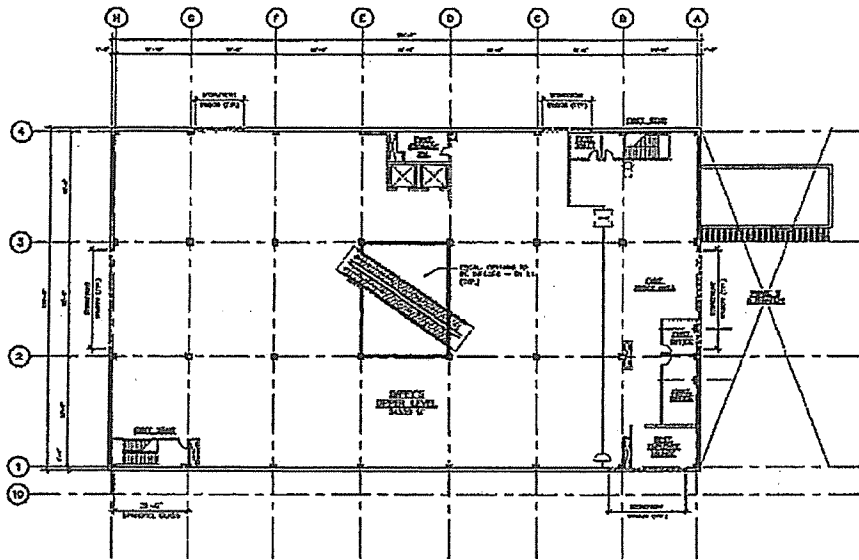


PROPOSED LOWER LEVEL
 SCALE: 1/8" = 1'-0"

301 Broadway
 New York, NY 10013
 www.poli.designinc.com
 t. 212.638.9993
 f. 212.625.0778



TITLE:	PROPOSED LOWER LEVEL	SHEET No.:	
PROJECT:	BAY PLAZA SHOPPING CENTER INT.	SK-1	
DATE:	05/04/10	SHEET 1 of 1	
SCALE:	AS NOTED	Drawn By:	Team
		Ref. Nos.:	A-X



DAFFY'S UPPER LEVEL
 SCALE: 1/8"=1'-0"

POINT DESIGN
 321 Broadway
 New York, NY 10013
 www.pointdesigninc.com
ARCHITECTS
 T. 212.625.6993
 F. 212.625.9778

Disc: PROPOSED DAFFY'S UPPER LEVEL		Rev:	Sheet No:
Project: DAFFY'S			SK-2
Date: 04.08.10	Scale: AS NOTED	Drawn by: Team	SHEET 2 of 3
		Rev: 102-A-X	

EXHIBIT A-1

LEGAL DESCRIPTION OF THE SHOPPING CENTER

All that certain plot, piece or parcel of land situate, lying and being in the Borough and County of Bronx, City and State of New York, more particularly bounded and described as follows:

BEGINNING at the corner formed by the intersection of the southerly side of Bartow Avenue and the westerly side of Hutchinson River Parkway Extension;

RUNNING THENCE south 34 degrees 06 minutes 23.3 seconds west along the westerly side of Hutchinson River Parkway Extension, 1460 feet to a point;

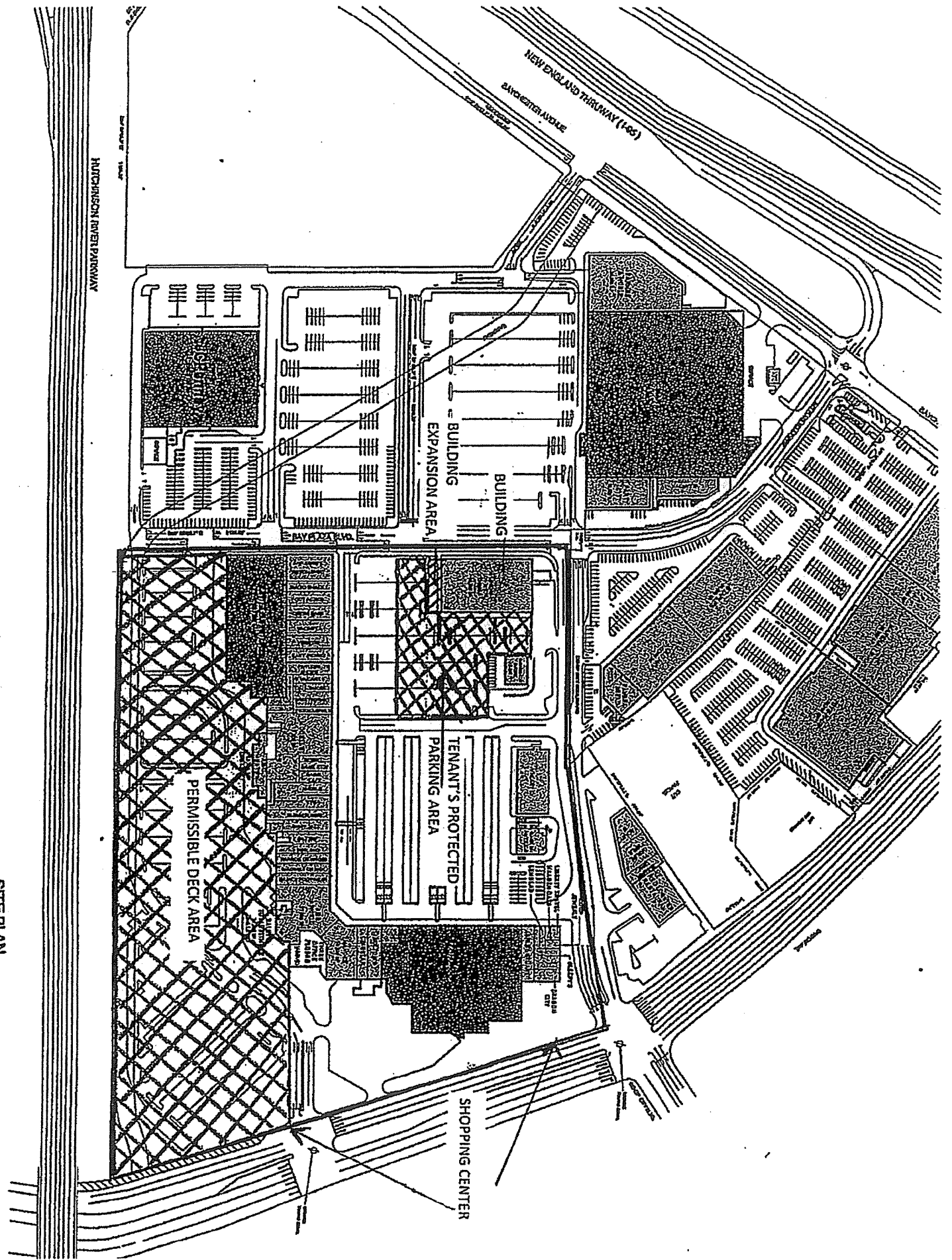
THENCE north 55 degrees 53 minutes 36.7 seconds west 1012.17 feet to a point;

THENCE north 34 degrees 06 minutes 23.3 seconds east 532.85 feet to a point;

THENCE north 28 degrees 43 minutes 59 seconds east 539.35 feet to the southerly side of Bartow Avenue;

THENCE easterly along the southerly side of Bartow Avenue, along the arc of a curve bearing to the right having a radius of 2587.60 feet 412.496 feet to a point of tangency;

THENCE still along the southerly side of Bartow Avenue, south 74 degrees 23 minutes 37 seconds east 720.81 feet to the corner aforesaid, the point or place of BEGINNING.



NEW ENGLAND THRUWAY (I-85)
SWEETEN AVENUE

HUTCHINSON RIVER PARKWAY

BUILDING
EXPANSION AREA

TENANT'S PROTECTED
PARKING AREA

PERMISSIBLE DECK AREA

SHOPPING CENTER

SITE PLAN
SCALE 1/8" = 1'-0"

6/22/09

Lease

between

BAY PLAZA COMMUNITY CENTER, LLC,

Landlord,

and

BAY PLAZA APPLE, LLC

Tenant

The Bronx, New York :

Original

I:\PPD\CC\APPLEBEE.09

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SECTION 1. BASIC LEASE PROVISIONS AND ENUMERATION OF EXHIBITS.

1.1 Basic Lease Provisions.

- (a) DATE: July 26, 1999
- (b) LANDLORD: BAY PLAZA COMMUNITY CENTER, LLC,
a New York limited liability company
- Address: Prestige Properties & Development Co., Inc.
546 Fifth Avenue, 15th Fl.
New York, New York 10036
- (c) TENANT: Bay Plaza Apple, LLC
- Address: 550 Mamaroneck Avenue, Suite 301
Harrison, New York 10528

TAX IDENTIFICATION NUMBER:

- (d) LEASED PREMISES: As shown on Exhibit A; and located in Space 1; containing approximately 6,795 square feet of Gross Leasable Area, including Tenant's share of the delivery and fire corridor.
- (e) TENANT'S TRADE NAME: Applebee's Neighborhood Grill & Bar
- (f) LEASE TERM: Twenty (20) Lease Years. (See Section 3.3.)
- (g) MINIMUM RENT:

<u>Lease Year</u>	<u>Annual Minimum Rent</u>	<u>Per Square Foot</u>	<u>Monthly Rent</u>
Commencement Date through 2	\$271,800.00	\$40.00	\$22,650.00
3	\$305,775.00	\$45.00	\$25,481.25
4 through 5	\$339,750.00	\$50.00	\$28,312.50
6 through 10	\$342,468.00	\$50.40	\$28,539.00
11 through 15	\$383,564.16	\$56.45	\$31,963.68
16 through 20	\$429,591.86	\$63.22	\$35,799.32

- (h) PERCENTAGE RENT RATE: Seven (7%) per cent. (See Section 5.2)
- (i) COMMON AREA CHARGE: Tenant's Pro Rata Share of the total Operating Costs (See Section 6.4).
- (j) TENANT'S TAXES: Tenant's Pro Rata Share of the total annual Taxes (See Section 5.6).
- (k) INSURANCE CHARGE: Tenant's Pro Rata Share of the Annual Insurance Premiums (See Section 5.7).
- (l) PERMITTED USE: The Leased Premises shall be used and occupied solely for the operation of a casual dining restaurant providing sit-down service only, serving foods and/or liquor, beer or wines, such liquor, beer or wines to be consumed only within the Leased Premises and for no other purpose. Under no circumstances shall (a) Tenant be permitted to sell beer, wine and liquor for off-premises consumption or (b) operate as a drive-in restaurant, or restaurant providing or serving food primarily for off-premises consumption. Tenant may sell such alcoholic beverages only so long as such sales are lawful and subject always to the Tenant's compliance with all pertinent laws, ordinances, orders, and other requirements of any governmental agency having jurisdiction thereof.
- (m) PROMOTIONAL FUND CHARGE: \$3,397.50 per annum, payable in equal monthly installments concurrently with the Minimum Rent.
- (n) GUARANTOR: Mr. Zane Tankel and Mr. Roy Raeburn
Address: c/o Apple Metro, Inc.
550 Mamaroneck Avenue, Suite 301
Harrison, New York 10528
- (o) SECURITY DEPOSIT: \$75,000.00 (See Section 3.5)
- (p) TIME FOR COMPLETION OF TENANT'S WORK: 120 days after Delivery of Possession, subject to the provisions of Section 12.12.
- (q) RETAIL RESTRICTION LIMIT: One mile in all directions from the intersection of Bartow Avenue and Baychester Avenue as presently configured.



1.2 Significance of a Basic Lease Provision. Each reference in this Lease to any of the Basic Lease Provisions contained in Section 1.1 shall be deemed and construed to incorporate all of the terms provided under each such Basic Lease Provision.

1.3 Enumeration of Exhibits. The exhibits enumerated are attached to and are to be construed as a part of this Lease. Landlord and Tenant shall perform any and all obligations stated in such exhibits within any time period set forth therein.

EXHIBIT A. Leasing Plan of the Shopping Center.

EXHIBIT B. Description of Tenant's Work, Submission of Tenant's Plans and Work Requirements; Sign Criteria.

EXHIBIT C. Description of Landlord's Work.

EXHIBIT D. Form of Subordination, Non-Disturbance and Attornment Agreement

EXHIBIT E: Form of Landlord Lien Waiver

SECTION 2. DEFINITIONS.

As used in this Lease, the following terms have the meanings set forth below:

Commencement Date: The day upon which the Lease Term commences, as provided in Section 3.3.

Common Areas: All portions of the Shopping Center which Landlord may from time to time make available for the general use, convenience and benefit of Tenant, other tenants, and their Permittees. The Common Areas shall include without limitation the following to the extent the same serve more than one occupant: truck ramps, roof, down spouts, fire corridors, service corridors, loading facilities and docks, all automobile parking areas, access roads, sidewalks, traffic lanes, bus stations, taxi stations, parcel pickup areas, entrances and exits from and to public roads, landscaping, rest rooms, and Utility Facilities.

Consumer Price Index or CPI: Index for the cost of living for the New York - Northeast New Jersey area (October 1987 = 347.4) as published by the U.S. Department of Labor, Bureau of Labor Statistics. In the event that the CPI ceases to incorporate a significant number of the items now incorporated therein, or if a substantial change is made in the method of establishing the CPI or if from time to time and at any time in Landlord's sole judgment it is preferable for Landlord to substitute another consumer price index (such as, without limitation, the Consumer Price Index for all Urban Consumers) then the governmental or other nonpartisan publication substituted by Landlord shall be used in lieu of the CPI.

Delivery of Possession: The tender by Landlord to Tenant of possession of the Leased

Premises with Landlord's Work, annexed hereto as Exhibit C, affecting the Leased Premises substantially completed, except for minor items which are in the process of being completed.

Gross Leasable Area: With regard to the premises occupied by any tenant, the actual number of square feet of floor space of the premises on all levels, measured to the exterior faces of exterior walls and to the center lines of all interior walls dividing tenants' premises.

Ground Floor Area: With regard to the premises occupied by any tenant, the actual number of square feet of Gross Leasable Area on the ground floor of the premises, measured to the exterior faces of exterior walls and to the center lines of all interior walls dividing tenants' premises.

Guarantor: The person, firm, association or corporation executing the guaranty, if any, attached to this Lease.

HVAC: The Utility Facilities involved in air-conditioning and heating the Leased Premises.

Insurance Requirements: All terms of any insurance policy covering or applicable to the Leased Premises, Shopping Center or any part thereof, all requirements of the issuer of any such policy, and all orders, rules, regulations and other requirements of the National Board of Fire Underwriters (or any other body exercising similar functions) applicable to or affecting the Leased Premises, Shopping Center or any part thereof, or any use or condition of the Leased Premises, Shopping Center or any part thereof.

Interest: As used in this lease, the words "Interest" or "with Interest" shall mean the greater of (a) 18% per annum; or (b) the prime commercial lending rate announced by Chase Manhattan Bank, or its successors, at its principal office in New York City as of the date upon which the obligation to pay interest commences; but in any event, not more than the highest legal rate of interest then chargeable to tenant in the State of New York on unsecured loans.

Lease Term: The period set forth in Subsection 1.1(f) commencing in accordance with the provisions of Section 3.3.

Lease Year: The calendar year (January 1 to December 31), provided, however, that, as to the first Lease Year:

(a) if the Commencement Date shall occur on or between January 1 and April 1, the first Lease Year shall be the Partial Lease Year commencing with the Commencement Date and ending on December 31 of the year in which the Commencement Date occurred (and the Lease Term shall consist of the number of Lease Years set forth in Section 1.1(f), with such partial Lease Year constituting the first of such number of Lease Years); or

(b) if the Commencement Date shall occur on or after April 1, the first Lease Year shall

begin on the first day of January next following the Commencement Date (and the Lease Term shall be the Partial Lease Year commencing with the Commencement Date plus the number of Lease Years set forth in Subsection 1.1(f).

In order to achieve uniformity in the operation of the Shopping Center, provided that Tenant shall not be adversely affected by such designation and change, Landlord reserves the right to designate and change the beginning and ending day of the Lease Year, notice of which shall be given to Tenant.

Leased Premises: As described in Section 3.1.

Legal Requirements: All laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, certificates of occupancy, authorizations, directions and requirements of and agreements with all government departments, commissions, boards, courts, authorities, agencies, officials and officers, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Leased Premises or any part thereof, or any of the adjoining sidewalks, streets or ways, or any use or condition of the Leased Premises or any part thereof.

Minimum Rent: As set forth in Subsection 1.1(g) paid in accordance with Section 5.1.

Mortgage: Any deed of trust or mortgage constituting a lien on the interest of Landlord in the Shopping Center, or any part thereof, or any rent therefrom, or any estate, right or interest of Landlord therein, including any ground or underlying leases, sale and leaseback agreement or lease and subleaseback agreement, whereby Landlord sells and simultaneously acquires a possessory interest under a lease from, or other agreement with, such transferee.

Mortgagee: Any trustee or mortgagee under a Mortgage, including any landlord under a sale and leaseback agreement, or lease and subleaseback agreement.

Operating Costs: As defined in Section 6.4.

Partial Lease Year: A portion of the Lease Term which is less than a Lease Year. All Rent and other charges shall be pro-rated accordingly in any Partial Lease Year.

Percentage Rent: As set forth in Subsection 1.1(h) and paid in accordance with Section 5.1.

Permittees: All partners, officers, directors, employees, agents, contractors, customers, licensees and invitees of Landlord, Tenant, or any occupant of the Shopping Center.

Project Manager: The Project Manager designated as such, from time to time, by Landlord.

Rent: The term "Rent" shall include the Minimum Rent, Percentage Rent, Tenant's Taxes, and all other charges or payments which Tenant is or becomes obligated to make hereunder, including without limitation, monies owed Landlord as a result of any default by Tenant in accordance with the terms of this Lease, or arising out of Landlord's performance of any obligation of Tenant hereunder in accordance with the terms of this Lease.

Shopping Center: The property commonly known as the Bay Plaza Community Center, The Bronx, New York. Landlord may, however, from time to time, provided that Tenant's rights and obligations hereunder shall not be materially adversely affected thereby, add to, remove from, or sever the ownership of the various sections or parcels comprising the Shopping Center, and designate other land together with the buildings and improvements thereon, if any, as part of the Shopping Center, but the same shall remain as part of the Shopping Center for so long as such designation remains unrevoked by the Landlord.

Stores: Any portion of a building (including the Leased Premises) located in the Shopping Center intended to be used by a tenant or occupant thereof.

Taking: A taking during the Lease Term of all or any part of the Leased Premises, the Shopping Center, or any interest therein or right accruing thereto, as the result or in lieu or in anticipation of the exercise of the right of condemnation or eminent domain, or any similar action by a governmental authority.

Tenant's Pro Rata Share: A fraction, the numerator of which is the Gross Leasable Area of the Leased Premises, and the denominator of which is the sum of (i) the Ground Floor Area of the occupied Stores, and (ii) one-half of the Gross Leasable Area of the occupied Stores excluding the Ground Floor Area. Such fraction shall be modified to reflect conditions existing as of the first day of any month during the Lease Term.

Tenant's Work: The work to be performed by Tenant as provided in Section 4 and Exhibit B.

Utility Facilities: The network of pipes, lines, conduits, wires and other interconnecting facilities within the Shopping Center through which air-conditioning, water, sewage, storm drainage, telephone, electricity, gas and other utility services utilized by any occupant in the Shopping Center are received, transmitted or discharged at any time and from time to time during the Lease Term.

SECTION 3. LEASED PREMISES AND TERM.

3.1 Leased Premises. Landlord hereby leases and demises to Tenant and Tenant hereby accepts from Landlord on the terms set forth herein, the Leased Premises designated in Subsection 1.1(d) together with all appurtenances specifically granted in this Lease, including the non-exclusive

right to use the Common Areas. Landlord, without limiting its rights hereunder: (i) retains and excludes from this demise (a) the exterior faces of the walls of the Leased Premises, (b) the roof, and (c) the land under the Leased Premises; and (ii) reserves unto itself the right to install, maintain, use, repair, relocate and replace the Utility Facilities and structural elements located in the Leased Premises in locations which will not materially interfere with Tenant's use of the Leased Premises. This latter reservation shall include without limitation the right to connect appropriate water-related Utility Facilities in and near the Leased Premises to the municipal or county sewer system, if and when such system is approved and constructed in the vicinity of the Shopping Center. There is no basement space included in the Leased Premises.

3.2 Modifications of Exhibits. Landlord hereby reserves, during the term of this Lease, the right from time to time and at any time and to make such changes to the Shopping Center and to make such modifications in the locations (other than the Leased Premises) within or among the various components of the Shopping Center as Landlord shall in the exercise of its sole discretion deem desirable and to construct additional buildings in the Shopping Center which need not be limited to retail store uses. Notwithstanding the foregoing, Landlord agrees that it will not erect any kiosk or other structure nor place any plantings or shrubbery within the portion of the Common Areas that is 100 (one hundred) feet in front of the Leased Premises and bounded by the side lease lines of the Leased Premises. Such changes and modifications may also include (without limitation) alterations, additions, or both, to any existing or new buildings or improvements in or on the Shopping Center. The annexation hereto of Exhibit A shall not constitute a warranty, or representation, express or implied, of the retention, development or future expansion of the Shopping Center or any part thereof. The naming of any tenant or occupant of the Shopping Center on Exhibit A or the presence of a tenant or occupant in the Shopping Center shall not constitute a warranty, express or implied, of the continued presence or occupancy of such tenant or occupant in the Shopping Center.

3.3 Lease Term. (a) Tenant shall have and hold the Leased Premises for a term commencing on the earlier of: (i) 120 days after Delivery of Possession, or (ii) the day Tenant opens for business in the Leased Premises, and ending at midnight on December 31 of the last Lease Year of the Lease Term as provided in Subsection 1.1(f), unless sooner terminated as hereinafter provided.

(b) Provided that Tenant is not in default of its obligations hereunder, notice of which has been given and time to cure having expired, Tenant shall have the right at its option to extend the Lease Term for a single term of ten (10) years, hereinafter known as the "Extended Term". Tenant shall exercise such option to extend by giving notice to Landlord at least 9 months prior to the expiration of the original Lease Term. If the notice to extend is not timely given as herein prescribed, Tenant shall have no further right to extend the Lease Term for such Extended Term, and this Lease shall terminate as of the last day of the then term of this Lease. If Tenant has elected to exercise its option to the Extended Term, the Lease Term shall be extended for the additional period covered by the option so exercised, without execution of any extension or renewal of this Lease. All terms, covenants and conditions of this Lease shall continue in full force and

effect through the Extended Term, except that the Annual Minimum Monthly Rent payable during the Extended Term shall be as follows:

<u>Lease Year</u>	<u>Annual Minimum Rent</u>	<u>Per Square Foot</u>	<u>Monthly Rent</u>
21 through 25	\$494,030.64	\$72.71	\$41,169.22
26 through 30	\$568,135.23	\$83.61	\$47,344.60

3.4 Statement As To Lease Term. When the Commencement Date has been determined, Landlord and Tenant shall exchange a written statement specifying the commencement and expiration dates of the Lease.

3.5 Conditions to Effectiveness of Lease. The effectiveness of this Lease is conditioned upon the following:

(a) Tenant obtaining a license from the New York State Liquor Authority permitting the sale of alcoholic beverages in the Leased Premises within ninety (90) days from the date a fully executed original of this Lease is delivered to Tenant; and

(b) The approval of the terms and conditions of this Lease by Applebee's International, Inc., within ninety (90) days from the date a fully executed original of this lease is delivered to Tenant.

In the event that one or both of the foregoing conditions shall not be satisfied within said 90 day period, Tenant shall have the right to terminate this Lease upon written notice to Landlord accompanied by the written denial of (a) and/or (b) above, and upon the giving of such notice this Lease shall terminate and be of no further force or effect. If this Lease is terminated pursuant to this Section 3.5 Landlord shall be entitled to withhold from Tenant's Security Deposit an amount equal to additional costs reasonably incurred by Landlord to alter the Leased Premises so as to allow Tenant to operate a restaurant therein. Upon Tenant's request, Landlord shall submit to Tenant copies of any bills or receipts evidencing such additional costs incurred by Landlord. The balance of the Security Deposit, if any, shall be returned to Tenant. Upon the satisfaction of both conditions, regardless when satisfied, and proof thereof furnished to Landlord, Landlord shall return the entire Security Deposit to Tenant. If Tenant does not so terminate this Lease within ten (10) days after the expiration of the initial 90 day period, Tenant shall no longer have such right to terminate this Lease, and this Lease shall remain in full force and effect in accordance with the terms thereof.

SECTION 4. CONSTRUCTION.

4.1 Construction by Landlord. Landlord shall effect Delivery of Possession of the Leased Premises to Tenant on or before June 1, 2000 substantially in accordance with Exhibit C and in accordance with all applicable Legal Requirements. If Landlord fails to deliver the Leased Premises to Tenant on or before June 1, 2000, Tenant may terminate this Lease by giving Landlord written notice within 30 days thereafter that Tenant has elected to terminate this Lease, such termination to be effective as of the date of such notice. Landlord's Work shall be deemed approved by Tenant in all respects unless Tenant within 30 days after Delivery of Possession, notifies Landlord of specific items which are not completed or do not conform to Exhibit C.

4.2 Construction by Tenant. Tenant shall perform and complete Tenant's Work at Tenant's sole expense in accordance with Exhibit B. Tenant will commence construction of Tenant's Work immediately upon the Delivery of Possession. Tenant shall diligently prosecute to completion Tenant's Work in a manner which will not interfere with the operation of the Shopping Center, in compliance with all reasonable and non-discriminatory rules and regulations established by the Project Manager, all Legal Requirements and all Insurance Requirements. Tenant shall, prior to commencement of Tenant's Work, deposit with Landlord policies or certificates of insurance evidencing compliance with the provisions of Section 9.2 and Exhibit B.

4.3 Resolution of Dispute. Any disagreement between Landlord and Tenant with reference to the Work to be performed by Tenant shall be resolved by the decision of a committee consisting of the Project Manager, an architect designated by Tenant and, if necessary, a third architect selected by agreement of the Project Manager and Tenant's architect. Each party shall be responsible for the expenses of its architect and the expense of any additional architect shall be borne equally by Landlord and Tenant.

SECTION 5. RENT

5.1 Minimum Rent. Tenant shall pay to Landlord the Minimum Rent provided in Subsection 1.1(g) in equal monthly installments in advance on the first day of each calendar month during the Lease Term. For any portion of a calendar month included at the beginning of the Lease Term, Tenant shall pay on the commencement of the Lease Term the prorated portion of the Minimum Rent for such month.

5.2. Percentage Rent. In addition to the Minimum Rent, Tenant shall pay to Landlord as Percentage Rent for each Lease Year an amount equal to the percentage set forth in Section 1.1(h) multiplied by Gross Sales made in such Lease Year in excess of the annual "Breakpoint Amount" set forth below for the appropriate Lease Year, pro-rated for any Partial Lease Year. Percentage Rent shall be paid on or before the 20th day of each month upon reaching the applicable Breakpoint Amount in each Lease Year, and each such payment shall account for all Gross Sales made in the preceding calendar month.

<u>Lease Years</u>	<u>Breakpoint Amount</u>
1 to 2	\$ 5,000,000.00
3	\$ 5,625,000.00
4 to 5	\$ 6,250,000.00
6 to 10	\$ 6,300,000.00
11 to 15	\$ 7,056,000.00
16-20	\$ 7,902,720.00
Option years 21 to 25	\$ 9,088,128.00
Option years 26 to 30	\$10,451,347.20

The Percentage Rent Breakpoint hereunder shall be subject to adjustment if during any Lease Year: (i) Minimum Rent shall abate for any reason, except in the case where such abatement shall occur in accordance with Sections 7.2, 8.1 or 10.1; and (ii) Tenant shall fail to conduct its business in the Leased Premises as required by Section 9.1(c) hereof. Such adjustment shall be computed by subtracting from the negotiated Percentage Rent Breakpoint an amount equal to the quotient resulting from, in the case of (i) above, the division of the amount of the abatement of Minimum Rent in such Lease Year by 7%, and in the case of (ii) above, the division of the amount of Minimum Rent payable during such period of time as Tenant shall fail to so conduct its business by 7%. Percentage Rent payable hereunder for any Lease Year or Partial Lease Year in which there is an abatement or failure to operate as aforesaid, shall be computed or re-computed based upon the Percentage Rent Breakpoint as adjusted, and paid on the first to occur of the 20th day of the month immediately following the commencement of the event giving rise to the adjustment. The foregoing adjustment shall not be deemed an election of remedy to the exclusion of any other remedy in the event the failure in (ii) above shall be occasioned by other than condemnation, casualty, repairs or renovations.

5.3 Statements As To Gross Sales. On or before the 20th day of each month during the Lease Term, Tenant shall submit to Landlord a written statement signed by Tenant showing Tenant's Gross Sales for the preceding month. Within 90 days after the expiration of each Lease Year, Tenant shall deliver to Landlord a statement certified by Tenant's chief financial officer setting forth the amount of Tenant's Gross Sales for each such Lease Year. Tenant represents and warrants that all of Tenant's Gross Sales statements shall include all of the Gross Sales of any subtenant, licensee or concessionaire made during the same period. In the event the statement submitted pursuant hereto shall indicate total Gross Sales for any Lease Year differing from the amounts as reported on the monthly statements submitted for such Lease Year, the Percentage Rent payable as a result of such difference shall be adjusted by payment, if any is due, within 15 days after receipt of such statements



by Landlord to Tenant, or by Tenant to Landlord, as the case may be.

5.4 Maintenance of Records. Tenant shall utilize, or cause to be utilized, cash registers equipped with sealed continuous totals to record all cash sales. Tenant shall keep and maintain at the Leased Premises or general offices of Tenant (provided the same is located within 100 miles of the Leased Premises), a complete, permanent and accurate set of books and records conforming to generally accepted accounting principles and containing all supporting evidence from which Gross Sales and all revenue derived from the conduct of business upon or from the Leased Premises can be determined. Such books and records shall include all pertinent original sales books and records, which records shall include, if any, : (a) daily dated register tapes; (b) serially numbered sales slips; (c) mail orders; (d) telephone orders; (e) settlement report sheets of transactions with subtenants, concessionaires and licensees; (f) records showing that merchandise returned by customers was purchased by such customers at or from the Leased Premises; (g) receipts or other records of merchandise leased, licensed or taken out on approval; (h) duplicate bank deposit slips and bank statements; (i) computer tapes, discs, chips, printouts, microfilm or similar storage media; (j) such other records as would normally be required to be kept and examined by an independent accountant in accordance with generally accepted auditing practices in performing an audit of Tenant's Gross Sales; and (k) all income, sales and occupation tax returns. Such books, records and evidence shall be kept for at least 36 months after the expiration of the Lease Year to which the same pertain and if Landlord shall inspect and/or audit Tenant's statement for such Lease Year, such books, records and evidence shall continue to be kept until such inspection and/or audit shall have been concluded. Landlord may, upon reasonable advance notice, at any reasonable time, or from time to time, inspect and/or audit any or all of Tenant's books of accounts, documents, records, sales tax returns, papers and files which shall in any manner relate to Gross Sales, and at Landlord's request Tenant shall make all such data available for such examination at such reasonable times as Landlord shall specify upon reasonable advance notice. If Landlord makes an audit for any Lease Year, and if the Gross Sales shown by Tenant's statement for such Lease Year are found to be understated by 5% or more, Tenant shall pay to Landlord the reasonable cost of such audit. Landlord's right to commence such an audit with respect to any Lease Year shall expire 24 months after the end of such Lease Year. If it is determined by any such audit that any statement previously delivered to Landlord by Tenant was not accurate, an adjustment shall be made, and one party shall pay to the other upon demand such sums as may be necessary so that the correct amount of Percentage Rent shall have been paid by Tenant to Landlord. In the event Tenant fails to furnish Landlord with a monthly or annual Gross Sales statement within the required time period and in the manner set forth in this Section 5, or fails to make Tenant's records available for audit by Landlord, then Tenant shall pay to Landlord, as liquidated damages, the sum of \$100.00 per month until such statement is received, or until Tenant's records are made available, as the case may be. If such failure by Tenant occurs more than two times in any Lease Year, any subsequent audit by Landlord shall in any event be at Tenant's expense.

5.5 Definition of Gross Sales. "Gross Sales" means the total amount of all sales and other charges by Tenant and any subtenants, licensees or concessionaires or other person, firm or corporation in connection with food, beverages, liquor, wine, beer, and for all merchandise and

services, and all other receipts of business conducted in or from the Leased Premises, including, without limitation, any finance charges made or rendered at, on, in or from the Leased Premises, and the sales whenever made of merchandise stored on the Lease Premises or merchandise shipped from other locations on orders taken in or through the Leased Premises, whether such amounts shall be for cash or on credit, paid or unpaid, collected or uncollected, and further including, without limitation, mail and telephone orders received or filled at or from the Leased Premises, sale of gift or merchandise certificates. Each installment sale shall be treated as a sale for the full price in the month during which such sale was made. There shall be excluded from Gross Sales: (i) all credits and refunds made to customers for merchandise returned or exchanged, the purchase price of which was previously included in Gross Sales; (ii) the amount of all sales, use, excise or similar taxes imposed by any governmental authority on any such sales, provided that such taxes are added to the price thereof and collected from the patron or customer and paid by Tenant or any subtenant to such governmental authority; (iii) the exchange of merchandise and/or supplies between stores or other facilities of Tenant or any Affiliate (as defined in Section 9.4(f)(ii)) of Tenant, where such exchange is made solely for Tenant's business convenience and does not deprive Landlord of the benefit of a sale which otherwise would be included within Gross Sales; (iv) receipts from sales of any fixtures, furniture or other property or assets of Tenant or any subtenant, licensee or concessionaire used in Tenant's business and not normally held for sale; or (v) the sale of used restaurant equipment; and (vi) employee meals. The following shall be excluded from Gross Sales: (i) proceeds of the sale of substantially all of the assets of Tenant at the Leased Premises, (ii) proceeds of insurance or condemnation; (iii) the unpaid balance of any credit sale which is written off as uncollectible in accordance with generally accepted accounting principles except that such unpaid balance of credit sale shall be included in Gross Sales whenever it is collected; (iv) proceeds of sales from vending machines installed for the convenience of employees of Tenant and sales to employees provided such sales do not exceed one percent (1%) of Tenant's Gross Sales; (v) financing and credit card charges payable by Tenant or credit card companies; and (vi) sums and credit received from shippers or manufacturers in settlement of claims for loss or damage to merchandise.

5.6 Taxes. (a) Tenant shall, in all instances, pay Tenant's Pro Rata Share of all Taxes, as hereinafter defined, ("Tenant's Taxes") which may be levied or assessed by the lawful taxing authorities against the land, buildings and all other improvements and betterments in the Shopping Center which are not separately levied or separately identified on the tax bills as assessments against any one building or occupant of the Shopping Center. In the event that a portion of the Taxes is separately levied or assessed against the premises occupied by another occupant of the Shopping Center, then as to each Tax Year in which there is paid such separate levy or assessment, the same shall be deducted from real estate Taxes, and in computing Tenant's Taxes, Tenant's Pro Rata Share (for purposes of computing Tenant's Taxes relative to the particular separately assessed element of Taxes only), the Gross Leasable Area of the Stores consisting of, or located in, the land or building area so separately levied or assessed shall be deducted from the denominator in computing Tenant's Pro Rata Share. If the Gross Leasable Area of any building shall change during any tax year, the Gross Leasable Area existing on the day on which the real estate taxes are assessed for such tax year shall control in the foregoing computation. The term "Taxes" shall mean and include all real estate

taxes, assessments, license and permit fees, charges for any easement maintained for the benefit of the Shopping Center, water and sewer rents and other governmental levies and charges of every kind and nature whatsoever, general and special, extraordinary as well as ordinary, foreseen and unforeseen, and each and every installment thereof, which shall or may during the Term of this Lease be levied, assessed, imposed, become due and payable out of, or for, the Shopping Center or any part thereof, or any rent or income received therefrom, or any land, buildings or other improvements therein (as initially constructed, or as the same may at any time thereafter be enlarged or reduced), and all reasonable costs and fees (including attorneys' fees) incurred by Landlord in contesting Taxes, and/or negotiating with the public authorities as to the same and shall include any "flat" or annual charge imposed as a standby charge for the availability of water or other utilities during period of no usage thereof. The amounts required to be paid by Landlord or any tenant or occupant of the Shopping Center in lieu of Taxes pursuant to any payment in lieu of tax agreement entered into with a taxing authority having jurisdiction over the Shopping Center shall be considered for the purposes of this Lease to be included within the definition of Taxes. Nothing herein contained shall be construed to include as "Taxes" any income, inheritance, estate, succession, transfer, gift, franchise, corporation tax or capital levy that is or may be imposed upon Landlord, provided, however, that if at any time during the Lease Term the methods of taxation prevailing at the commencement of the Lease Term shall be altered so that in lieu of or as a substitute for the whole or any part of the Taxes now levied, assessed or imposed on real estate as such, there shall be levied, assessed or imposed (i) a tax on the rents received from such real estate other than an income tax, or (ii) a license fee measured by the rents receivable by Landlord for the Shopping Center or any portion thereof, or (iii) a tax or license imposed upon Landlord which is otherwise measured by or based in whole or in part upon the Shopping Center or any portion thereof, then the same shall be included in the computation of Taxes, computed as if the amount of such tax or fee so payable were that part due if the Shopping Center were the only property of Landlord subject thereto. The term "Tax Year" shall mean each twelve-month period imposed by the taxing authorities having lawful jurisdiction over the property comprising the Shopping Center. Taxes shall be equitably prorated during any partial Tax Years. Notwithstanding anything to the contrary herein, "Taxes" shall exclude: (i) any tax upon the sale, transfer and/or assignment of Landlord's title or estate which at any time may be assessed against or become a lien upon all or any part of the Shopping Center; (ii) any penalties and/or interest due to Landlord's failure to timely pay Taxes; and (iii) any real property taxes attributable to unimproved parcels, if any, comprising a part of the Shopping Center. If general or special assessments may be paid in installments over a period of years, only the installments coming due during the Tax Year in question during the Lease Term shall be included in Taxes payable by Tenant for such year.

(b) On the Commencement Date, Tenant shall pay to Landlord Tenant's Pro Rata Share of the semi-annual Taxes that are payable for the half year period of the tax year in which the Commencement Date occurs, prorated on a per diem basis from the Commencement Date until the end of such half year. During the first Tax Year or partial Tax Year, Tenant shall pay to Landlord, without duplication, as additional rent, monthly in advance in equal installments, the amount estimated by Landlord as Tenant's Taxes subject to adjustment when the amount of Tenant's Taxes

for such period shall be determined. Thereafter, and for the balance of the Lease Term, Tenant shall pay to Landlord monthly, in advance, as additional rent, an amount equal to one-twelfth (1/12) of Tenant's Taxes which shall be based on Tenant's Taxes for the immediately preceding Tax Year. Tenant shall commence payment of Tenant's Taxes, as set forth herein, within 10 days after its receipt of a copy of the tax bill relating to the period of the tax year in which the Commencement Date occurs. If the amount of such monthly payments paid by Tenant exceeds the actual amount thereafter due, the overpayment shall be credited on Tenant's next succeeding payment. If the amount of such monthly payments paid by Tenant shall be less than the actual amount due, Tenant shall promptly pay to Landlord the difference between the amount paid by Tenant and the actual amount due. If any Mortgagee of Landlord should require Tax escrow deposits, in advance of the due date, then Tenant shall deposit with Landlord, in advance, its share of such Taxes.

(c) Tenant, in addition to the foregoing, agrees to pay, prior to delinquency, any and all taxes and assessments levied or assessed during the Lease Term as a separate and identifiable item upon or against (i) all furniture, fixtures, equipment and any other personal property installed or located within the Leased Premises, (ii) all alterations, additions, betterments or improvements of whatever kind or nature made by Tenant to the Leased Premises, including such improvements mentioned in Exhibit B as Tenant's Work; and (iii) the rentals payable hereunder by Tenant to Landlord (other than Landlord's Federal and State income taxes thereon).

(d) Should any governmental authority require that a tax, other than the Taxes above mentioned, be paid by Tenant, but collected by Landlord, for and on behalf of said governmental authority, and from time to time forwarded by the Landlord to said governmental authority, the same shall be paid by Tenant to Landlord, and be collectable by Landlord, and payment thereof enforced in the same fashion as provided for the enforcement of payment of Rent hereunder; and for the purpose of enforcing payment thereof, shall be deemed additional rent hereunder, payable monthly.

(e) Landlord shall have the right but not the obligation, if permitted by law, to make installment payments of any assessments levied against the Shopping Center and in such event Tenant's Taxes shall be computed upon the installments and interest thereon paid by Landlord in each Tax Year. Landlord shall have the sole, absolute and unrestricted right, but not the obligation, to contest the validity or amount of any Tax by appropriate proceedings, and if Landlord shall institute any such contest on its own volition, it shall have the sole, absolute and unrestricted right to settle any contest, proceeding or action upon whatever terms Landlord may, in its sole discretion, determine. In the event Landlord receives any refund of such Taxes (and provided Tenant is not then in default of any of the monetary terms of this Lease), Landlord shall credit such proportion of such refund as shall be allocable to payments of Taxes actually made by Tenant (less such proportion of reasonable costs, expenses and attorneys' fees paid by Landlord in connection with obtaining said refund) against the next succeeding payments of Taxes due from Tenant or, with respect to Tenant's Taxes for the final Lease Year, pay such refund to Tenant upon Landlord's receipt.

(f) Any amount payable by Tenant to Landlord under this Section 5.6 shall be paid by



Tenant to Landlord within 10 days after receipt by Tenant from Landlord of a bill setting forth such amount. Upon Tenant's request, Landlord shall provide copies of Landlord's actual tax bills and a statement itemizing Tenant's payments during the previous Tax Year. If Landlord fails to provide a copy of the actual tax bill within twenty (20) days following Tenant's request thereof, Tenant shall pay Tenant's Pro Rata Share of Taxes based upon the prior Tax Year or partial Tax Year and shall not be required to pay any increase to Tenant's Pro Rata Share of Taxes from the prior Tax Year or partial Tax Year until Tenant's receipt of the actual tax bill, whereupon Tenant shall pay to Landlord the difference between the amount paid and the amount actually due with the next installment of Minimum Rent due. Landlord's failure to provide such statement to Tenant shall not relieve Tenant of its obligations generally hereunder or for Tenant's Taxes due for such Tax Year (or any portion of any Tax Year) in which any failure occurs. The failure of Tenant to pay any such amount within said 10 day period shall carry with it the same consequences as the failure to pay any installment of Rent. In the event of any dispute, Tenant shall pay the amount of Taxes in accordance with the applicable bill or statement, and such payment shall be without prejudice to Tenant's position. If the dispute shall be determined in Tenant's favor, by agreement or otherwise, Landlord shall pay to Tenant the amount of Tenant's overpayment resulting from compliance with such bill or statement. If the dispute shall result in the determination that the amount collected from Tenant was less than the amount actually due, Tenant shall pay to Landlord the difference between the amount paid and the amount actually due with the next installment of Minimum Rent. Any bill or statement under this section 5.6 shall be deemed binding and conclusive if Tenant fails to object thereto within 60 days after receipt thereof.

5.7 Insurance Charge. (a) Tenant shall pay as Tenant's Insurance Charge in each Lease Year and Partial Lease Year during the Lease Term as additional rent hereunder, Tenant's Pro Rata Share of Landlord's premiums for such Lease Year or Partial Lease Year for loss of rent insurance and such other insurance as may be maintained by Landlord pursuant to Section 8.2 hereof, including all endorsements thereon, covering the Shopping Center exclusive of the Common Areas. Tenant's Insurance Charge shall be paid within 30 days after Landlord's written demand therefor accompanied by a statement which shall set forth Landlord's computations in arriving at Tenant's Insurance Charge.

(b) During the first Lease Year or Partial Lease Year, Tenant shall pay to Landlord, monthly in advance in equal installments, the amount reasonably estimated by Landlord as Tenant's Insurance Charge subject to adjustment when the amount of Tenant's Insurance Charge for such period shall be determined. Thereafter, and for the balance of the term of this Lease, Tenant shall pay to Landlord monthly in advance an amount equal to one-twelfth (1/12) of Tenant's Insurance Charge which shall be based upon Tenant's Insurance Charge for the immediately preceding Lease Year. If the amount of such monthly payments paid by Tenant exceeds the actual amount thereafter due, the overpayment shall be credited on Tenant's next succeeding payment. If the amount of such monthly payments paid by Tenant shall be less than the actual amount due, Tenant shall promptly pay to Landlord the difference between the amount paid by Tenant and the actual amount due with the next installment of Rent.

5.8 Payment of Rent. All Rent and other charges which Tenant is obligated to pay shall be paid to Landlord by checks drawn on an account at a New York Clearing House Association bank, without demand therefor and shall be delivered to Landlord at Landlord's address or such other place as Landlord may from time to time direct. In the event that any check in payment of Rent is not honored when first presented by Landlord for payment, in addition to any remedy which Landlord may otherwise have for failure of Tenant to pay Rent when due, Tenant shall be obligated to pay the sum of \$100.00 to Landlord within five (5) days after notice to Tenant that its check was dishonored, in reimbursement of Landlord's additional administrative costs caused by Tenant's "bad check".

5.9 No Set-Off, etc. All Rent and other charges which Tenant is obligated to pay Landlord under any provision of this Lease shall be paid timely to Landlord without any set-off, counterclaim or deduction whatsoever, except as otherwise specifically provided herein.

5.10 Past Due Rents. If during the term of this Lease Tenant fails to pay the full amount of the Minimum Rent, Percentage Rent or any other item of Rent when the same is due and payable, in addition to Landlord's rights and remedies pursuant to Section 11 hereof, Interest shall accrue on the unpaid amount from and after the date on which any sum shall be due and payable, and such Interest, together with a Late Charge of \$50.00 for each past due payment to cover the extra expense involved in handling such delinquency, shall be paid to Landlord at the time of payment of the delinquent sum. If any payment of Rent is past due longer than three days, then the Late Charge shall be increased to \$100.00 for each day after the third day that the same is past due. Landlord shall have the right to apply any payments made by Tenant first to any deficiency in the payment of interest and administrative charges provided for hereunder. Any payment to be made by Tenant under this Lease shall be deemed to have been paid upon the date that it is received by Landlord. The provision for a Late Charge and interest herein shall not be deemed to grant Tenant any grace period or extension of time or prevent Landlord from exercising its other rights under this Lease.

5.11 Accord and Satisfaction. No payment by Tenant or receipt by Landlord of an amount less than any payment of Rent then due and payable shall be deemed to be other than on account of the Rent then due and payable, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as Rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such Rent or pursue any other remedy provided for in this Lease or available at law or in equity. No payment by Tenant, nor any writing accompanying any payment, shall be deemed an accord and satisfaction, and Tenant may make any payment without prejudice to Tenant's right to recover an overpayment or to pursue any other remedy provided in this Lease or available by law.

SECTION 6. COMMON AREAS

6.1 Common Areas. Landlord shall make available within the Shopping Center the

Common Areas, or any portion thereof, subject, however, to Landlord's right to, from time to time, and at any time, change or modify the same pursuant to Section 3.2 and to without limitation erect and install from time to time, and at any time within the Common Areas, parking areas, signs, kiosks, planters, pools and/or sculptures. Landlord shall operate, manage, equip, police, light, repair and maintain the Common Areas for their intended purposes in such manner as Landlord shall in the exercise of its sole commercially reasonable discretion determine to be in the best interests of the Shopping Center. Landlord covenants and agrees that it will not reduce the number of parking spaces within the portion of the Common Areas within two hundred (200) feet of the exterior entrance of the Leased Premises and bounded by the lease lines of the Leased Premises, which are owned, leased or controlled by Landlord, below the number of parking spaces existing in the same area at the time of the execution of this Lease. Landlord further covenants and agrees that there shall at all times be maintained in the Leased Premises sufficient parking area so as to maintain a ratio of not less than 4.0 parking spaces for 1,000 square feet of Gross Leasable Area of the Leased Premises.

6.2 Use of Common Areas. Tenant and its Permittees shall have a non-exclusive license to use the Common Areas in common with the Landlord and all others to whom Landlord has granted or may hereafter grant such license subject to such reasonable rules and regulations as Landlord may from time to time reasonably impose. Tenant agrees, after notice thereof, to abide by such rules and regulations and to use its best efforts to cause its Permittees to conform thereto. The rules and regulations referred to or set forth in this Lease or otherwise imposed by Landlord shall not conflict with any of the provisions of this Lease. Landlord agrees that insofar as applicable, Landlord shall enforce such rules and regulations against all other retail tenants of the Shopping Center in the case of any violations or breaches thereof which adversely affect Tenant's enjoyment of the Leased Premises or of the Common Areas. Landlord may at any time temporarily close any Common Area to make repairs or changes therein or to effect construction, repairs or changes within the Shopping Center, to prevent the acquisition of public rights therein, or to discourage non-customer parking, and may do such other acts in and to the Common Areas as in Landlord's reasonable judgment may be desirable. Landlord shall not reduce the number of parking spaces within the Shopping Center below the number required to comply with the applicable Legal Requirements.

6.3 Tenant Parking. Landlord shall designate specific areas within reasonable proximity to the Leased Premises which shall provide a sufficient number of parking spaces that meet the needs of the Shopping Center in which vehicles owned or operated by Tenant or its Permittees (other than its customers) can and must park and may prohibit the parking of any such vehicles in any other part of the Common Areas. Tenant shall, upon request, promptly furnish Landlord the license numbers of the motor vehicles operated by such Permittees. Landlord may cause to be towed away any such vehicles not parked in the areas designated by Landlord, and Tenant waives any liability of Landlord to Tenant resulting therefrom; or Landlord may, for any such vehicles not parked in the areas designated therefor by Landlord, charge Tenant, as additional rent, a daily rate to be established from time to time by Landlord, provided that such rate shall not exceed \$10.00 for each vehicle per day or part thereof and provided further, that Landlord has first given notice of Landlord's intent to so



charge. All amounts due under the provisions of this paragraph shall be paid by Tenant within ten (10) days after Landlord's request thereof.

6.4 Common Area Charge. (a) Tenant shall pay to Landlord as Tenant's Common Area Charge in each Lease Year and Partial Lease Year during the Lease Term as additional rent hereunder, Tenant's Pro Rata Share of the Operating Costs (as hereinafter defined) of maintaining the Common Areas. "Operating Costs" shall mean the total costs and expenses incurred in operating, maintaining and repairing the Common Areas, including those driveways, roads, walkways and curbs which are not within the Shopping Center but which are used for access to the Shopping Center, and such maintenance, repair, replacement and remodeling as shall be required in Landlord's sole and absolute judgment to preserve the utility of the Common Areas in the same condition and status as existed at the time of completion of the original construction and installation and to provide for the safety and convenience of the tenants and occupants of the Shopping Center and their Permittees, including, without limitation, the roof and down spouts, the cost of all materials, supplies and services purchased or hired therefor; the cost and expense of landscaping, gardening and planting, cleaning, painting (including line painting), decorating, paving, lighting, energy usage monitoring and control, sanitary control, removal of snow, trash, garbage and other refuse, fire protection and sprinkler maintenance, water and sewerage charges, all taxes (as defined in Section 5.6(a)) attributable to the Common Areas; the cost of all insurance carried by Landlord covering the Common Areas, including, without limitation, public liability, personal and bodily injury and property damage liability and automobile coverage, fire and extended coverage, vandalism and malicious mischief and all broad form coverages, sign insurance and any other insurance that may be carried by Landlord covering the Common Areas, all in limits reasonably selected by Landlord; the cost of operation of loudspeakers and any other equipment supplying music, if any, to the Common Areas, or any parts thereof; the cost of operation of public toilets, if any; the cost of installing and renting of signs; the cost of maintenance, repair and replacement of Utility Facilities serving the Common Areas, depreciation of machinery and equipment owned and used in the operation, maintenance and repair of the Common Areas or the rental charges for such machinery and equipment; the cost of policing and security services of the Common Areas and the directing of traffic and parking of automobiles on the parking areas thereof, parking surcharges, if any, and the cost incurred in implementing or complying with orders, rules and regulations of Local, State and Federal environmental protection agencies and agencies and bodies of similar jurisdiction; the cost of personnel (excluding applicable payroll taxes, workers' compensation insurance and disability insurance) to implement all of the foregoing, and administrative costs equal to 15% of the total Operating Costs. Landlord may, however, cause any or all of said services to be provided by an independent contractor or contractors. If any of the Operating Costs is incurred by Landlord as part of the costs of operating the common areas of other property adjacent to the Shopping Center that is owned by landlord or an affiliated entity of Landlord, an equitable portion of the costs of the same shall be attributable to the Shopping Center as "Operating Costs." Operating Costs shall not include (i) the initial cost of any construction of the Shopping Center or any part thereof, (ii) full value costs for any items which under generally accepted accounting principles would be capitalized, depreciated, or amortized (whether or not said items are leased, financed and/or purchased) the cost

thereof amortized over the useful life thereof, (iii) salary, employee benefits and payroll taxes for off-site, executive or managerial personnel, (iv) brokerage fees and commissions incurred in connection with the sale or leasing of space in the Shopping Center, (v) such portion of any expense for which Landlord is entitled to reimbursement by insurance proceeds, condemnation awards, other tenants, or any other source, (vi) cost of performing additions, alterations, improvements or individual services for other tenants or vacant or vacated space (except the repair and/or replacement of the roof over other tenant's premises where such repairs are performed subsequent to the first five years of the Lease Term), (vii) any payments required in connection with any debt or ground lease encumbering the Shopping Center, (viii) any amounts not actually expended, such as contingency funds, reserve funds or sinking funds, (ix) costs and expenses or enforcing lease provisions against other tenants in the Shopping Center, including legal fees, (x) expenses resulting from a violation by Landlord of the terms of any lease of space in the Shopping Center or of any ground lease or mortgage to which the Shopping Center is subject, (xi) all management fees except administrative costs which are equal to 15% of the total Operating Costs, and (xii) costs attributable to the removal and clean up of Hazardous Materials. The charges for any services provided by affiliates, related or designated parties of Landlord which are included in Operating Costs shall be reasonable, customary and competitive with charges for similar services of independent contractors in the area where the Shopping Center is located. There shall be no duplication of costs, charges or expenses anywhere in this Lease, including, without limitation, charges for utilities, HVAC, Insurance, Taxes, Operating Costs or depreciation. Any overpayment by Tenant of Operating Costs, Taxes or any other charges concerning the final Lease Year of the Lease Term shall be refunded by Landlord to Tenant within thirty (30) days of the expiration of the Lease Term provided that Tenant is not then in default of any of the provisions of the Lease or any such default has been cured.

(b) During the first Lease Year or Partial Lease Year, Tenant shall pay to Landlord, monthly in advance in equal installments, the amount reasonably estimated by Landlord as Tenant's Common Area Charge subject to adjustment when the amount of Tenant's Common Area Charge for such period shall be determined. Thereafter, and for the balance of the term of this Lease, Tenant shall pay to Landlord monthly in advance an amount equal to one-twelfth (1/12) of Tenant's Common Area Charge which shall be based upon Tenant's Common Area Charge for the immediately preceding Lease Year. If the amount of such monthly payments paid by Tenant exceeds the actual amount thereafter due, the overpayment shall be credited on Tenant's next succeeding payment. If the amount of such monthly payments paid by Tenant shall be less than the actual amount due, Tenant shall pay to Landlord the difference between the amount paid by Tenant and the actual amount due with the next installment of Rent. Tenant's Common Area Charge shall be paid within thirty (30) days after Landlord's written demand therefor accompanied by an annual statement with reasonable supporting documentation which shall set forth Landlord's computations in arriving at Tenant's Common Area Charge.

(c) In the event of any dispute, Tenant shall pay the amount of Landlord's bill or statement hereunder, and such payment shall be without prejudice to Tenant's position. If the dispute shall be determined in Tenant's favor, by agreement or otherwise, Landlord shall pay to Tenant the

amount of Tenant's overpayment resulting from such compliance by Tenant. Any such bill or statement shall be deemed binding and conclusive if Tenant fails to object thereto within 60 days after receipt thereof.

(d) Tenant shall be entitled to inspect and audit Landlord's books and records relating exclusively to Operating Costs and the computation of Tenant's Pro Rata Share thereof, at reasonable times, for the purposes of verifying the computation of Tenant's Pro Rata Share of the Operating Costs. Full and accurate books and records for each Lease Year shall be maintained by Landlord and retained either at Landlord's office at the Shopping Center, or at its main office (or other such place as may be reasonably designated by Landlord), for at least 24 months after the end of such year. Tenant's audit shall be conducted within 24 months after the Lease Year to which it pertains, at no cost or expense to Landlord, except for the cost and expenses involved in making Landlord's records dealing with the Operating Costs available to Tenant. Any correction found to be required as a result of such audit be promptly paid by Landlord to Tenant, or Tenant to Landlord, as the case may be. If Tenant makes an audit of Operating Costs in any Lease Year, and if the Operating Costs shown by Landlord's statement for such Lease Year are found to be overstated by 5% or more, Landlord shall pay Tenant the reasonable cost of such audit.

SECTION 7. ENVIRONMENTAL SERVICES

7.1 Utility Connections. Unless otherwise provided in Exhibit B, Landlord shall pay all installation and service charges required to initially connect, or thereafter to provide such additional or substitute utilities to the Leased Premises including, without limitation, energy, gas, electricity, telephone, water, sewage and drainage system connections as may be hereafter from time to time offered or provided in the sole discretion of Landlord to one or more of the Stores. Tenant covenants that its use of any utilities shall not exceed the capacity of the Utility Facilities initially installed by Landlord or by Tenant, and Landlord shall have the right to inspect and test Tenant's utility systems to determine if Tenant's utility systems exceed such capacity. In the event Tenant's utility systems exceed the capacity of the Utility Facilities installed by Landlord or Tenant, Tenant shall correct its utility systems so that the same shall not exceed the permitted capacity; provided, however, that Tenant may increase the capacity of the Utility Facilities if: (i) Tenant pays for and performs all necessary work therefor; (ii) Tenant receives Landlord's prior approval for such work; (iii) such work results in no increased expense to Landlord (unless Tenant agrees to pay such increase); and (iv) such work does not disrupt utility services to other occupants of the Shopping Center or interfere with the business of the other occupants of the Shopping Center.

7.2 Environmental Services and Charges. Tenant shall arrange directly with the local utility services for the commencement of all necessary utilities to take effect on the day Landlord delivers the Leased Premises to Tenant for Tenant's Work, and from and after that day, Tenant shall pay all bills for water, gas, electricity, fuel, light, heat and power furnished to or used by Tenant on or about the Leased Premises, and all sewage disposal or sewerage service charges for the Leased

Premises whether the charges for same are separately metered, "flat charged", or otherwise computed. Landlord shall not be under any responsibility or liability in any way whatsoever for the quality, impairment, interruption, stoppage, or other interference with service involving any of such services or utilities. If Tenant does not pay the above bills within 30 days when the same is due, Landlord may pay all or any of the same, and such payment, with Interest thereon computed as provided in Section 5.10 hereof, shall be deemed additional rent for the Leased Premises. Notwithstanding anything to the contrary contained in this Lease, any temporary failure or interruption of any utility services due to the negligence of Landlord, its contractors, agents or employees, which prevents Tenant from operating its business in the Leased Premises for a period in excess of 5 consecutive business days, shall result in the abatement of Minimum Rent for the period from the sixth consecutive day without such service to the day upon which such service is restored.

7.3 Charges For Domestic Water and Gas Services. (a) Landlord presently plans to provide domestic water to the Leased Premises. Landlord shall install, at Landlord's expense, a water submeter to measure Tenant's domestic water consumption including consumption for stand-by purposes within the sprinkler system. Tenant agrees to pay for water consumed, as shown in said submeter, based on rates payable by Landlord for domestic water, within 30 days following receipt of a statement therefor. Landlord agrees that such statements shall not be rendered more frequently than once per month.

(b) Landlord presently plans to provide gas service to the Leased Premises and Landlord shall install, at Landlord's expense, a gas submeter to measure Tenant's consumption of gas for cooking purposes. Tenant agrees to pay for gas consumed for cooking purposes, as shown in said submeter, based on rates payable by Landlord to the utility company providing such service, within 15 days following receipt of a statement therefor. Landlord agrees that such statements shall not be rendered more frequently than once per month.

SECTION 8. LANDLORD'S ADDITIONAL COVENANTS

8.1 Repairs by Landlord. Subject to the provisions of Section 10, Landlord shall, at its expense, keep the roof and the foundations of the Leased Premises and the structural soundness of the exterior walls of the Leased Premises, and the Utility Facilities located in the Leased Premises installed by Landlord (but not including Tenant's service connections therewith), in good condition; provided, however, that if any damage is caused by any act, negligence or omission of Tenant or Tenant's Permittees, Tenant shall upon demand by Landlord pay for any necessary repairs. In no event shall Landlord be responsible for the following, which shall be Tenant's responsibility:

- (1) Repair of damage caused by the act or omission of Tenant or its Permittees;
- (2) Repair of any loading areas not used in common with others; and

- (3) Repairs which are the responsibility of Tenant in accordance with Section 9.1(e) hereof.

Except in case of apparent emergency, Landlord shall not be required to commence any repairs required hereunder until after notice from Tenant that the same is necessary, which notice (except in the case of emergency) shall be in writing and allow Landlord a reasonable time in which to commence such repair. Landlord shall prosecute to completion with due diligence any repair commenced pursuant to this Section 8.1. Landlord shall use its reasonable efforts to make any repairs, additions or alterations in, about or affecting the Leased Premises or adjoining premises, in a manner which will minimize material interference with Tenant's business in the Leased Premises and agrees to promptly restore the Leased Premises following any such work or activity. In the event such repairs, additions or alterations in, about or affecting the Leased Premises or adjoining premises substantially interfere with Tenant's business operations for more than five (5) consecutive business days, so that Tenant is unable to conduct its business operations during such impairment, then Tenant's Minimum Rent shall be subject to pro-rata abatement from the sixth such consecutive day to the removal of the impairment, or if earlier, to the day Tenant re-opens for business. Tenant's Common Area Charge and Insurance Charge in such event shall also abate until such impairment ceases.

8.2 Insurance. (a) Landlord shall keep the improvements (including the Leased Premises) comprising the Shopping Center insured against loss or damage by: (i) fire and any other causes or events from time to time included within the coverage of the standard form extended coverage insurance policy in an amount not less than 80% of the then full insurable value of such improvements (actual replacement cost without deduction for physical depreciation, exclusive of the cost of foundations and excavations) and (ii) the explosion or rupture of pressure vessels, if any such vessels shall be utilized, in an amount not less than \$100,000.00 per accident, such insurance to be written on a replacement cost basis.

(b) Landlord shall, by itself or in conjunction with others, maintain a policy of comprehensive public liability insurance, naming Landlord as an insured, against claims on account of personal injury and property damage incurred upon or about the Shopping Center with limits of no less than (i) \$2,000,000.00 in respect of personal injury to or death of any number of persons arising out of any one occurrence and (ii) \$100,000.00 per occurrence in respect of any instance of property damage.

8.3 Quiet Enjoyment. Landlord covenants that Tenant, upon paying the rent and performing all of its other obligations under this Lease, shall peacefully and quietly have, hold and enjoy the Leased Premises throughout the Lease Term, or until this Lease is terminated as herein provided.

8.4 Liability. (a) Landlord shall not be liable, except in case of Landlord's negligence or willful misconduct, for any damage or loss resulting from any accident or occurrence in, or upon,

the Leased Premises or other portions of the Shopping Center sustained by any person claiming through the Tenant or for any loss or damage whatsoever to Tenant's business or property.

(b) In no event shall Landlord, including any successor or assignee of all or any portion of Landlord's interest in the Shopping Center, be personally liable or accountable with respect to any provision of this Lease. If Landlord named herein shall be in breach or default with respect to any obligation hereunder or otherwise, Tenant agrees to look for satisfaction solely to the equity of such Landlord in the Shopping Center or to the net sales proceeds thereof, or insurance proceeds or condemnation awards. The liability of Landlord hereunder shall in no event exceed such amount and no other assets of such Landlord (or any partners, venturers, stockholders, beneficiaries, trustees or officers of Landlord) shall be subject to levy, execution or other procedures for the satisfaction of Tenant's remedies. In the event Landlord transfers this Lease, other than as security for a Mortgage, the Landlord (and, in case of any subsequent transfers or conveyances, the then grantor) shall, upon such transfer, be relieved from all liability and obligations hereunder arising after such transfer, provided that the transferee shall assume all such liability and obligations upon such transfer.

8.5 Landlord's Indemnification. Landlord shall indemnify and hold harmless Tenant from and against all claims, actions, damages, liability and expenses including attorney's fees, in connection with loss of life, personal injury and/or damage to property arising from the negligence or intentional acts in or upon the Common Areas of Landlord (and the agents, contractors and employees of Landlord), except to the extent that such may be caused by the negligence or intentional acts of Tenant or by the negligence or intentional acts in connection with Tenant's business in the Shopping Center by Tenant's agents, contractors or employees.

8.6 Landlord's Representations. (a) Landlord represents, warrants and covenants that the Leased Premises are presently zoned, so as to permit the operation of a restaurant in the Leased Premises in accordance with the provisions hereof and sufficient parking exists within the Shopping Center to comply with applicable zoning codes.

(b) Landlord represents, warrants and covenants that it owns the fee simple interest in the Shopping Center and that Landlord's title to the Leased Premises is not subject to any covenant, agreement, reservation, lien, easement, restriction and/or encumbrance which would prohibit Tenant from using the Leased Premises in accordance with the terms of this Lease.

(c) Landlord represents that to its knowledge the Shopping Center is presently in compliance with all Legal Requirements pertaining to Hazardous Materials.

SECTION 9. TENANT'S ADDITIONAL COVENANTS

9.1 Affirmative Covenants. Tenant covenants that at its own cost and expense, and at all times during the Lease Term:

(a) General Performance. Tenant shall perform promptly all of Tenant's obligations set forth in this Lease and in the Exhibits attached hereto, such performance to be in conformity with all Legal Requirements and Insurance Requirements and all reasonable rules and regulations which Landlord may from time to time make for the management and use of the Shopping Center.

(b) Use of Leased Premises. Tenant shall (i) use the Leased Premises only for the Permitted Uses, and (ii) operate its business in a first-class manner under the Tenant's Trade Name, in a manner consistent with the majority of the other stores operated by Tenant as of the date hereof under the same Trade Name and having the same or similar use as the Permitted Use, and with due diligence and efficiency so as to maximize Gross Sales. If Tenant (including permitted successors, assigns or subtenants) no longer has the right, or elects not, to use the "Applebee's Neighborhood Grill & Bar" format in connection with the change in its franchise in accordance with Section 9.1(l), such change in format will not be considered a breach of the provisions of this Section and shall be a permitted use, so long as there is no change in the general concept of a similar type family restaurant and such use is consistent with the use of a majority of other restaurants being operated under the same trade name under which the Leased Premises will then operate under the new franchise agreement, provided that in no event shall Tenant use the Leased Premises primarily as a sit down steak restaurant (Landlord hereby acknowledges that Tenant intends to serve steak among a variety of other types of foods) or as a "fast food" (non-waiter service) restaurant, or sell rotisserie chicken as its principal business.

(c) Continuous Operation. Tenant shall use, occupy and operate continuously and uninterruptedly in the manner set forth in Section 9.1(b) all of the Leased Premises (other than such minor portions thereof as are reasonably required for storage and office purposes) in connection with the business conducted by Tenant therein, excepting only that portion of the Leased Premises which may have been rendered untenable by reason of fire or other casualty. Tenant shall remain open for business, unless otherwise prohibited by law, at least between the hours of 10:00 A.M. and 9:00 P.M. Monday through Saturday inclusive and between the hours of 12:00 noon and 6:00 P.M. Sunday; provided that Tenant shall not be required to open for business on any legal holiday (other than Saturday (except if Christmas should fall on Saturday) if Saturday is a legal holiday in New York). Tenant shall light its display windows until 10:30 P.M. Monday through Saturday inclusive and until 6:30 P.M. Sunday. If Tenant, having opened for business in the Leased Premises, shall fail to continue to conduct its business as hereinabove required (including, without limitation, failure to remain open during the hours set forth above) then, without modifying or diminishing Landlord's other rights or remedies, at law or in equity, or both, Tenant, in recognition of the importance of the continuing operation of Tenant's business in maintaining the character and quality of the Shopping Center and difficulty of determining damages caused by Tenant's such failure, shall pay to Landlord upon demand, as liquidated damages and not as a penalty, in addition to all items of Rent (including, without limitation, Minimum Rent) payable under this Lease, a separate charge equal to 1/30th of the then payable monthly Minimum Rent for each day or partial day on which Tenant fails to so operate in the Leased Premises. A temporary cessation of business by Tenant, occasioned by the making of repairs, alterations or renovations (not to exceed an aggregate of 60 days in any Lease

Year exclusive of time spent on repairs or restoration required as a result of a damage by fire or other casualty or a Taking), or for the taking of inventory (not to exceed an aggregate of five days in any Lease Year), or by Force Majeure, as defined in Section 12.12 hereof, shall not constitute a breach by Tenant of its foregoing covenant with regard to business hours.

(d) Signs and Advertising. (i) Tenant shall obtain and install, at Tenant's sole expense, Tenant's sign and canopy as depicted on Drawing A-2 prepared by Seagrass Associates Architects dated June 1, 1999 and as approved by Landlord. Tenant shall maintain in good condition, identification signs in accordance with Exhibit B. Tenant shall, at a minimum, keep its store front sign lit between the hours of 10:00 A.M. and 10:00 P.M. each calendar day. If Tenant shall be in default of any of the provisions of this subsection (i), notice of which having been given and time to cure having expired, in addition to all of Landlord's other rights and remedies therefor, Tenant shall pay to Landlord, as additional rent, \$100 per day for each day that Tenant continues to so be in default.

(ii) In all advertisements, stationery or printed material relating to Tenant's activities in the Leased Premises, Tenant shall refer to the Shopping Center as the Bay Plaza Shopping Center and shall include the address and telephone number of the Leased Premises wherever the address and telephone numbers of similar business activities conducted by Tenant in the New York City - Westchester area are mentioned.

(iii) Tenant agrees to spend in each Lease Year not less than 1 ½% of Tenant's Gross Sales during such Lease Year in advertising Tenant's business in the Leased Premises in newspapers, radio or television or other media. Tenant agrees to furnish Landlord, together with the annual statement to be furnished under Section 5 hereof, a statement showing the amounts spent by Tenant in advertising Tenant's business in the Leased Premises in the required media during the preceding Lease Year.

(e) Repair and Maintenance. (i) Tenant hereby assumes responsibility for the condition of the Leased Premises, and Tenant shall repair any and all damage to the Leased Premises regardless of how caused, unless such damage is insured by Landlord or required to be repaired by Landlord pursuant to Section 8.1. Tenant shall also keep the Leased Premises, including without limitation, the entire store front, all glass, doors, fixtures and improvements in good repair (including all necessary painting), tastefully decorated and in a neat, clean and safe condition, free of debris, garbage, pests and vermin. Tenant shall also keep all Utility Facilities (other than as provided in Section 8.1), plumbing, electrical and mechanical installations, equipment and facilities in the Leased Premises in a good and safe working order, repair and condition, and shall keep any sidewalk or service area immediately contiguous to the Leased Premises free of snow, ice, debris, garbage, pests and vermin. If the Leased Premises are used for the sale of food, Tenant shall store all trash, refuse and garbage in a garbage storeroom or compartment which Tenant shall install and keep in good repair at its sole expense. Landlord may require that the Leased Premises be periodically treated against pest, rodents or vermin, and in such event, Tenant will, at its sole cost and expense,

enter into a contract with a professional pest control service for the performance of such work. Any work performed by Tenant during the Lease Term shall be done in conformity with Exhibit B and at Tenant's sole cost and expense without any claim for or right of reimbursement from Landlord.

(ii) During the entire Lease Term, Tenant agrees during the entire Lease Term to use the sprinkler system service company designated by Landlord for any repairs or maintenance required for Tenant's sprinkler, provided that the cost thereof at all times shall be reasonable and competitive.

(iii) Tenant further agrees at its own expense to make all alterations, additions or replacements to the Leased Premises required by any law or ordinance or any order or regulation of any public authority; to keep the Leased Premises equipped with all safety appliances so required; to procure any licenses and permits required for any use of the Leased Premises by Tenant; and to comply with the orders and regulations of all governmental authorities.

(iv) Tenant shall, at all times, comply with all local, state and federal laws, rules and regulations governing the use, handling and disposal of Hazardous Material in the Leased Premises including, but not limited to Section 1004 of the Federal Reserve Conservation and Recovery Act, 42 U.S.C. Section 6901 et. seq. (42 U.S.C. Section 6903) and any additions, amendments, or modifications thereto. As used herein, the term "Hazardous Material" shall mean any hazardous or toxic substance material or waste which is, or becomes, regulated by any local or state government authority in which the Leased Premises is located or the United States Government. If Landlord reasonably believes that Tenant is not in compliance with this paragraph, Landlord and its agents shall have the right, but not the duty, to inspect the Leased Premises at any time to determine whether Tenant is complying with the terms of this paragraph. If Tenant is not in compliance with this paragraph, Landlord shall have the right to immediately enter upon the Leased Premises and take whatever actions reasonably necessary to comply including, but not limited to the removal from the Leased Premises of any Hazardous Material and the restoration of the Leased Premises to a clean, neat, attractive, healthy and sanitary condition. Tenant shall pay all such costs incurred by Landlord within thirty (30) days following receipt of a bill therefor plus 15% thereof for administrative costs.

(v) If the Lease Term set forth in Subsection 1.1(f) shall equal or exceed seven Lease Years, then, at any time between the beginning of the fourth Lease Year and the end of the seventh Lease Year of the Lease Term, Tenant shall at Tenant's sole cost and expense commence and complete the refurbishing of the Leased Premises so that Tenant's furnishings, furniture, flooring, walls, fixtures, equipment and other appointments in the Leased Premises shall be at least equal to the original installation in quality and condition.

(f) Taxes and Liens. Tenant shall pay, before delinquency, all municipal, county, regional, state and federal taxes levied, assessed, or unpaid on any leasehold interest, any investment of Tenant in the Leased Premises, or any personal property of any kind owned, installed, or used by Tenant or on Tenant's right to occupancy of the Leased Premises. Tenant shall also pay promptly when due the entire cost of any work affecting the Leased Premises done by or for the account of

Tenant, so that this Lease and the Leased Premises shall at all times be free of liens for labor and materials, all such work to be done in accordance with all Legal Requirements and Insurance Requirements and in a good and workmanlike manner. Tenant shall cause forthwith to be discharged of record (by payment, bond, order of a court of competent jurisdiction or otherwise) any lien (of mechanics or others) which may at any time be filed against the Shopping Center or any part thereof arising out of work done by or for the account of Tenant.

(g) Indemnification. Tenant shall be responsible for, and shall indemnify and hold harmless Landlord and its agents, successors and assigns, from and against, all injury, loss, claims or damage (including attorneys' fees and disbursements incurred by Landlord in any action or proceeding between Landlord and Tenant or between Landlord and any third party or otherwise) to any person or property arising from, related to, or in connection with the use, occupancy, construction, or repair of the Leased Premises, including, without limitation, any such injury, loss, claim, or damage caused by Tenant's Permittees. All property of Tenant and Tenant's Permittees in or about the Leased Premises shall be kept and stored at Tenant's sole risk and Tenant shall hold Landlord harmless from any claims arising out of damage to, or loss of, the same provided such claims do not arise out of Landlord's negligence or wilful acts or omissions.

(h) Inspection of Premises; Repairs by Landlord. Tenant shall permit the Landlord to enter the Leased Premises during normal business hours and at other reasonable times upon reasonable advance notice, except in the case of an emergency, to make such repairs, improvements, or additions in the Leased Premises or in the building of which they are a part as may be necessary or appropriate, and to take onto the Leased Premises all materials that may be required therefor without the same constituting an eviction of Tenant in whole or in part. Except as provided in Sections 7.2, 8.1 and 10.1, Tenant's Rent shall not, during the prosecution of such work, abate because of any business loss or interruption. Landlord shall also have the right to enter upon the Leased Premises during normal business hours and at other reasonable times to show the same to prospective purchasers or Mortgagees. During the six months prior to the expiration of the Lease Term, Landlord may show the Leased Premises to prospective tenants at reasonable times upon reasonable advance notice and may place upon the Leased Premises the usual "To Let" notices, which notices Tenant shall permit to remain thereon without molestation so long as the same shall not interfere with the conduct of Tenant's business.

(i) Surrender of Premises. Upon any termination of the Lease Term, Tenant shall quit and surrender to Landlord the Leased Premises, broom clean, in good order and condition, normal wear and tear excepted. Tenant shall remove at Tenant's expense all trade fixtures, inventory, stock in trade, furniture and other personal property installed by Tenant and shall repair all damage to the Leased Premises caused by such removal. Any property not so removed shall be deemed to have been abandoned by Tenant and may be retained or disposed of by Landlord at Tenant's expense free of any and all claims of Tenant, as Landlord shall desire. All other installations or improvements (including all Utility Facilities, paneling, decorating, partitions, railings, mezzanine floors, galleries and the like) made by either party shall be and become upon installation, the property of Landlord



and shall be surrendered with the Leased Premises as a part thereof at the termination of this Lease, unless Landlord notifies Tenant to the contrary in which event Tenant shall pay Landlord the cost of removing the same. If the last day of the Lease falls on a Sunday, the Lease Term shall expire on the business day immediately preceding. Notwithstanding anything contained herein to the contrary, Tenant or Tenant's franchisor shall have the right to remove any trade fixture or sign which contains the name "Applebee's" prior to or within 30 days after termination of this Lease or the Franchise Agreement provided that any damage caused to the Leased Premises by such removal is properly restored or repaired subsequent to such removal.

(j) Subordination. (i) The rights and interest of Tenant under this Lease shall be subject and subordinate to any Mortgage now or hereafter placed upon all or any part of the Shopping Center and to any advances made thereunder, and to the interest thereon, and all renewals, modifications, consolidations, replacements and extensions thereof. Any Mortgagee may elect also to give the rights and interest of Tenant under this Lease priority over the lien of its Mortgage. In either event and upon notice by such Mortgagee to Tenant to that effect, the rights and interests of Tenant under this Lease shall be deemed to be subordinate to, or to have priority over, as the case may be, the lien of said Mortgage whether this Lease is dated prior to or subsequent to the date of said Mortgage. Tenant shall execute and deliver whatever instruments reasonably acceptable to Tenant which may be required to effectuate such subordination or priority, as the case may be. Tenant agrees that in the event of a sale, transfer or assignment of the Landlord's interest in the Shopping Center or any part thereof which includes the Leased Premises, or in the event any proceedings are brought for the foreclosure of or for the exercise of any power of sale under any Mortgage made by Landlord covering the Shopping Center or any part thereof which includes the Leased Premises, or in the event of a cancellation or termination of any ground or underlying lease covering the Shopping Center or any part thereof which includes the Leased Premises, to attorn to and to recognize such transferee, purchaser or Mortgagee as Landlord under this Lease.

(ii) With reference to any assignment by Landlord of Landlord's interest in this Lease, or the rents payable hereunder, conditional in nature or otherwise, which assignment is made to the holder of a mortgage or ground lease on property which includes the Leased Premises, Tenant agrees:

- (A) That the execution thereof by Landlord, and the acceptance thereof by the holder of such mortgage or the ground lessor, shall never be treated as an assumption by such holder of any of the obligations of Landlord hereunder, unless such holder or ground lessor shall, by notice sent to Tenant, specifically otherwise elects; and
- (B) That except as aforesaid, such holder or ground lessor shall be treated as having assumed Landlord's obligations hereunder only upon and as of foreclosure of such holder's mortgage and the taking of possession of the Leased Premises, or, in the case of a ground lessor, the assumption of Landlord's position hereunder by such ground lessor.

Where a party acquires Landlord's interest in property (whether land only, or land and buildings) which includes the Leased Premises, and simultaneously leases the same back, such acquisition shall not be treated as an assumption of Landlord's position hereunder, and this Lease shall thereafter be subject and subordinate at all times to such lease.

(iii) This Lease shall be subject and subordinate to the lien of any or all Mortgages which may hereafter affect the Shopping Center, and to all advances made thereunder, and all renewals, modifications, consolidations, replacements, and extensions thereof, all as provided in this Subsection 9.1(j), provided that following Tenant's written request, Landlord shall obtain an inclusion of a provision in each such Mortgage or a separate agreement executed by the Mortgagee which shall provide that so long as Tenant shall not be in default beyond the expiration of any applicable notice and cure period: (a) Tenant's rights of possession and use of the Common Areas as set forth in this Lease shall not be affected or disturbed by the Mortgagee, and (b) in the event such Mortgagee comes into possession or ownership of the Leased Premises by reason of a foreclosure or other proceedings, this Lease and the rights of Tenant hereunder shall not be terminated by any such proceedings. If a charge shall be imposed by the Mortgagee for entering into such agreement, Landlord shall give notice thereof to Tenant and such charge shall be paid by Tenant. If Tenant shall elect not to pay such charge the priority of the Mortgage shall not be affected.

(iv) Notwithstanding Subsection 9.1(j)(iii) Landlord shall, within thirty (30) days from its receipt of an original counterpart of this Lease executed by Tenant, obtain an executed Subordination, Non-Disturbance and Attornment Agreement in the form attached hereto as Exhibit D from the holder of the Mortgage presently encumbering the Shopping Center. If a charge shall be imposed by the Mortgagee for entering into such agreement, Landlord shall give notice thereof to Tenant and such charge shall be paid by Tenant. If Tenant shall elect not to pay such charge, the priority of the Mortgage shall not be affected. This obligation set forth in this Subsection 9.1(j)(iv) is limited to the mortgage existing as of the date of the Lease as provided in Subsection 9.1(j)(v).

(v) Subordination to Present Encumbrances. Landlord represents that as of the date hereof the only mortgages or trust deeds encumbering the Leased Premises or the Shopping Center are held by LaSalle National Bank, as Trustee for the Commercial Mortgage Pass-Through Certificates, Series 1996-MDV.



(k) Financial Statements. Upon Landlord's request not to exceed more than once in any eighteen (18) month period, Tenant shall promptly furnish to Landlord, within sixty (60) days after requested, financial statements reflecting Tenant's and Guarantor's then current financial condition.

(l) Franchise Agreement. Tenant represents that so long as it shall operate the Leased Premises as Applebee's Neighborhood Grill & Bar pursuant to a valid franchise agreement between Tenant and Applebee's International Inc. (being hereinafter referred to as the "Franchise

Agreement"). Tenant agrees to comply in all respects with such agreement so that the same shall be and remain in full force and effect at all times during the Lease Term. Failure to keep such agreement in full force and effect shall be a material breach of this Lease and Landlord shall have all rights and remedies against Tenant in the event of such breach as for any other default pursuant to Section 11 hereof, unless Tenant continues to operate the Leased Premises as an Applebee's Neighborhood Grill & Bar or in accordance with Subsection 9.1(b). Notwithstanding the foregoing, Landlord agrees that so long as Tenant originally named herein (a) shall have duly kept and performed all of the terms, covenants, conditions and agreements of this Lease on Tenant's part to be kept and performed prior to the expiration of any applicable notice and cure period and (b) shall be occupying the entire Leased Premises and actively conducting business therein in accordance with the Permitted Use, Landlord shall not unreasonably withhold its consent to the change of use in accordance with Subsection 9.1(b) by Tenant to a restaurant franchise by a different franchisor on one occasion only, provided that: there shall be submitted to Landlord reasonably detailed information as to the character, reputation, business experience and financial status of the proposed franchisor, all at least sixty (60) days before the effective date of the transfer; no such franchisor shall be another tenant or occupant of the Shopping Center or of any adjacent sites, and the proposed use shall be limited to a full service sit-down restaurant whose primary use shall not be the same as any other tenant or occupant of the Shopping Center or the adjacent sites. Any such franchise agreement shall be subject to all terms and conditions of this Lease.

9.2 Insurance. (a) In addition to the Insurance Requirements of Exhibit B hereof, Tenant shall, at its sole cost and expense maintain with responsible companies licensed to do business in the State of New York, insurance policies naming Landlord, Tenant and any Mortgagee, as their respective interests may appear, and providing not less than the following protection:

- (1) Comprehensive public liability insurance against all claims on account of personal injury and property damage for which Tenant may as a result of its business in the Shopping Center become liable with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate and such policies shall, with respect to any instance of property damage, including water damage and sprinkler leakage legal liability in the same policy limits; and excess or umbrella liability insurance with limits of \$5,000,000 in excess of the comprehensive general liability limits set forth in this paragraph; and which will further include by endorsement as part of the policy an agreement indemnifying Landlord in accordance with the provisions of Section 9.1(g) hereof; and
- (2) Steam boiler and machinery insurance with limits of not less than \$300,000.00 if there is a boiler or other similar equipment in the Leased Premises;
- (3) Fire insurance with such extended coverage or other endorsements as Landlord may from time to time reasonably require, covering all of Tenant's stock in trade, fixtures, personal property, and all installations and improvements made by Tenant (including



Tenant's installations and improvements made pursuant to Exhibit B) in, on, or about the Leased Premises in an amount not less than 80% of the then full insurable value (actual replacement cost without deduction for physical depreciation), such value to be determined, at Tenant's expense, at least once every two years, but in any event in an amount sufficient to prevent Landlord and Tenant from becoming co-insurers under provisions of the applicable policy;

- (4) Workers' compensation or similar insurance affording statutory coverage if the nature of Tenant's business is such as to place any or all of its employees under the coverage of local workers' compensation or similar statutes;
- (5) Plate glass insurance covering all plate glass in the Leased Premises.
- (6) Such other insurance against other insurable hazards as from time to time are commonly insured against in the case of premises similarly situated; provided Landlord gives Tenant reasonable notice of the type of such required insurance.

(b) The insurance policies or duly executed certificates thereof, together with satisfactory evidence that the premium has been paid, shall be deposited with Landlord on the day Tenant begins Tenant's Work and thereafter evidence of continuing insurance and premium payment shall be given to Landlord prior to the expiration of each policy required to be in force hereunder. All insurance carried by Tenant shall provide that the policy shall not be subject to cancellation, termination or change except after at least 30 days prior written notice to the Landlord and to any Mortgagee to whom a loss thereunder may be payable. If Tenant fails to maintain the required insurance, Landlord may, but shall not be obligated to, obtain such insurance and Tenant shall pay Landlord the premium upon demand.

(c) If, as a result of Tenant's use or occupancy (other than the Permitted Use) of any portion of the Shopping Center, or from any vacancy of the Leased Premises, Landlord is charged any increase in premium on insurance carried by Landlord, Tenant shall promptly pay on demand the amount of such increase or reimbursement and the amount so paid shall not be considered an increase in Landlord's insurance premiums for the purpose of Section 5.7. In determining whether increased premiums are attributable to Tenant, a schedule or "make-up" rate of the organization issuing the insurance or the rating procedures or rules of Landlord's insurance companies shall be conclusive evidence of the several items and charges which make up the insurance rates and premiums on the Leased Premises and the Shopping Center.

9.3 Promotional Fund. Landlord may establish a fund ("Promotional Fund") for the purposes of developing, producing and placing advertising for the general benefit of the Shopping Center, and Tenant shall pay to Landlord, for deposit in and use by the Promotional Fund, the amount set forth in Subsection 1.1(m) ("Promotional Fund Charge"), subject to adjustment as hereinafter provided, in equal monthly installments on the dates and in the manner provided for the



payment of Minimum Rent. Tenant agrees that the mention or non-mention of Tenant's Trade Name in the general advertising hereunder shall be in Landlord's sole discretion; however, at times when such advertising is to include tenant advertising, Tenant shall, upon request, furnish copy, pictures or an example of its merchandise, or all three, describing Tenant's business or merchandise for promotion in such advertising. The Promotional Fund Charge shall be adjusted at the beginning of the second Lease Year and every Lease Year thereafter in accordance with the following computation: by multiplying the Promotional Fund Charge by a fraction, the numerator of which is the Consumer Price Index for the month of October next preceding the commencement of such Lease Year and the denominator of which is the Consumer Price Index for the month in which the Lease Term commences. The result thus obtained shall be paid by Tenant in lieu of the then current Promotional Fund Charge; provided, however, that in no event shall Tenant pay a Promotional Fund Charge less than that provided in Section 1.1(m). Landlord hereby disclaims any warranty, express or implied, that the Promotional Fund will benefit Tenant or Tenant's Gross Sales.

9.4 Negative Covenants.

(a) Prohibited Conduct. Tenant shall not, without the written consent of Landlord: (i) conduct any auction, fire, "going-out-of-business" or bankruptcy sales; (ii) operate any coin or token-operated vending machine or similar device for the sale of any goods, foods, beverages or services, including, without limitation, pay toilets, scales, amusement devices and vending machines but excluding coin-operated clothes washers and dryers except if installed for the convenience of Tenant's employees; (iii) sell or display merchandise on, or otherwise obstruct the Common Area or the vestibule or entry thereto; (iv) distribute handbills, advertising material or otherwise solicit or conduct business in the Common Areas; (v) permit any deliveries to the Leased Premises between the hours of 9:00 A.M. and 9:00 P.M. other than through the rear door of the Leased Premises or permit Tenant's Permittees to use the rear door of the Leased Premises other than for deliveries to the Leased Premises and rubbish removal; and (vi) be open for business in the Leased Premises during periods other than the time periods set forth in Subsection 9.1(c).

(b) Alterations; Maintenance. Tenant shall not, without on each occasion obtaining Landlord's prior written consent which shall not be unreasonably withheld: (i) alter or change the exterior of the Leased Premises or any part thereof, or install any awnings in or on the Leased Premises which are visible to public view from outside the Leased Premises; (ii) paint or decorate any part of the exterior of the Leased Premises; (iii) make any alterations or additions to the Leased Premises, or permit the making of any holes in the walls, ceilings or floors thereof; (iv) injure, overload, deface or otherwise harm the Leased Premises or any part thereof or any equipment or installation therein; (v) permit the use of any forklift truck, tow truck, or any other mechanically powered machine or equipment handling freight in the Leased Premises or other portions of the Shopping Center. Tenant shall present to Landlord plans and specifications for proposed structural alterations to the Leased Premises in the case of (i) or (ii) above, at the time Landlord's approval is sought and shall pay to Landlord a design review fee of \$500.00 to cover the cost of review by Landlord's architect and a review fee of \$500.00 for Landlord's engineer. Notwithstanding the

foregoing, following notice to Landlord including a description of the work to be performed, and subject to Tenant's compliance with all applicable Legal Requirements and Insurance Requirements and the requirements of Exhibit B, Tenant may without Landlord's consent make interior non-structural changes which do not affect the storefront or the mechanical or electrical systems of the Leased Premises, the cost of which shall not exceed \$30,000.00 per Lease Year. If any such changes affect Utility Facilities or partition walls, within 30 days following completion of these changes, Tenant shall furnish as-built plans to Landlord showing such changes.

(c) Advertising. Tenant shall not: (i) use any advertising medium such as loudspeakers, sound amplifiers, phonographs or flashing lights which may be heard or seen outside the Leased Premises; (ii) attach or locate interior signs, advertising placards or other objects to the windows, doors or ceiling in such a manner as to obstruct the view of Tenant's store from the outside; (iii) install any awning, canopy, banner, flag or the like on the exterior of the Leased Premises; and (iv) place in the windows or display windows any sign, decoration, letter, advertising matter, shade or blind or other thing of any kind, other than professionally lettered signs of reasonable size placed on the floor thereof identifying articles offered for sale and the price thereof. If Tenant shall be in default of any of the provisions of this subsection (c), notice of which having been given and time to cure having expired, in addition to all of Landlord's other rights and remedies therefor, Tenant shall pay to Landlord, as additional rent, \$100.00 per day for each day that Tenant continues to so be in default.

(d) Nuisances. Tenant shall not permit the emission from the Leased Premises of any objectionable noise, vibration or odor, nor commit any nuisance or illegal activity of any kind in the Leased Premises or elsewhere in the Shopping Center.

(e) Outside Services. Tenant shall not permit, except by a person or company designated by Landlord: (i) the extermination of vermin in, on or about the Leased Premises; (ii) laundry to be collected and serviced, (iii) collection of rubbish and trash throughout the Lease Term, including during the performance of Tenant's Work, other than in compliance with local governmental health requirements and in accordance with the rules and regulations established by Landlord, which shall minimally provide that Tenant's rubbish and trash shall be kept in containers located so as not to be visible to members of the public; or (iv) window cleaning, janitorial services or similar work in the Leased Premises (except by Tenant's own employees); provided, however, that in each such case the prices charged by Landlord's designee shall be competitive with prices charged by others providing quotes to Tenant for performing similar services in the area.

(f) Assignment. (i) Subject to the provisions of this Subsection 9.4(f), Tenant shall not: (x) except as provided in Subsection 9.4(h), assign, sell, mortgage, pledge or in any manner transfer this Lease or any interest therein; (y) sublet the Leased Premises or any part thereof; or (z) grant to any concessionaire or licensee the right to occupy the Leased Premises or any portion thereof. Landlord's consent to any assignment, subletting, concession, or license shall not be construed to relieve Tenant from obtaining the express consent of Landlord to any further assignment, subletting,

concession, or license, and the collection of Rent by Landlord from any assignee, subtenant or other occupant, after default by Tenant, shall not be deemed a waiver of this covenant or the acceptance of the assignee, subtenant, or occupant as Tenant or as a release of Tenant from the further performance by Tenant of any or all of the covenants in this Lease. For purposes of this Section, any sublease of all or substantially all of the Leased Premises shall be deemed an assignment.

(ii) Notwithstanding the foregoing provisions of Subsection 9.4(f)(i), Landlord agrees that so long as Tenant named herein (1) shall have duly kept and performed all of the terms, covenants, conditions and agreements of this Lease on Tenant's part to be kept and performed subject to the giving of any applicable notice but prior to the expiration of any applicable cure period and (2) shall be occupying the entire Leased Premises and actively conducting business therein in accordance with the Permitted Use, Tenant need not obtain Landlord's consent to an assignment of this Lease to: (a) an entity which (i) acquires at least five of the restaurants then operated by Tenant or any Tenant's Affiliate and currently operated under the same Trade Name in the New York City metropolitan area, (ii) has a net worth after such assignment at least equal to Tenant's net worth at the time of execution of this Lease, (iii) provided Tenant originally named if surviving as an entity (and if not so surviving its successor or successors), shall remain liable notwithstanding such assignment, and (iv) provided if Guarantor's obligations are still in effect at the time of such assignment, Guarantor's obligations shall continue and remain in full force and effect after such assignment; (b) a corporation or other entity which as result of merger, consolidation, reorganization, or other restructuring, or sale of all or substantially all of Tenant's assets, succeeds to the business carried on by Tenant; and (c) Tenant's Affiliate (as hereinafter defined), so long as such entity remains an Affiliate of Tenant. An Affiliate, as used herein, shall be a corporation, partnership, or limited liability company of which a 50% or more interest therein is owned by the members of Tenant, or which shall be controlled by or under common control with Tenant, with "control" having the meaning set forth in Rule 405 of the Federal Securities Act of 1933, as amended.

(iii) Tenant originally herein named ("Original Tenant" for purposes of this subsection) shall, in one instance only, have the right to make an assignment or sublease to, a franchisee of any franchisor under Subsection 9.1(l) (such franchisor shall for purposes of this subsection be referred to as "Franchisor"), or to Franchisor, and Franchisor to any such franchisee without Landlord's consent. Landlord need not recognize such permitted assignment or sublease unless it shall be: (i) if to a franchisee, to a franchisee who agrees to comply in all respects with the terms, covenants and conditions of this Lease including, without limitation, the Permitted Use; (ii) in writing with copy furnished to Landlord at least 30 days prior to its effective date; and (iii) guaranteed by the Original Tenant and Guarantor (provided Guarantor's obligations are still in effect at the time of such assignment or sublease) as to the full and faithful performance by the franchisee of all of the terms, covenants and conditions of this Lease. No such assignment or sublease shall be construed to release the Original Tenant from the further performance of all of the terms, covenants and conditions of this Lease. Anything in this Lease to the contrary notwithstanding, if any default by the franchisee succeeding to Tenant's rights hereunder shall occur which would entitle Landlord to terminate this Lease, Landlord shall not terminate this Lease unless, following the expiration of the time given to

(*) including, without limitation, Applebee's International, Inc.

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(*)³⁴, except that the "one instance" limitation shall not apply to an assignment to Applebee's International Inc., or to an assignment by Applebee's International Inc. to its franchisee.

cure such default, Landlord shall notify the Franchisor and the Original Tenant (if applicable) of Landlord's intent to so terminate. Such notice shall be given at least 10 days in advance of the proposed date of such termination if such default is capable of being cured by the payment of money, and at least 20 days in advance of the proposed date of such termination if such default is not capable of being cured by the payment of money. During such 10 or 20 day termination notice period, the Franchisor and/or the Original Tenant, as the case may be, shall have the option to notify Landlord of its wish to nullify such notice, provided that in the case of the Original Tenant being reinstated as Tenant hereunder:

(i) concurrently with such notice the Original Tenant shall pay or cause to be paid all Rent, and other payments then due and in arrears, as specified in the termination notice to the franchisee, and which may come due during such 10 or 20-day period, and

(ii) the Original Tenant shall comply, or in good faith, with reasonable diligence and continuity, commence to comply, with all nonmonetary requirements of this Lease then in default, of which Landlord has given notice.

In such event, Landlord's election to terminate this Lease shall be nullified and Franchisor or the Original Tenant shall be reinstated to the rights and obligations of Tenant under this Lease for the remainder of the Lease Term as of the commencement of such cure, it being understood, however, that if Franchisor elects to assume the Lease,^{*} Franchisor shall not be obligated to cure any default of the Tenant occurring prior to such assumption.

(iv) Notwithstanding and in addition to the foregoing provisions of this Subsection 9.4(f), Landlord agrees that so long as Tenant originally named herein (a) shall have duly kept and performed all of the terms, covenants, conditions and agreements of this Lease on Tenant's part to be kept and performed and (b) shall be occupying the entire Leased Premises and actively conducting business therein in accordance with the Permitted Use, Landlord shall not unreasonably withhold its consent to an assignment of this Lease or subletting of the entire Leased Premises on one occasion only, provided that: there shall be submitted to Landlord for approval a fully executed copy of any proposed assignment or sublease, together with reasonably detailed information as to the character, reputation, business experience and financial status of the proposed subtenant, all at least thirty (30) days before the proposed transaction; any subtenant shall agree, prior to the effective date of the subletting, to attorn to Landlord, at Landlord's option, in the event this Lease is surrendered by Tenant or terminated by Landlord for default; Tenant and Guarantor shall remain primarily liable under this Lease notwithstanding any such assignment or subletting, except in the event that the assignee or its guarantor has a net worth as demonstrated to Landlord's satisfaction in excess of \$5,000,000 ; such assignment or sublease shall be to an operator of at least ten restaurants in the New York City metropolitan area and will agree to operate the Leased Premises under the same trade name as such other restaurants; no such assignment or subletting shall be in favor of another Shopping Center tenant or occupant or any proposed tenant of the Shopping Center with whom Landlord may then be negotiating, or shall be for the same use as the primary use of any

* whether following its receipt³⁵ of Landlord's notice of default as provided above or following any assignment of this Lease to Franchisor




other tenant or occupant of the Shopping Center; any such assignment or subletting shall be subject to all terms and conditions of this Lease, including, without limitation, the Permitted Use; and, Tenant shall also pay the reasonable cost of Landlord's attorney's fees in connection with any such transaction.

(v) Notwithstanding anything to the contrary in this Lease, Landlord agrees that the issuance and private placement of additional corporate shares or membership interests in Tenant for the sole purpose of infusing venture capital monies into Tenant shall be permitted without Landlord's consent, even if said issuance and placement results in a change in control of the Tenant entity so long as the Guarantor retains "control" of the Tenant.

(vi) Any assignment (a) as to which Landlord has consented; or (b) to which Landlord's consent need not be obtained in accordance with the foregoing provisions of this Subsection 9.4(f); or (c) which is made to a company into which Tenant has been merged or consolidated in accordance with the foregoing provisions of this subsection (f); or (d) which is required by reason of a final nonappealable order of a court of competent jurisdiction; or (e) which is made by reason of and in accordance with the provisions of any law or statute, including, without limitation, the Bankruptcy Acts; shall be subject to all terms and conditions of this Lease, and shall not be effective or deemed valid unless, at the time of such assignment:


1. no default beyond any applicable notice and cure period shall exist at the time of the effective date of any such assignment;

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2. a fully executed copy of such assignment shall have been submitted to Landlord at least ten (10) days before the effective date thereof;
 3. each assignee shall assume the obligations of this Lease by executing, acknowledging and delivering to Landlord, before the effective date of such assignment, a written assumption agreement in recordable form and substance reasonably satisfactory to Landlord;
 4. Landlord shall receive affidavits, made by both Tenant and its assignee through an officer or principal of each such entity, stating the full consideration to be received by Tenant as assignor or sublessor as a result of said assignment, including, if any, payments for Tenant's leasehold improvements, proposed Rent, which includes, without limitation, all monthly charges allocated to common area charges, and insurance charges, tax rent, utility charges, and other payments; and.
 5. The written consent to such assignment by the holder of any fee or leasehold Mortgage affecting the Leased Premises to which this Lease is then subject shall, if required under the Mortgage, have been obtained and delivered to Landlord if so required by the terms of such Mortgage or by a collateral document securing the same obligations as are secured by such Mortgage.

In the event of any assignment or subletting, there shall, in addition to the Rent and other charges due Landlord pursuant to this Lease, be paid to Landlord as additional rent, one-half of the excess, if any, of the Rent and other charges paid by the assignee or sublessee over the Rent and other charges payable to the Landlord by Tenant pursuant to this Lease. Such additional rent shall be paid to Landlord concurrently with the payments of Rent required under this Lease, and Tenant shall remain primarily liable for such payments. Tenant further agrees to pay to Landlord, upon demand, all reasonable expenses (including attorneys' fees) incurred by Landlord for reviewing and responding to any transaction or proposed transaction covered by this subsection 9.4(f) which requires Landlord's consent.

(vii) Except as otherwise provided herein, no assignment of this Lease shall be construed to relieve Tenant of its obligations and liabilities under this lease. Tenant further agrees that Landlord, in the exercise of its rights hereunder, may proceed against Tenant before, after or simultaneously with any proceeding against Tenant's sublessees or assignees, as the case may be, and further that Landlord may, at its option, notify and proceed against Tenant and its sublessees or assignees jointly or severally.

(g) Radius Restriction. Tenant shall not, nor shall any Tenant's Affiliate (as defined in Section 9.4(f)(ii)) of Tenant or Guarantor, either directly or indirectly operate, manage or have any interest in any other store or facility operating under the same Trade Name located within the Retail Restriction Limit, for the sale at retail of merchandise which could be sold at the Leased Premises pursuant to Section 1.1(l). If Tenant shall violate this covenant, in addition to such other remedies



as Landlord may have for any default of Tenant hereunder, Landlord may require that Tenant compute and pay Percentage Rent hereunder by including all receipts from business conducted at such other store or facility in the Gross Sales pursuant to Section 5.5 as if such sales had been transacted in the Leased Premises. In the event of such election, all of the provisions of Section 5.2 through 5.5 shall be deemed applicable to the business of such other store or facility. For purposes of this subsection, Affiliated Business shall be an enterprise (a) in which any beneficial ownership interest or voting rights attributable to its corporate shares are the property of Tenant, Guarantor or a principal of Tenant or Guarantor, or (b) which owns or controls Tenant or Guarantor or (c) which is under common control with Tenant or Guarantor. "Control" hereunder shall have the meaning set forth in Rule 405 of the Federal Securities Act of 1933, as amended.

(h) Leasehold Mortgage. (i) During such time that Tenant is not in default under this Lease beyond any applicable notice and cure period, Tenant shall have the right without Landlord's prior written consent, but only in compliance with the provisions of this subsection to mortgage Tenant's leasehold estate and Tenant's rights under this Lease by a mortgage or deed of trust ("Leasehold Mortgage"), as security under said Leasehold Mortgage. The Mortgagee of such Leasehold Mortgage shall be and remain a lending institution which for the purpose of this Subsection shall mean a bank, trust company, insurance company, savings and loan association, or pension fund administered by a bank or a similar type institution.

(ii) All costs, payments and fees incurred in the placing of such Leasehold Mortgage, and the fees, if any, of Landlord's attorney incurred in connection therewith shall be paid by Tenant.

(iii) Tenant agrees that it shall faithfully perform all of Tenant's obligations under the Leasehold Mortgage and that the making of such Leasehold Mortgage shall not terminate or affect the liability of Tenant for the performance of and compliance with all the covenants and provisions of this Lease on the part of Tenant to be performed. Each such Leasehold Mortgage shall provide that a copy of any notice of default given to Tenant by the Leasehold Mortgagee shall also be simultaneously given to Landlord and Landlord shall have the right, but not the obligation, to cure such default. All costs and expenses incurred by Landlord in curing such default shall be promptly repaid by Tenant to Landlord as additional Rent together with Interest.

(iv) The Leasehold Mortgage shall further provide that: (x) in the event of any conflict between the Leasehold Mortgage and this Lease, the provisions of this Lease shall govern; and (y) the proceeds of any insurance policy or of any condemnation award shall be applied towards the repair, replacement or restoration of the Leased Premises as provided in this Lease before being applied towards the reduction of the unpaid principal or interest of the loan secured by the Leasehold Mortgage; and (z) neither the Leasehold Mortgagee nor any purchaser at any foreclosure sale shall acquire any interest in the Lease until such purchaser or its successor shall, prior to taking of possession of the Leased Premises by instruments reasonably satisfactory to Landlord's counsel, assume all of Tenant's accrued liabilities under the Lease and assume and agree to perform all of the terms, covenants and conditions, including, without limitation, Section 9.1(b), of the Lease to be

observed or performed by Tenant, and moreover that no further additional mortgage or assignment of lease or of the term hereby demised shall be made except subject to the provisions contained in said Lease.

(v) At least fifteen (15) days prior to the execution and delivery of any Leasehold Mortgage, a copy of such Leasehold Mortgage and a copy of the note secured thereby, shall be furnished to Landlord for review.

(vi) In the event that the Leasehold Mortgagee or its successor obtains possession of the Leased Premises by foreclosure or deed in lieu of foreclosure or otherwise said Leasehold Mortgagee or its successor or such purchaser shall have no greater rights than Tenant under this Lease and shall take subject to all of Tenant's obligations set forth in this Lease except that the restaurant to be operated on the Leased Premises in accordance with the terms of this Lease need not be an Applebee's Neighborhood Grill & Bar.

(vii) Nothing herein contained shall be construed as relieving Tenant or Guarantor of its liabilities under this Lease and Tenant and Guarantor shall in all respects remain liable for the full and faithful performance of all of the terms, covenants and conditions of this Lease on the part of Tenant to be observed and performed.

(viii) For the purposes of the foregoing, the term "Leasehold Mortgage" shall be deemed to include an assignment and any purchase money mortgage or deed of trust delivered in connection with a sale and leaseback by Tenant of the Leased Premises in connection with a financing of the same, and such assignee and mortgagee shall be entitled to the benefits of all of the provisions of this Lease in favor of the Leasehold Mortgagee and be subject to all of the obligations and conditions of this Lease imposed upon a Leasehold Mortgagee, and Landlord shall have the same rights as to such assignee or mortgagee as it has with respect to a Leasehold Mortgagee, or its successor or a purchaser at a foreclosure sale.

(ix) Landlord agrees that any notice of default given to Tenant shall, if requested by such Leasehold Mortgagee, be given to such Leasehold Mortgagee and the Leasehold Mortgagee shall have the same rights as Tenant and within the time periods provided therefor, to cure any such defaults under this Lease.

(x) In case of a non-monetary default by Tenant, Landlord will take no action to effect a termination of the term of this Lease by reason thereof unless such default has continued beyond the grace period available to Tenant for curing said default, and then only after Landlord shall have given to Leasehold Mortgagee a reasonable time, but not in excess of 30 days, after the expiration of Tenant's grace period for curing such default within which to (i) cure such default, if such default is susceptible of being cured by Leasehold Mortgagee without its obtaining possession of the Leased Premises; or (ii) obtain possession of the Leased Premises (including possession by a receiver) and to cure such default in the case of a default which is susceptible of being cured when the Mortgagee



has obtained possession thereof; or (iii) institute foreclosure proceedings and to complete such foreclosure proceedings or otherwise acquire Tenant's interest under this Lease with reasonable and continuous diligence in the case of a default which is not so susceptible of being cured by Mortgagee (any default by Tenant of its obligations under Section 9.1(c) shall be deemed a default which is not susceptible of being cured by any such Mortgagee for purposes of this Subsection); provided, however, that any Mortgagee shall not be required to continue such possession or continue such foreclosure proceedings if the default which prompted the service of such a notice has been cured.

(xi) The time available to the Leasehold Mortgagee to initiate foreclosure proceedings as aforesaid shall be deemed extended by the number of days of delay occasioned by other circumstances beyond the Leasehold Mortgagee's control. During the period that the Leasehold Mortgagee shall be in possession of the Leased Premises and/or during the pendency of any foreclosure proceeding instituted by Leasehold Mortgagee but not beyond the 30 day period hereinabove set forth, the Leasehold Mortgagee shall pay or cause to be paid the Rent and all other charges of whatever nature payable by Tenant hereunder which have been accrued and are unpaid and which will thereafter accrue during said period. Following the acquisition of Tenant's leasehold estate by the Leasehold Mortgagee, or its designee, either as a result of foreclosure or acceptance of any assignment in lieu of foreclosure, the Leasehold Mortgagee or party acquiring title to Tenant's leasehold estate shall, as promptly as possible, commence the cure of all defaults hereunder to be cured and thereafter diligently process such cure to completion. Any default not susceptible of being cured by the Mortgagee or party acquiring title to Tenant's leasehold estate shall be deemed to have been waived by Landlord upon completion of the foreclosure proceedings or acquisition of Tenant's interest in this Lease by any purchaser (who may, but need not be, the Leasehold Mortgagee) at the foreclosure sale, or who otherwise acquires such Tenant's interest from Leasehold Mortgagee or by virtue of the Leasehold Mortgagee's exercise of its remedies. (A monetary default shall in all events be deemed susceptible of being cured). Any such purchaser, or successor of purchaser, shall not be liable to perform the obligations imposed on Tenant by this Lease incurred or accruing after such person no longer has ownership of said leasehold estate or possession of the Leased Premises. Nothing herein shall preclude Landlord from exercising any of Landlord's rights or remedies with respect to any other default by Tenant during any period of any such forbearance subject to the rights of the Mortgagee as herein provided. All notices by Landlord to the Mortgagee shall be given by registered or certified mail, return receipt requested, addressed to the Leasehold Mortgagee at the address last specified to Landlord by Leasehold Mortgagee, and any such notice shall be deemed to have been given and served when so mailed.

(xii) Landlord agrees that it will not without prior written consent of such Leasehold Mortgagee, agree to surrender, cancellation, modification or amendment of this Lease.

(xiii) Nothing, except as expressly otherwise provided in this Section, herein contained shall be construed as preventing Landlord from exercising any and all rights and remedies it may have under this Lease or at law or equity in the event of any default in the performance of the terms, covenants and conditions of this Lease.

(xiv) During such time that a Leasehold Mortgage given in accordance with the provisions of this Lease is in full force and effect, a bankruptcy or insolvency of Tenant shall not be considered a default under this Lease nor give any rise to a right of Landlord to terminate this Lease because of such bankruptcy or insolvency so long as all Rent and all other charges of whatsoever nature payable by Tenant under this Lease continue to be promptly paid on or before the date set for their payment in accordance with the provisions of this Lease.

(xv) The Leasehold Mortgage shall at all times be subject and subordinate to Landlord's interest in this Lease.

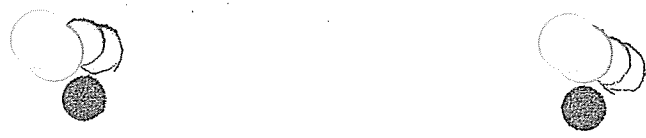
(xvi) In the event that this Lease is terminated for any reason while the Leasehold Mortgage is in full force and effect, Landlord shall give prompt notice to the Leasehold Mortgagee and within sixty (60) days after receipt of such notice the Leasehold Mortgagee shall have the right to enter into a new lease wherein the Leasehold Mortgagee or its designee is the Tenant. Said new lease shall be for the remainder of the Lease Term and shall otherwise be upon the same terms and conditions as are set forth herein except that the party in possession of the Leased Premises need not operate the restaurant under the name Applebee's Grill & Bar as provided in Section 1.1(e) above. It is, however, a condition of obtaining such new lease that the Leasehold Mortgagee must cure all defaults which can be cured by the payment of money and shall make such payment at the time of its agreement to enter into the new lease. All other defaults shall be promptly undertaken and cured by the Tenant under the new lease within thirty (30) days after the execution and delivery of such lease, except, however, with respect to defaults which may not be cured within said thirty (30) day period, said Tenant may have such additional time as required to cure such default provided it shall, within said thirty (30) day period, undertake the curing of such default and diligently prosecute such cure to completion.

(xvii) No merger of Tenant's leasehold estate into Landlord's fee title shall result or be deemed to result by reason of ownership of Landlord's or Tenant's estates by the same party or by reason of any other circumstances, without the prior written consent of the Leasehold Mortgagee.

SECTION 10. DESTRUCTION; CONDEMNATION.

10.1 Fire or Other Casualty. (a) Tenant shall give prompt notice to Landlord in case of fire or other damage to the Leased Premises or to any portion of the Shopping Center in the vicinity thereof.

- (b) In the event of the happening of any of the following events:
- (1) the Leased Premises shall be damaged to the extent of more than 50% of the cost of replacement thereof;
 - (2) the aggregate Gross Leasable Area of the Shopping Center shall be damaged to the



extent of more than 25% of the cost of replacement thereof;

- (3) the Leased Premises or a substantial portion of the Shopping Center within a radius of 50 feet of the main entrance to the Leased Premises (whether or not the Leased Premises are damaged) shall be damaged to the extent to 50% or more of the cost of replacement thereof or shall be rendered untenable as a result of an occurrence which is not required to be covered by Landlord's insurance;
- (4) the holder of the first mortgage encumbering the Shopping Center elects not to permit the insurance proceeds payable upon damage or destruction of the Shopping Center or Leased Premises to be used for such repair, reconstruction or restoration;
- (5) the Stores or the Shopping Center have been damaged or destroyed by a casualty not covered by insurance and Landlord elects not to rebuild or repair the same;
- (6) the Leased Premises shall be damaged in whole or in part (at least 40%) during the last Lease Year of the Lease Term; or
- (7) Tenant has vacated or abandoned the Leased Premises;

Landlord, in the event of (1), (2), (3), (4), (5) or (7) above, and either party in the event of (6), may at its option terminate this Lease by giving Tenant or Landlord, as the case may be, written notice within 60 days after the happening of any of the aforesaid events that such party has elected to terminate this Lease, such termination to be on a date specified in the notice of termination which date shall be not more than 15 days after the date of such notice. Upon the effective date of the termination of this Lease, in accordance with such election, Tenant shall vacate and surrender the Leased Premises in accordance with the provisions of Section 9.1 (i) hereof and pay the Rent to the date of termination, after which Tenant's liability for all future Rent shall cease. If the casualty, or reconstruction necessitated by any of the events hereinabove specified in this subparagraph (b), shall render the Leased Premises untenable, in whole or in part, then from the date when the damage occurred until completion of the reconstruction or, in the event Landlord elects to terminate this Lease, until the date of termination, all rents hereunder shall abate in the proportion which the portion of the Leased Premises rendered untenable bears to the Gross Leasable Area of the Leased Premises; provided, however, that there shall be no such abatement during any period, and to the extent, that Tenant shall be entitled to and receiving rent insurance proceeds as a result of such casualty.

(c) If this Lease shall not be terminated as provided in Section 10.1(b) hereof, Landlord shall, at its expense, proceed with the repair or restoration of the Leased Premises and adjacent areas existing immediately prior to such damage or destruction, provided that Landlord shall not be obligated to expend for such repair an amount in excess of the insurance proceeds recoverable as a

result of such damage, and that in no event shall Landlord be required to repair or replace Tenant's stock in trade, fixtures, furniture, furnishings, floor coverings and equipment. If, however, the Leased Premises are completely destroyed or so damaged that Landlord cannot reasonably restore or rebuild in eight (8) months to substantially the same condition in which the Leased Premises were before such damage, then Landlord shall not be required to rebuild or restore, and this Lease shall be terminable by Landlord or Tenant by serving written notice upon the other as provided in paragraph (b) of this Section 10.1. If the casualty was caused by Tenant or its Permittees and was not covered by Tenant's insurance, then Tenant shall pay to Landlord the estimated cost of such repair or restoration before Landlord shall be obligated to commence the repair or restoration required of it, and upon completion of such work, Tenant shall pay an amount by which the actual cost exceeded the estimated cost. All repairs and restoration of the Leased Premises not so restored by Landlord shall be performed by Tenant at Tenant's expense. All work of restoration by either party shall restore the Leased Premises to as good a condition as existed prior to the casualty and shall be done in conformity with all applicable Exhibits. If Landlord is required or elects to repair the Leased Premises as herein provided, Tenant shall repair or replace its stock in trade, fixtures, furniture, furnishings, floor coverings and equipment, and if Tenant has closed for business, Tenant shall promptly reopen for business upon the completion of such repairs.

(d) If this Lease is not terminated, as aforesaid, this Lease shall remain in full force and effect and the parties waive the provisions of any law to the contrary. Tenant shall repair, restore and replace Tenant's trade fixtures, decorations, signs, and contents in the Leased Premises in a manner and to at least a condition equal to that existing prior to their damage or destruction. The proceeds of all insurance carried by Tenant on said property shall be held in trust by Tenant for the purposes of such repair, restoration or replacement required hereunder. Tenant shall continue the operation of Tenant's business in the Leased Premises or any part thereof not so damaged during any such period to the extent reasonably practicable from the standpoint of prudent business management and, except to the extent of the abatement of the Minimum Rent as hereinabove set forth, the Tenant shall perform all of its obligations under this Lease. The computation of Percentage Rent shall, however, be based upon the revised Minimum Rent as the same may be abated. Except for the abatement of the Minimum Rent and rights of termination, hereinabove set forth, Tenant shall not be entitled to and hereby waives all claims against Landlord for any compensation or damage for loss of use of the whole or any part of the Leased Premises and/or for any inconvenience or annoyance occasioned by any such damage, destruction, repair or restoration. The provisions of any statute or other laws which may be in effect at the time of the occurrence of any such damage or destruction, under which a lease is automatically terminated or a Tenant is given the right to terminate a lease upon the occurrence of any such damage or destruction are hereby expressly waived by Tenant.

(e) Tenant hereby expressly waives the provisions of any rule of law or statute now or hereafter in force giving Tenant any right to terminate this Lease or abate the Rent hereunder or claim partial or total (constructive or actual) eviction because of fire or other casualty or any other peril against which Landlord is required to carry insurance under Section 8.2.



10.2 Taking. (a) In the event of a Taking of the whole of the Leased Premises, or any part thereof which shall in the judgment reasonably exercised by either party render the Leased Premises remaining after such Taking unfit for the purposes demised, either party shall have the right to terminate this Lease upon notice to the other party within 30 days after receiving knowledge of the Taking. Should either party elect to terminate this Lease, the Lease Term shall cease as of the day the public authority assumes possession thereof; provided, however, that if such Taking is for a temporary period not exceeding 6 months, neither party may terminate this Lease but all Rent shall abate during such period.

(b) If, following a Taking, this Lease shall continue in effect as to any portion of the Leased Premises, the Minimum Rent (but not the Percentage Rent), shall be reduced by the proportion which the Gross Leasable Area of the Leased Premises Taken bears to the initial Gross Leasable Area of the Leased Premises. In such event, Landlord shall at its expense proceed with the repair and restoration of the Leased Premises to restore the same to the condition existing immediately preceding such Taking, provided that Landlord shall not be obligated to undertake any such repair or restoration if the total estimated cost would exceed the amount of the award.

(c) In the event of a Taking of: (i) more than 20% of the Gross Leasable Area of the Stores within a radius of 50 feet of the main entrance to the Leased Premises, Landlord may, by giving notice to Tenant within 30 days after receiving notice of the Taking, terminate this Lease as of the date of title vesting in such proceeding; and (ii) 40% or more of the total Gross Leasable Area of the Shopping Center, Landlord may, by giving notice to Tenant within 30 days after receiving notice of the Taking, terminate this Lease as of the date of title vesting in such proceeding.

(d) In the event of a Taking of the parking area so that the number of parking spaces provided in the Shopping Center shall be reduced by 50% or more, and in the further event that Landlord does not notify Tenant within 90 days after receiving notice of such Taking of Landlord's intent to restore by means of multilevel or underground parking facilities or by providing additional land in the vicinity of the Shopping Center so that, after such restoration, there shall remain at least the minimum number of parking spaces for the Shopping Center that is required in order to meet applicable Legal Requirements (subject to Landlord's completion of such parking facilities within three (3) months after such notice), then either party may, by giving notice between the 90th and 120th day after Landlord first received notice of the Taking, terminate this Lease as of the day the public authority takes physical possession thereof; provided, however, that if such Taking is for a temporary period not exceeding 6 months, neither party may terminate this Lease but the Rent shall abate during such period.

(e) If this Lease is terminated as provided in this Section 10.2, all Rent shall be paid by Tenant up to the date that possession is so taken by public authority and Landlord shall make an equitable refund of any Rent paid by Tenant in advance and not yet earned.

(f) All compensation awarded for any Taking (including a temporary Taking) shall be

the property of Landlord, whether such damages shall be awarded as a compensation for diminution in the value of the leasehold, or to the fee of the Leased Premises, and Tenant hereby assigns to Landlord all of Tenant's right, title and interest in and to any and all such compensation. Tenant shall be entitled to claim, prove and receive in the condemnation proceeding such awards as may be allowed for trade fixtures or leasehold improvements or for loss of business, "good will," depreciation or injury to and cost of removal of stock-in-trade; but only if such awards shall be made by the condemnation court in addition to, and shall not result in a reduction of, the award made for any interest in the property of the Landlord.

10.3 No Discrimination in Termination. Landlord shall not exercise any rights that it may have to terminate this Lease in accordance with the terms of this Section 10 unless it simultaneously terminates the leases of all other tenants in the Shopping Center similarly affected with respect to such casualty or condemnation.

SECTION 11. BANKRUPTCY OF TENANT, DEFAULTS BY TENANT AND REMEDIES OF LANDLORD.

11.1 Bankruptcy. (a) If at any time prior to the Commencement Date, or

(b) If at the Commencement Date or, if at any time during the term hereby, demised, there shall be filed by or against Tenant or Guarantor in any court pursuant to any statute either of the United States or of any state a petition in bankruptcy or insolvency or for reorganization or for the appointment of a receiver or trustee of all or a portion of Tenant's or Guarantor's property, and if within ninety (90) days thereof Tenant or Guarantor fails to secure a discharge thereof, or if Tenant or Guarantor makes an assignment for the benefit of creditors or petitions for or enters into an arrangement, this Lease, at the option of Landlord, may be canceled and terminated by written notice of cancellation to Tenant effective ten (10) days thereafter, in which event neither Tenant nor Guarantor nor any person claiming through or under Tenant or Guarantor by virtue of any statute or of an order of any court,

- (1) in the case of (a), shall be entitled to possession, or,
- (2) in the case of (b), shall be entitled to possession, or to remain in possession of the Leased Premises, and Landlord, in addition to the other rights and remedies Landlord has by virtue of any other provision herein or elsewhere in this Lease contained or by virtue of any statute or rule of law may retain as liquidated damages any Rent, security, deposit or monies received by Landlord from Tenant or others in behalf of Tenant.

(c) It is stipulated and agreed that in the event of the termination of this Lease by reason of either (a) or (b) hereof, Landlord, notwithstanding any other provisions of this Lease to the contrary, shall forthwith be entitled to recover from Tenant as and for liquidated damages an amount

equal to the difference between the Rent for the unexpired portion of the term demised and the then fair and reasonable rental value of the Leased Premises for the same period. In the computation of such damages the difference between any installment of Rent becoming due hereunder after the date of termination and the fair and reasonable rental value of the Leased Premises for the period for which such installment was payable shall be discounted to the date of termination at the rate of seven percent (7%) per annum. If the Leased Premises or any part thereof be relet by the Landlord for the unexpired term of this Lease, or any part thereof, before presentation of proof of such liquidated damages to any court, commission or tribunal, the amount of rent reserved upon such reletting shall be deemed prima facie to be the fair and reasonable rental value for the part or the whole of the premises so relet during the term of the reletting. Nothing herein contained shall limit or prejudice the right of the Landlord to prove and/or obtain as liquidated damages by reason of such termination an amount equal to the maximum allowed by any statute or rule of law in effect at the time when, and governing the proceedings in which, such damages are to be proved, whether or not such amount be greater than, equal to or less than the amount of the difference referred to above.

11.2 Defaults. (a) If prior to the Commencement Date or during the Lease Term:

- (1) there is a transfer or an attempted transfer of this Lease or of Tenant's interest thereof in violation of the restrictions set forth in Section 9.4(f) of this Lease and the failure continues for ten (10) days after receipt of written notice from Landlord to Tenant;
- (2) Tenant abandons the Premises or otherwise fails to fully perform the obligations contained in sections 9.1(b) and (c) of this Lease and the failure continues for ten (10) days after receipt of written notice from Landlord to Tenant;
- (3) Tenant fails to comply with all any local, state or federal law, rule or regulation governing the use, handling and disposal of Hazardous Materials or is otherwise in violation of the obligations contained in Section 9.1(e) of this Lease and the failure continues for ten (10) days after receipt of written notice from Landlord to Tenant;
- (4) Tenant or Tenant's Guarantors, if any, fails to pay any installment of Rent, or any portion of any such payment, when the same becomes due and payable, and such failure continues for ten (10) days after receipt of written notice from Landlord to Tenant; or
- (5) Tenant or Tenant's Guarantor, if any, fails to perform or observe any other requirement of this Lease (not hereinbefore specifically referred to) on the part of Tenant to be performed or observed and such failure continues for thirty (30) days after receipt of written notice from Landlord to Tenant;

Landlord may serve a ten (10) day notice of cancellation of this Lease upon Tenant, and upon the expiration of said ten (10) days, this Lease and the term thereunder shall end and expire as fully and

completely as if the date of expiration of such five (5) day period were the day herein definitely fixed for the end and expiration of this Lease and of the term thereof, and Tenant shall then quit and surrender the Leased Premises to Landlord but Tenant shall remain liable as hereinafter provided.

(b) If the notice of cancellation provided for in paragraph (a) hereof shall have been given, and the term shall expire as aforesaid; or if any execution of attachment shall be issued against Tenant or any of Tenant's property or if the interest of Tenant in the Leased Premises shall be offered for sale or sold under execution or other legal process; or if Tenant shall fail to open for business on the Commencement Date, then and in any of such events Landlord may without notice reenter the Leased Premises either by force or otherwise, and dispossess Tenant or the legal representative of Tenant or other occupant of the Leased Premises, by summary proceedings or otherwise, and thereafter remove their effects and store all such effects in a public warehouse or elsewhere at the cost of and for the account of Tenant, or any other occupant and hold the premises as if this Lease had not been made and Tenant hereby waives the service of notice of intention to reenter or to institute legal proceedings to that end. If Tenant shall default hereunder prior to the date fixed as the commencement of any renewal or extension of this Lease, Landlord may cancel and terminate such renewal or extension agreement by written notice. Upon any such termination, any and all subleases theretofore executed by Tenant at the option of Landlord, shall be and hereby are assigned, transferred and set over unto the Landlord, or at the option of the Landlord shall be terminated.

(c) The waiver by either party of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained. The acceptance of Rent hereunder by Landlord shall not be deemed to be a waiver of any breach by Tenant of any term, covenant or condition of this Lease, other than the failure of Tenant to pay the particular rental so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such Rent. No covenant, term or conditions of this Lease shall be deemed to have been waived by either party, unless such waiver be in writing by such party. The consent or approval by Landlord to or of any act of Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent or approval to or of any subsequent similar acts by Tenant. Landlord shall not have the right to enforce the rules and regulations against Tenant in a discriminatory manner.

(d) If Tenant becomes a debtor within the meaning of the Bankruptcy Reform Act of 1978, as the same may from time to time be amended ("Bankruptcy Act") and notwithstanding any other provision of this Lease, this Lease and Landlord's and Tenant's rights are then made subject to such Bankruptcy Act, it is covenanted and agreed that the failure of Tenant or its representative appointed in accordance with said Bankruptcy Act to (a) provide Landlord with adequate assurances that any Percentage Rent due under the Lease shall not decline substantially, or (b) furnish accurate information and adequate assurances as to the source of Rent and other consideration due under this Lease, or (c) conduct or have conducted at the Leased Premises Tenant's business as provided in Section 1.1(l) hereof, shall in any such case each be deemed a default under this Section 11.2, and



Landlord shall have all rights and remedies herein afforded to it in the event of any default by Tenant under this Lease.

11.3 Remedies of Landlord. (a) The remedies provided under this Section are cumulative. In case of any such default, reentry, expiration and/or dispossession by summary proceedings or otherwise:

- (1) the Rent shall become due thereupon and be paid up to the time of such reentry, dispossession and/or expiration, together with such reasonable expenses as Landlord may incur for legal expenses, attorneys' fees, brokerage and/or putting the Leased Premises in good order, or for preparing the same for rental, plus Interest thereon from and after the due date of any payment required to be made by Tenant hereunder;
- (2) Landlord may relet the Leased Premises or any part or parts thereof, either in the name of Landlord or otherwise, for a term or terms which may at Landlord's option be less than or exceed the period which would otherwise have constituted the balance of the term of this Lease, and may grant concessions or free rent or charge any rent deemed by Landlord to be reasonable; but Landlord shall not be required so to relet the Leased Premises, either pursuant to this Lease or by any requirements of law or equity, to any person who in Landlord's sole judgment and discretion shall not be of sound financial standing and ability and possess good reputation, business judgment, or for any use or purpose which, in Landlord's sole judgment and discretion, shall not be the same or substantially the same as the uses of the Leased Premises permitted under this Lease, or shall not be in keeping with the caliber and quality of the Shopping Center and the other occupants of the Stores; and
- (3) Tenant or the legal representative of Tenant shall also pay Landlord, as liquidated damages for the failure of Tenant to observe and perform said Tenant's covenants herein contained, any deficiency between the Rent and the net amount, if any, of the rents collected on account of the lease or leases of the Leased Premises for each month of the period which would otherwise have constituted the balance of the term of this Lease.

(b) In determining the Rent which would be payable by Tenant hereunder, subsequent to default, the annual Rent for each year of the unexpired term shall be equal to the total of the average Minimum and Percentage Rents and all other rents and charges otherwise payable by Tenant pursuant to the terms of this Lease from the Commencement Date to the time of default, or during the preceding three (3) full Lease Years, whichever period is shorter. The failure or refusal of Landlord to relet the Leased Premises or any part or parts thereof shall not release or affect Tenant's liability for damages. In computing such liquidated damages there shall be added to said deficiency such expenses as Landlord may incur in connection with reletting, such as legal expenses, attorneys' fees, brokerage, and for keeping the Leased Premises in good order or for preparing the same for

reletting. Any such liquidated damages shall be paid in full upon demand or at Landlord's option, in monthly installments by Tenant on the day specified in Section 5.1 of this Lease and any suit brought to collect the amount of the deficiency for any month shall not prejudice in any way the rights of Landlord to collect the deficiency for any subsequent month by a similar proceeding.

(c) Landlord at Landlord's option may make such alterations, repairs, improvements and/or decorations in the Leased Premises as Landlord in Landlord's judgment considers advisable and necessary for the purpose of reletting the Leased Premises, and the making of such alterations and or decorations shall not operate or be construed to release Tenant from liability hereunder as aforesaid. Landlord shall in no event be liable in any way whatsoever for failure to relet the Leased Premises or in the event that the Leased Premises are relet, for failure to collect the rent thereof under such reletting and in no event shall Tenant be entitled to receive the excess, if any, of such net rents collected over the sums payable by Tenant to Landlord hereunder. In the event of a breach or threatened breach by either party of any of the covenants or provisions hereof the other party shall have the right of injunction and the right to invoke any remedy allowed at law or in equity as if re-entry summary proceedings and other remedies were not herein provided for and in such event the other party shall be entitled to recover from such party (in the case of Tenant, payable as Rent hereunder), any and all reasonable expenses the other party may incur in connection with its efforts to serve such injunctive relief or other remedy at law or in equity.

(d) Mention in this Lease of any particular remedy shall not preclude Landlord from any other remedy at law or in equity. Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event of Tenant being evicted or dispossessed for any cause, or in the event of Landlord obtaining possession of the Leased Premises, by reason of the violation by Tenant of any of the covenants and conditions of this Lease or otherwise. The words "re-enter" and "re-entry" as used in this Lease are not restricted to their technical legal meaning.

(e) Notwithstanding any rights which may be conferred upon Landlord in law, equity, or otherwise, in no event shall Landlord be entitled to collect rent and damages due hereunder on an accelerated basis upon default by Tenant. Notwithstanding a default by Tenant, any rent and damages due hereunder shall only become due and payable by Tenant in the amounts and at the times set forth herein for the payments thereof.

11.4 Landlord's Lien. Throughout the term of this Lease, Landlord, without prejudice to its statutory lien, shall have and is hereby granted a lien upon the property in the Leased Premises for the amount of any unpaid Rent or other sum due from Tenant hereunder. Upon any termination of this Lease by reason of Tenant's default, Landlord shall have the right and privilege, at its sole option and discretion, to take possession of all property in the Leased Premises, to store the same on the Leased Premises and/or to remove the same therefrom for storage in such place as may be selected by Landlord at Tenant's risk and expense, in accordance with such lien and any rights of distraint Landlord may possess against Tenant's property. Tenant agrees to execute, within ten (10)

days after being so requested by Landlord, such financing statements and other documents as Landlord may require evidencing the security interest herein granted. Upon the occurrence of any termination of this Lease by reason of Tenant's default, Landlord may, in addition to any other remedies provided herein or by law, enter upon the Leased Premises and take possession of any and all goods, wares, equipment, fixtures, furniture and other personal property and effects of Tenant situated on the Leased 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. Landlord agrees to subordinate its lien to that of a chattel mortgage on Tenant's personalty in the Leased Premises by the execution of a subordination agreement in the form hereto annexed as Exhibit E within a reasonable time after Tenant's written request therefor.

11.5 Tenant not to Counterclaim. If Landlord shall commence any proceeding for nonpayment of any monies to which Landlord may be entitled or which Landlord may claim hereunder, Tenant will not interpose any counterclaim (except mandatory counterclaims) or set-off of whatever nature or description in any such proceeding, the parties hereto specifically agreeing that Tenant's covenants to pay Minimum Rent, Percentage Rent and other items of Rent required of Tenant hereunder are independent of all other covenants and agreements herein contained; however, that this shall not be construed as a waiver of Tenant's right to assert such a claim in any separate action brought by Tenant.

11.6 Holdover by Tenant. If Tenant shall not immediately surrender possession of the Leased Premises upon any termination of this Lease, Tenant, at the option of the Landlord, shall thereafter become a tenant from month-to-month at a monthly rental equal to 150% of the sum of (i) the monthly Minimum Rent, (ii) 1/12th of the average annual Percentage Rent payable hereunder for the most recent three Lease Years (or the monthly average for the entire preceding portion of the Lease Term if less than three full Lease Years), and (iii) the average monthly amount of all other items of Rent payable hereunder during the last year of the Lease Term, subject to all other conditions, provisions and obligations of this Lease insofar as the same are applicable to a month-to-month tenancy.

11.7 Tenant's Obligations Prior to Lease Term. This Lease has been executed as of the date hereof with the understanding that all of Tenant's obligations contained in this Lease and the Exhibits are effective immediately except for Tenant's obligations to pay Rent (other than Tenant's obligation to pay charges for temporary water, heating, cooling and lighting pursuant to the Exhibits) which obligations shall not commence until the Commencement Date. If Tenant delays or interferes with the performance of Landlord's Work, including, without limitation, the failure to make timely submission to Landlord of any plans or specifications or to perform Tenant's Work diligently,

Landlord, in addition to any other right or remedy it may have at law or in equity may pursue any one or more of the following remedies:

(a) If Tenant shall not have commenced Tenant's Work Landlord may give Tenant not less than 10 days' notice that unless a specified default is timely cured, this Lease shall, ipso facto, be canceled and terminated without prejudice to Landlord's rights hereunder, including but not limited to those set forth in this Section 11.

(b) If Tenant has commenced its Work, Landlord may, after so notifying Tenant:

(1) Proceed, at Tenant's cost and expense, including without limitation, expense for such overtime as the Project Architect or Landlord may deem necessary, with the completion of any portion of Tenant's Work. Such performance by Landlord shall have the same effect as if such work or other action had been done by Tenant.

(2) Declare that, notwithstanding such default, the Lease Term shall be deemed to have commenced in accordance with Section 3.3. Landlord shall thereafter be entitled to be paid Rent and any other charges which are payable hereunder by Tenant during the Lease Term.

11.8 Landlord's Right to Cure Defaults. Landlord may, but shall not be obligated to, cure, at any time, without notice, any default by Tenant under this Lease which has not been cured after the giving of any applicable notice and expiration of any applicable cure period; and whenever Landlord so elects, all costs and expenses incurred by Landlord in curing a default, including, without limitation, reasonable attorneys' fees together with Interest plus a 15% administrative fee on the amount of costs and expenses so incurred, shall be paid by Tenant to Landlord on demand, and shall be recoverable as Rent.

11.9 Tenant's Right to Cure. If Landlord has not commenced repair or maintenance required to be performed by Landlord under this Lease within thirty (30) days after receiving notice thereof from Tenant, or if so commenced, is not diligently pursuing same to completion, Tenant shall have the right, but not the obligation, to make such repairs and Landlord shall reimburse Tenant for the reasonable cost thereof within thirty (30) days after receipt of a bill thereof from Tenant. In the event of any emergency, Tenant may (but shall not be obligated to) perform such repairs which would otherwise be Landlord's obligation hereunder which may be reasonably necessary, after having given Landlord such notice, if any, as may be practicable under the circumstances. Tenant shall not be responsible for any loss or damage to Landlord's property that may result from such repairs except if such loss or damage is caused by the negligent or wilful acts of Tenant or Tenant's contractors, agents or employees.

SECTION 12. MISCELLANEOUS PROVISIONS.



12.1 Notices. Any notices and other communications hereunder shall be in writing and mailed by first class registered or certified mail, return receipt requested, or by overnight courier service (such as, without limitation, Federal Express or Express Mail), postage prepaid, addressed to the address of Tenant or Landlord, as the case may be, set forth in Section 1.1 or to such other address as shall have last been designated by notice in writing to the appropriate party. In the case of notices to Tenant, with a copy sent in like manner to: Moses & Singer, LLP, 1301 Avenue of the Americas, New York, New York 10019, Att.: Edward Goodman, Esq. A notice shall be deemed to have been given three days after the same is mailed or upon actual delivery, whichever shall first occur. Notwithstanding anything to the contrary, Tenant hereby irrevocably elects domicile at the Leased Premises for the purpose of service of all notices, writs of summons or other legal documents, or process in any suit, action or proceeding which Landlord or any Mortgagee may undertake under this Lease.

12.2 Notice to Mortgagee. A duplicate copy of all notices from Tenant shall be sent, in the manner provided in Section 12.1, to any Mortgagee at the address furnished to Tenant by such Mortgagee or by Landlord. A Mortgagee shall have the same rights as Landlord to cure any default.

12.3 Brokerage. Tenant represents that it has not dealt with any broker, agent or finder, other than Welco Realty Company, in connection with this Lease and covenants to pay, hold harmless and indemnify Landlord from and against any and all costs, expense or liability (including reasonable attorneys' fees) to any broker, agent or finder with respect to this Lease or the negotiation thereof. Landlord represents it has not dealt with any broker, agent or finder in connection with this Lease, other than Welco Realty Company and covenants to pay, hold harmless and indemnify Tenant from and against any and all costs, expense or liability (including reasonable attorneys' fees) to Welco Realty Company or any other broker, agent or finder with respect to this Lease or the negotiation thereof.

12.4 Control of Tenant. If Tenant or the Guarantor, or any approved subtenant occupying all or substantially all of the Leased Premises is a corporation, Tenant shall notify Landlord if at any time during the Lease Term such corporation's shares shall be transferred so as to result in a change from the present control of such corporation from the person or persons owning a majority of such shares at the time it became Tenant or Guarantor (as the case may be) to some other person or corporation. Any such transfer without Landlord's consent shall be deemed a default under this Lease and, without limiting its other rights and remedies hereunder, Landlord may, at its option, terminate this Lease by notice to Tenant given within 90 days after Landlord has first received notice of such transfer. This Section shall not apply whenever Tenant is a corporation the outstanding voting stock of which is listed on a recognized security exchange. Similarly, Landlord may terminate this Lease if Tenant is a partnership and the interest of any partner in Tenant is transferred. Notwithstanding the foregoing, transfers by gift, intestacy or bequest, to the immediate family (spouse, siblings or issue) of a principal owner of Tenant shall not constitute a transfer hereunder requiring Landlord's consent. Landlord's consent shall not be required, although notice hereunder must be given in the event of a transfer which is made to effect an assignment of this Lease pursuant

to Section 9.4(f) which does not itself require Landlord's consent.

12.5 Relationship of the Parties. Nothing contained in this Lease shall be construed by the parties hereto, or by any third party, as constituting the parties as principal and agent, partners or joint venturers, nor shall anything herein render either party (other than a guarantor) liable for the debts and obligations of any other party, it being understood and agreed that the only relationship between Landlord and Tenant is that of landlord and tenant.

12.6 Estoppel Certificates. Each party shall, from time to time, within fifteen (15) business days following notice from the other party, execute and deliver to such other party a certificate in recordable form stating: (i) that this Lease is in full force and effect and, if the Lease has been modified, the substance of such modification; (ii) the dates to which the Rent due hereunder from Tenant has been paid in advance; and (iii) that neither party is in default in performance of any provision of this Lease, and if there is a default, the reason therefor.

12.7 Waiver of Trial by Jury. Landlord and Tenant hereby expressly waive trial by jury in any action, proceeding or counterclaim brought by either of them against the other on any matter arising out of this Lease.

12.8 Applicable Law and Construction. The laws of New York shall govern the validity, performance and enforcement of this Lease. The invalidity or unenforceability of any provision of this Lease shall not affect or impair any other provision. If any provision of this Lease is capable of two constructions, one of which would render the provision invalid and the other of which would make the provision valid, then the provision shall have the meaning which renders it valid. The submission of this document for examination does not constitute an offer to lease and becomes effective only upon execution and delivery thereof by Landlord, Tenant and Guarantor. After the execution and delivery of this Lease by Tenant and Guarantor, Landlord shall have 30 days in which to obtain the approval of Landlord's Mortgagee to the terms of this Lease. If by the expiration of the aforesaid period, Landlord shall not have returned to Tenant a fully executed copy of the Lease, Tenant may notify Landlord of Tenant's intention to cancel this Lease if approval of Landlord's Mortgagee is not forthcoming within 30 days after receipt by Landlord of such notice. If at the expiration of such 30-day period, Landlord still has not returned a fully executed copy of the Lease to Tenant, it shall be conclusively presumed that the parties hereto have canceled this Lease by mutual consent and this Lease shall be of no further force and effect and neither party shall have any right or claim hereunder against the other.

12.9 Cancellation. If for any reason, including Force Majeure, the Lease Term shall not have commenced within 12 months from the date hereof, this Lease will thereupon be automatically null and void and thereupon neither party hereto shall have any further rights against or obligations to the other hereunder.

12.10 Binding Effect of Lease. All provisions of this Lease shall be binding upon and inure

to the benefit of the parties hereto and their respective personal representatives, heirs, successors and permitted assigns; provided, however, that, subject to the provisions of Subsection 9.4(f), no rights shall inure to the benefit of any person or entity claiming by, from or through Tenant unless such person or entity has been approved in writing by Landlord. Each covenant or other provision of this Lease shall be deemed and construed as a separate and independent covenant of the party bound by, undertaking or making the same, not dependent on any other provision of this Lease unless otherwise expressly provided.

12.11 Mutual Waiver of Subrogation Rights. Neither party shall be liable (by way of subrogation or otherwise) to any other party (or to any insurance company insuring the other party) for any loss or damage to any of a party's property covered by insurance under Section 8.2 or Section 9.2 even though such loss or damage might have been occasioned by the negligence of the first party or of such party's Permittee. This release of liability shall be operative only as long as Waiver of Subrogation clauses are available. Tenant shall cause its fire insurance and extended coverage policies with respect to the Leased Premises to contain appropriate provisions whereby the insurer(s) waives any rights or subrogation against both Landlord and Supermarkets General Corporation ("SGC") (if same can be so written and either do not result in additional premium or Landlord and/or SGC pay on demand any additional premium therefor); and in consideration thereof, it is agreed that SGC will obtain any appropriate release from SGC releasing Tenant from liability for damage or destruction to SGC's property, whether or not caused by acts or omissions of Tenant.

12.12 Force Majeure. Each party shall be excused from performing any obligation or undertaking provided for in this Lease (other than the obligations of Tenant to pay any and all items of Rent as the same become due under the applicable provisions of this Lease) for so long as such performance is prevented or delayed, retarded or hindered by act of God, fire, earthquake, flood, explosion, action of the elements, war, invasion, insurrection, riot, mob violence, sabotage, inability to procure or general shortage of labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strike, lockout, action of labor unions, a Taking, requisition, laws, orders of government or civil or military or naval authorities, or any other cause, whether similar or dissimilar to the foregoing, not within the reasonable control of the party prevented, retarded, or hindered thereby, including reasonable delays for adjustments of insurance.

12.13 Modifications. This Lease embodies the entire agreement and understanding between the parties, supersedes all prior negotiations, agreements and understandings, and any provision of this Lease may be modified, waived or discharged only by an instrument in writing signed by the party against which enforcement of such modification, waiver or discharge is sought. If modification of this Lease is required for Landlord to obtain financing or refinancing of the Shopping Center Mortgage, Tenant shall execute and deliver to Landlord, within 30 days after Landlord's request, an amendment of lease incorporating the necessary modifications, provided, however, that no amendment requested hereunder shall adversely affect Tenant or increase Tenant's obligations hereunder or decrease Tenant's rights hereunder.

12.14 Effect of Landlord's Notice to Terminate. Any right on the part of Landlord to terminate this Lease shall, when exercised, require no further act, to the end that at the expiration of the applicable time period, if any, contained in the particular termination provision, this Lease and the term hereunder shall end and expire as fully and completely as if such termination date was the date herein definitely fixed for the end and expiration of this Lease and the term hereof, and upon such date Tenant shall quit and surrender the Leased Premises to Landlord.

12.15 No Representation by Landlord. Neither Landlord nor any agent of Landlord has made any representations, warranties, or promises with respect to the Leased Premises or the Shopping Center except as herein expressly set forth.

12.16 Memorandum of Lease. At either party's request the other party will execute a memorandum of lease in recordable form setting forth only such provisions of this Lease as shall be necessary to achieve such recordation. The party recording the memorandum of lease shall pay for the cost of recordation.

12.17 Qualification. Each party represents that it is duly authorized to do business in New York and will remain so during the term hereof, and that it has been in all respects duly authorized to enter into and perform this Lease.

12.18 Captions. The captions and headings herein are for convenience and reference only and in no way define or limit the scope or content of this Lease or in any way affect its provisions.

12.19 Gender. Whenever the sense of this Lease so requires, the use of (1) the singular number shall be deemed to include the plural, (2) the masculine gender shall be deemed to include the feminine and neuter gender, and (3) the neuter gender shall be deemed to include the masculine and feminine gender.

12.20 Counterparts. This Lease may be executed in any number of counterparts, each of which shall be an original, but all of which shall together constitute one and the same instrument.

[The balance of this page is intentionally left blank. Signatures appear on the following page.]



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

LANDLORD:
BAY PLAZA COMMUNITY CENTER, LLC
By: Bay Plaza Community Corp.

Attest: _____

By

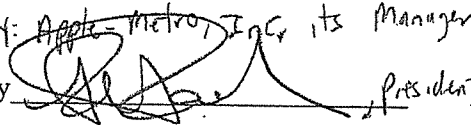
 J.V.P.

TENANT:
BAY PLAZA APPLE, LLC

By: ~~Apple~~ Metro, Inc. its Manager

Attest: _____

By

 President

ACKNOWLEDGMENTS
LANDLORD

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

On the _____ day of _____, 1999, before me personally came _____, to me known, who, being by me duly sworn did depose and say that he/she resides at _____; that he/she is the _____ of BAY PLAZA COMMUNITY CORP., the corporation described in and which executed the above instrument; and that he/she signed his/her name thereto by order of the board of directors of said corporation, as manager of Bay Plaza Community Center, LLC.

Notary Public

My Commission Expires: _____

TENANT

STATE OF NEW YORK)
) ss.:
COUNTY OF)

On the _____ day of _____, 1999, before me personally came _____, to me known, who, being by me duly sworn did depose and say that he/she resides at _____; that he/she is a member of BAY PLAZA APPLE, LLC, the limited liability company described in and which executed the above instrument.

Notary Public

My Commission Expires: _____

GUARANTY

For VALUE RECEIVED, in consideration for, and as an inducement to Landlord to enter into the foregoing Lease between BAY PLAZA COMMUNITY CENTER, LLC. ("Landlord") and BAY PLAZA APPLE, LLC ("Tenant"), dated July 26, 1999, the undersigned ("Guarantor") hereby guarantees to Landlord, its legal representatives, successors and assigns, the full and faithful performance and observance by Tenant, its successors and assigns, of all terms, covenants, conditions, agreements, restrictions and limitations of the Lease, including without limitation the payment of all Rent, the Rules and Regulations prescribed by Landlord and the provisions of section 9.4, together with the payment of all reasonable costs, attorneys' fees and other expenses incurred by Landlord in enforcing such performance and observation and in enforcing this Guaranty.

Guarantor further covenants that (1) the liability of the Guarantor is primary, shall not be subject to deduction for any claim of offset, counterclaim or defense which Tenant may have against Landlord, and Landlord may proceed against Guarantor separately or jointly, before, after or simultaneously with any proceeding against Tenant for default; (2) this guaranty shall not be terminated or impaired in any manner whatsoever by reason of the assertion by the Landlord against Tenant of any of the rights or remedies reserved to Landlord pursuant to the provisions of such Lease, by reason of summary or other proceedings against Tenant, by the omission of Landlord to enforce any of its rights against Tenant, or by reason of any extension of time or indulgence granted by Landlord to Tenant; (3) Guarantor expressly waives any requirement of notice of non-payment, non-performance or non-observance, or proof of notice or demand; (4) this guaranty shall be absolute and unconditional and shall remain and continue in full force and effect as to any renewal, extension, amendment, additions, assignment, sublease, transfer or other modification of the Lease, whether or not Guarantor shall have knowledge of or have agreed or consented to any such renewal, extension, amendment, addition, assignment, sublease, transfer or other modification of the Lease; and that in any action or proceeding brought by Landlord against Guarantor on account of this Guaranty, Guarantor shall and does hereby waive trial by jury. All obligations and liabilities of Guarantor pursuant to this guaranty shall be binding upon the heirs, personal representatives and assigns of the Guarantor. This guaranty shall be governed by and construed in accordance with the laws of New York.

Notwithstanding anything in the foregoing to the contrary, in the event that Tenant's Gross Sales transacted in any Lease Year as shown on Tenant's annual Gross Sales statement provided to Landlord in accordance with Section 5.3 of the Lease shall meet or exceed the corresponding amount for the subject Lease Year shown on the schedule annexed to this Guaranty, then the liability of the undersigned under this Guaranty shall be limited to the amount which shall be due from Tenant under the Lease through the date that legal possession of the Leased Premises is returned to Landlord in broom clean condition. However, if Tenant vacates the Leased Premises and ceases its operation prior to the end of the fifth Lease Year, notwithstanding the foregoing sentence, in addition to all of Guarantor's obligations and responsibilities provided herein above, Guarantor shall pay Landlord the sum of \$65,000.00. For purposes hereof the following -----


terms shall have the following meaning:

i. "legal possession" shall mean the date Tenant delivers or tenders delivery of the keys to Landlord or Landlord's attorney or agent, or the City Marshall gives possession to Landlord; whichever date is earlier; and

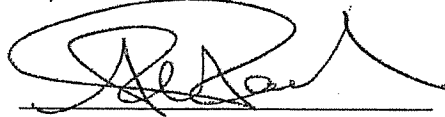
Dated: July 26, 1999

Witness:

GUARANTOR:



Zane Tankel



Roy Raeburn



STATE OF)
) ss.:
COUNTY OF)

On the day of _____, 1999, before me personally came ZANE TANKEL to me known and known to me to be the individual described in, and who executed the foregoing instrument, and duly acknowledged to me that he executed the same in the capacity therein stated and for the purposes therein contained.

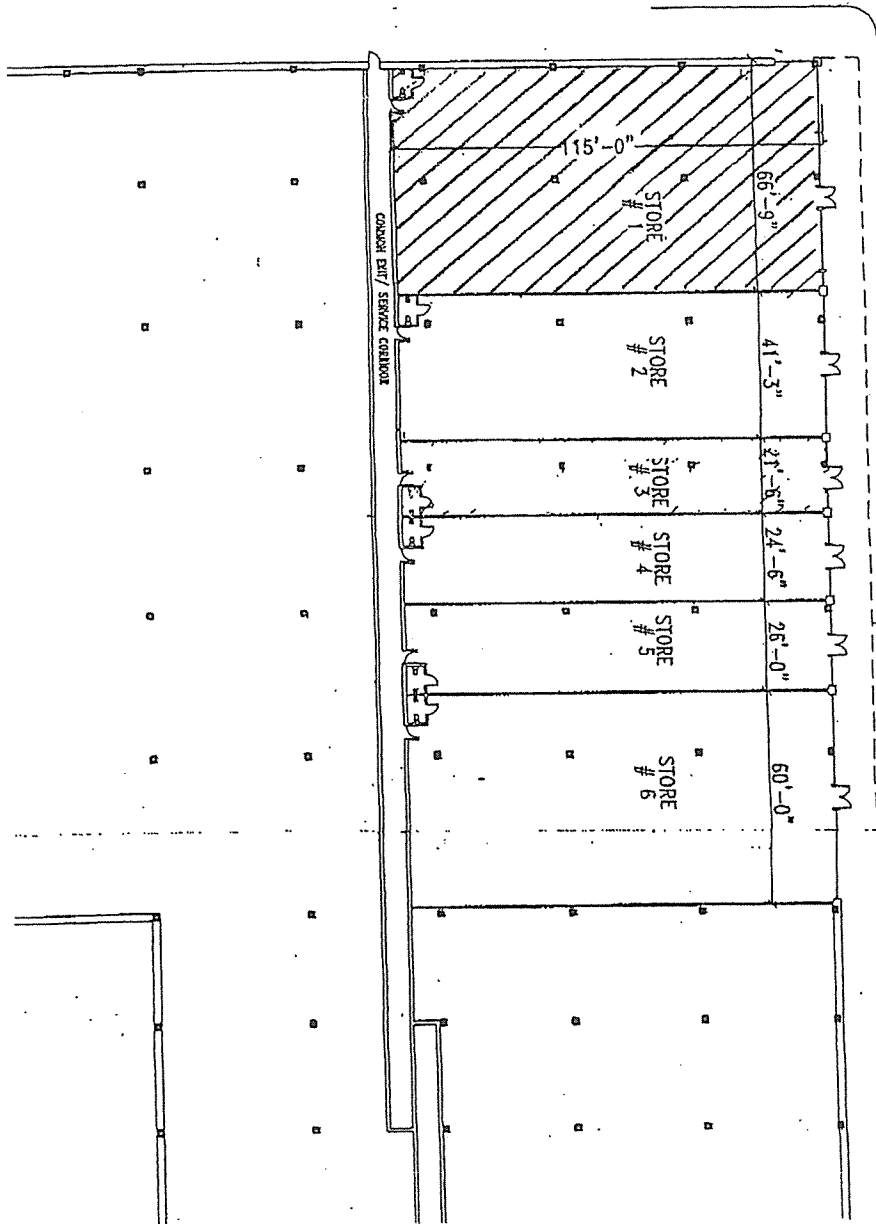
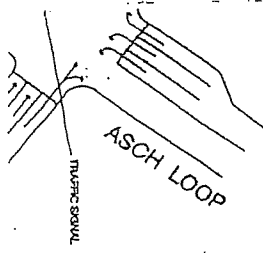
Notary Public

STATE OF)
) ss.:
COUNTY OF)

On the day of _____, 1999, before me personally came ROY RAEBURN, to me known and known to me to be the individual described in, and who executed the foregoing instrument, and duly acknowledged to me that he executed the same in the capacity therein stated and for the purposes therein contained.

Notary Public

<u>Lease Years</u>	<u>Breakpoint Amount</u>
1 to 2	\$ 4,000,000.00
3	\$ 4,520,000.00
4 to 5	\$ 5,062,400.00
6 to 10	\$ 5,113,024.00
11 to 15	\$ 5,726,586.88
16-20	\$ 6,413,777.31
Option years 21 to 25	\$ 7,375,843.91
Option years 26 to 30	\$8,482,220.50



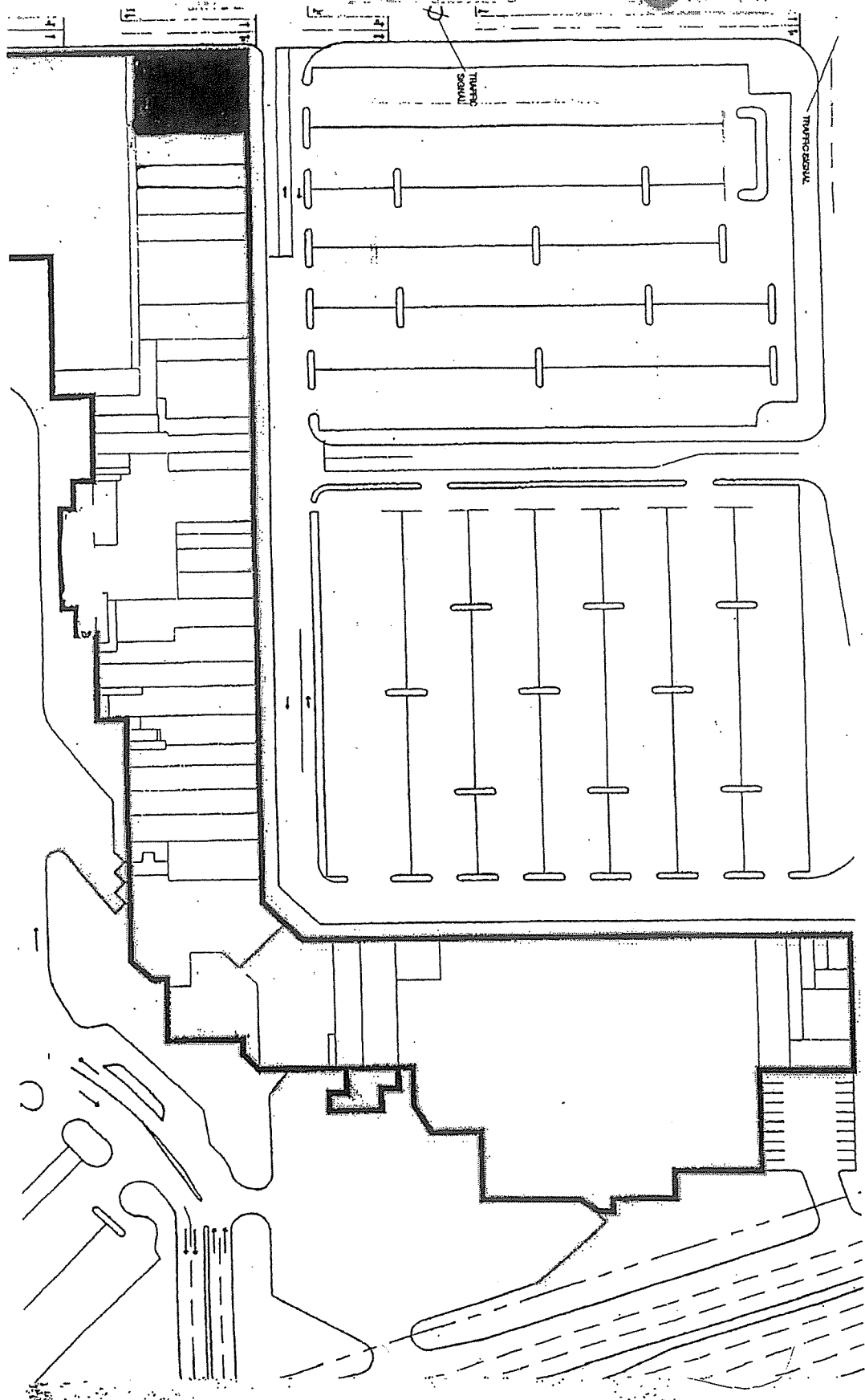




EXHIBIT "B"

I. DESCRIPTION OF TENANT'S WORK

- A. Tenant acknowledges and agrees that except as provided in this Lease, Landlord shall have no obligation, liability or responsibility of any nature with respect to Landlord's Work. If either the plumbing, that portion of the fire protection sprinkler that is up to the valve (excluding any distribution from the valve, within the Leased Premises that Landlord may choose to install) or electrical system installed by Landlord is determined to be deficient within 30 days following Delivery of Possession, at its sole cost, Landlord shall perform any necessary maintenance, repairs and alterations thereto, including all necessary replacements, in order to render the same in good operating condition provided that in no event shall Landlord perform any such maintenance, repairs and alterations to any portion of the utility systems which Tenant installed. Landlord shall not at any time have any obligation, liability or responsibility of any nature with respect to Tenant's Work at any time made in the Leased Premises by or for Tenant or existing in the Leased Premises on the Commencement Date; and Tenant agrees to maintain and/or replace (if necessary) all of the same, as required.
- B. The condition of all utility improvements as they presently exist within the Leased Premises is neither represented nor warranted by Landlord to satisfy the requirements of Tenant.
- C. Any change in the Leased Premises, including, but not limited to, any new construction work, modification of existing improvements, or the installation of trade fixtures, shall be performed by Tenant at its sole cost and expense, shall be subject to Landlord's prior written approval except as otherwise provided in this Lease and shall be completed in such manner so that the Leased Premises shall have the appearance of, and be, a restaurant suitable for the purposes permitted by Section 1.1(1) of the Lease.
- D. The design, construction, and proposed finishes to the Leased Premises shall be subject to Landlord's prior approval, which shall not be unreasonably withheld, and shall conform to and be architecturally harmonious with the Shopping Center. Tenant shall commence Tenant's Work only upon receipt of Landlord's approval of Tenant's Plans.
- E. Any design, construction, mechanical and/or electrical work shall comply with applicable statutes, ordinances, regulations, laws and codes of the governing authorities and/or agencies, including requirements of the State Fire Marshall and the New York Board of Fire Underwriters' requirements for fire insurance. Tenant shall

utilize only new and first-class materials in the performance of Tenant's Work, which work shall be performed in a first-class workmanlike manner, and Tenant shall obtain any approvals required to operate a restaurant in the Leased Premises.

- F. Tenant may not alter the storefront exterior finishes in any way, except for signage as provided herein. Entrance and window jambs, sills, and heads are part of public canopied walkway finish as provided by the Landlord.
- G. All required building and other permits and fees will be obtained and paid for by Tenant or Tenant's Contractor and posted as required within the Leased Premises. Tenant shall be responsible for: all filings required by the New York City Building Department; obtaining Building Department approval for all drawings; and obtaining all required departmental sign-offs, including a new Certificate of Occupancy for the Leased Premises if the same is required due to Tenant's intended use of the Leased Premises. Tenant shall provide Landlord with copies of all such approvals, drawings and sign-offs immediately upon Tenant's receipt thereof. Any violations of any Legal Requirements shall be cured by Tenant within ten (10) days after notice thereof. If Landlord requires from Tenant any information, documentation or any other requirements for Landlord to obtain an update of the Certificate of Occupancy for the Shopping Center, Tenant shall provide the same to Landlord within ten (10) days following Landlord's request therefor.
- H. All improvements to the Leased Premises made by Tenant, including, without limitation, light fixtures, floor coverings and partitions, ceilings, HVAC system and distribution thereof, plumbing and electrical distribution, but excluding trade fixtures and signs, shall become Landlord's property upon expiration or earlier termination of the Lease.
- I. Tenant's Contractor shall conduct the performance of its work in such manner so as to avoid labor disputes and disruptions which will interfere with other work in or the operation or use of the Shopping Center.
- J. Contractors shall be required to work in harmony with other contractors at the Shopping Center. Tenant's Contractors shall coordinate their work with the general Project Manager. Tenant's Contractors must comply with the provisions of the Occupational Health and Safety Act as enacted by Congress and as may be amended from time to time.
- K. All unloading of construction materials and equipment shall be accomplished within predetermined areas, then hand carried or wheeled to the Leased Premises. Damage to sidewalks, and to adjoining premises, etc., by Tenant's Contractors will be charged to Tenant. All materials and equipment must be stored within the Leased Premises.

- L. Landlord shall have the right to order any Tenant or Tenant's Contractor who willfully violates the above requirements to cease work, and to remove himself, his equipment and his employees from the Landlord's property. Tenant's Contractors may not commence any work in the Shopping Center without first obtaining Landlord's approval of the work to be done, subject to the terms of this Lease.
- M. In the event the Tenant is notified of any violations of any Legal Requirements either by the jurisdictional authorities or by the Landlord, Tenant will, at its expense, correct such violations within ten (10) calendar days after such notification. Should Tenant fail to correct such violations within the 10-day time period, Landlord may correct the violation at Tenant's cost plus fifteen percent (15%) thereof for administrative costs.
- N. Fire Protection System:
Tenant shall be responsible for all fire protection work in the Leased Premises, including the distribution, maintenance and repair of the sprinkler system and the obtaining of all necessary approvals and inspections as required by the Landlord's insurance carrier for any modification work to be performed by Tenant to existing sprinkler system if such exists within the Leased Premises.
- O. Meters:
All meters and/or meter pits required for utility services shall be furnished and installed by and at Landlord's expense in location approved by the Project Manager.
- P. Upon completion of all work affecting the Leased Premises, an inspection verifying compliance with Lease Exhibits and Tenant's approved drawings will be made by Landlord's representatives.
- Q. No approval by the Landlord is valid unless in writing, signed by the Landlord.
- R. Insurance:
Tenant shall secure, pay for and maintain or cause its contractor(s) to secure, pay for and maintain during the continuance of Tenant's Work insurance in accordance with Part IV of this Exhibit B.
- S. Within ten (10) days after demand therefor Tenant shall pay Landlord for any Tenant's Work performed by Landlord, at Tenant's request, and for any advances of funds made by Landlord to or for the benefit of Tenant in connection with Tenant's Work hereunder. Any failure of Tenant to pay or reimburse such amounts or to pay

any other charges required herein shall constitute a default under the terms of the Lease in like manner as the failure to pay Rent.

- T. Tenant shall pay or cause to be paid all costs for work done by Tenant or caused by Tenant on the Leased Premises, and for all materials installed in the Leased Premises. Tenant shall furnish Landlord, upon Landlord's request, satisfactory evidence of such payment, including lien waivers for all work performed by Tenant's Contractor(s). Any failure of Tenant to pay for said work or material shall constitute a default under the terms of the Lease in the like manner as the failure to pay Rent.
- U. Trash Removal. Tenant shall arrange with Landlord's designated commercial refuse hauler for the removal of Tenant's trash, provided its rates are competitive with other commercial refuse haulers that service the area in which the Shopping Center is located and do not exceed any statutory rates that may be applicable. It shall be the responsibility of Tenant to remove daily all trash and debris from the Leased Premises, to break down all boxes and place all such trash and debris into the containers supplied for that purpose by the hauler.

V. HVAC:

Tenant shall be responsible for the installation of the HVAC system and distribution thereof, including duct work, diffusions and other necessary items of equipment relative thereto.

II. SUBMISSION OF TENANT'S PLANS AND WORK REQUIREMENTS

- A. Tenant shall, prior to the commencement of Tenant's Work, submit to Landlord for Landlord's written approval all prints, drawing information, and other material ("Tenant's Plans") concerning the design, construction and proposed finishes of Tenant's Work. Landlord shall accept or reject Tenant's Plans within ten (10) business days after Landlord's receipt of Tenant's written request for Landlord's approval thereof, otherwise such plans shall be deemed approved. Any subsequent modifications must be itemized by the Tenant and submitted for Landlord's prior written approval.
- B. Tenant is solely responsible for timely preparation and submission of all required drawings and plans to both Landlord and all appropriate jurisdictional authorities, timely procurement of all necessary permits, timely bidding and awarding of contracts and ordering of materials and equipment, and timely performance of all other acts necessary for Tenant to commence Tenant's Work and to open the Leased Premises for business when required by the Lease. Tenant shall have no obligation to pay Landlord for any cost or expense incurred by Landlord or Landlord's architect,



in reviewing Tenant's Plans.

- C. A minimum of five (5) days prior to the commencement of Tenant's Work, Tenant shall submit the following items to Landlord:
1. A statement setting forth the name and address of Tenant's general, plumbing, and electrical contractors performing Tenant's Work.
 2. A statement setting forth the proposed commencement date of Tenant's Work and the estimated completion dates of Tenant's Work, including fixturing work, and scheduled completion.
 3. Certificates of Insurance as called for herein. Tenant's contractors shall not be permitted to commence any work until all required insurance has been obtained and such certificates have been received by Landlord.
 4. Building permit, if the same is required.
- D. Tenant or its contractors shall not be required to furnish any performance, labor or material payment bond(s).
- E. Tenant shall not be obligated to pay for any tap-in fees, impact fees, barricade charges or other "charge-back" fees.
- F. Whenever Landlord's approval is required with respect to Tenant's Plans, said approval shall not be unreasonably withheld or delayed.

III. SIGN CRITERIA

A. EXTERIOR SIGNAGE.

The manufacture, installation and the cost of signage shall be the responsibility of the Tenant. Sign construction is to be completed in compliance with the instructions, limitations, and criteria set forth below:

1. Sign drawings shall clearly show graphic, as well as construction and attachment details. Full information regarding electrical requirements and brightness in foot-lamberts is also to be included.
2. The wording of signs shall be limited to Tenant's trade name only. Logo, decals, stamps, graphics and any other designs except as provided herein shall not be permitted on the signband.

3. All signs shall have concealed attachment devices.
4. Tenant's exterior sign shall be mounted in front of the Leased Premises totally within the confines of the leased area.
5. No other types of signs whatsoever shall be permitted, including, but not limited to, signs that move, rotate or employ moving or flashing lights.
6. Lighting shall be controlled by a seven (7) day time clock, no weekend skip, Tork or equal, purchased by Tenant. Landlord will establish the operating hours for all signage in the Shopping Center.
7. No signage whatsoever shall be permitted on the exterior storefront glass or elsewhere on the storefront.

B. INTERIOR SIGNAGE

Interior storefront signage shall be a non-illuminated element. Tenant may only install opaque signs which may not exceed 20% of the window opening. No other types of signs whatsoever shall be permitted on the interior storefront, including, but not limited to, the following:

- a. Moving or rotating signs;
- b. Signs employing moving, flashing lights or lighting;
- c. Signs employing the use of any sound or noise making device and components; or
- d. Signs, letters, symbols or identification of any nature which is painted directly on the interior or exterior of the storefront glass.

IV. INSURANCE AND INDEMNIFICATION CRITERIA

Contractor shall secure, pay for and maintain during the continuance of his work the following insurance in the following amounts, which shall be endorsed in all policies to include Landlord and its mortgagees or beneficiaries and their employees and agents as additional insureds, and which shall provide in all policies that Landlord shall be given thirty (30) days prior written notice of any alteration or termination of coverage in the amounts as set forth below:

1. Worker's Compensation and Employer's Liability insurance with limits of not less

than \$100,000.00 for bodily injury each accident, \$100,000.00 for bodily injury by disease each employee, and \$500,000.00 bodily injury by disease policy limit, and as required by state law and any insurance required by any employee benefit acts or other statutes applicable where the work is to be performed, as will protect contractor from any and all liability under the aforementioned acts.

2. Comprehensive General Liability insurance (including contractor's protective liability) in an amount not less than \$1,000,000.00 per person and \$3,000,000.00 per occurrence, whether involving personal injury (or death resulting therefrom) or property damage or a combination thereof, with a minimum aggregate limit of \$3,000,000.00. Such insurance shall provide for explosion, collapse, and underground coverage and contractual liability coverage and shall hold harmless Landlord, Landlord's general contractors; and Landlord's subcontractors against any and all claims for personal injury, including death resulting therefrom, and damage to the property of others, arising from his operation under the contract whether such operations are performed by contractor or any of their subcontractors or by anyone directly or indirectly employed by any of them.
3. Comprehensive automobile liability insurance, including the ownership, maintenance and operation of any automotive equipment, owned, hired, and non-owned for a combined single limit of not less than \$1,000,000 including bodily injury and property damage.

Such insurance shall cover the contractor against any and all claims for bodily injury, including death resulting therefrom, and damage to the property of others, arising from his operations under the contract, whether such operations are performed by contractor, subcontractors, or any of their employees or by anyone directly or indirectly employed by any of them.

4. Contractor shall obtain certificates of insurance to verify that coverages have been obtained as required by this document for the benefit of both parties hereto and a waiver of subrogation from his insurance company in favor of the Landlord.
5. Contractor shall list the following entities as Additional Insureds:
 1. Bay Plaza Community Center, LLC
 2. Bay Plaza Community Corp.
 3. LaSalle National Bank as trustee for Commercial Mortgage Pass-Through Certificate Series 1995-MDIV
 4. Nomura Asset Securities Corp.
 5. Prestige Bay Plaza Development Corp.
 6. Prestige Properties & Development Co.


- 
7. LaSalle National Bank as Trustee for Commercial Mortgage Pass-Through Certificate Series 1996-C2
6. Contractor shall defend and indemnify Landlord and all additional insureds as checked above and shall hold Landlord and Additional Insureds harmless from and against any and all injuries, losses, claims, actions, damages, liabilities and expenses (including, without limitation, attorneys' fees and expenses) to persons or property arising out of or resulting from the performance of any of Contractor's work or materials provided by Contractor or materialman whether or not attributable to active or passive negligence on the part of Landlord such Landlord's Additional Insureds and whether or not Landlord or such additional insureds participated in any wrong. No approval by Landlord or the Landlord's Architect will excuse or release Contractor from its obligations under this Paragraph 6.



EXHIBIT C

I. GENERAL:

Landlord will, at its expense, incorporate in the construction of the Shopping Center and the Leased Premises the following items in the manner, at the times and according to the specifications established by Landlord at its sole discretion.

- A. Floor Slab: Smooth finish concrete slab.
- B. Interior Walls: All walls enclosing the Leased Premises, taped and spackled drywall.
- C. Doors: Rear door, when so provided, shall be utilized by Tenant for receipt of goods and services and not for customer access.
- D. Electric: Landlord will furnish a junction box, providing 450 amps at 265/460 volts or the equivalent in high tension for electric power to Leased Premises. Tenant shall be responsible for the distribution of the electric service throughout the Leased Premises.
- E. Cooking and HVAC: Landlord will provide natural gas rated for 2,600 MBH for cooking and for the operation of the HVAC system which shall be separately submetered.
- F. Sprinkler System: Landlord will furnish sprinkler source and control valve. Tenant shall be responsible for distribution or Landlord shall, at its discretion, supply a generic sprinkler system provided that Tenant is responsible for any governmental filing requirements.
- G. Storefront: Standard storefront with double glass doors.
- H. Water and Sewer: Water and Sewer shall be stubbed to the rear of the Leased Premises, including a six-inch line for sanitary sewer and a two-and-a-half-inch line for domestic water. Tenant shall be responsible for distribution throughout the Leased Premises.

EXHIBIT D
[Form of SNDA]

EXHIBIT E

FINOVA

FINOVA Capital Corporation
115 West Century Road P.O. Box 907
Paramus, New Jersey 07653
Telephone (201) 634-3300

WAIVER

WHEREAS, the Undersigned is the owner, landlord or mortgagee of the premises known as

No. Street City
County State (the "Premises") which are now occupied,

in whole or in part, by (hereinafter called the "Tenant");
and

WHEREAS, FINOVA Capital Corporation with principal place of business at Dial Tower, Dial Corporate Center, Phoenix, Arizona is the owner of (or intends to obtain a first security interest in) the equipment set forth on the Schedule hereto (hereinafter the "Equipment") which is located on, or may hereafter be delivered to or installed on the Premises.

WHEREAS, the Equipment is the subject of a personal property lease or security agreement between FINOVA and Tenant;

NOW, THEREFORE, to induce FINOVA to enter into the lease or security agreement with Tenant, it is agreed as follows:

1) Undersigned recognizes and acknowledges that any claim or claims that FINOVA has or may hereafter have with respect to the Equipment by virtue of any lease or security agreement, is superior to any lien or claim of any nature which Undersigned now has or may hereafter have in the Equipment by statute, agreement or otherwise.

2) In the event of default by Tenant in the payment of any indebtedness to FINOVA, or in the performance of any of the terms and conditions of any lease or security agreement, or any extension or renewal thereof, FINOVA may remove the Equipment or any part thereof from the Premises, in accordance with the terms and conditions of such lease or security agreement; *

3) The Equipment may be affixed to the said real estate but shall remain personal property notwithstanding the manner in which it is affixed.

**

5-4) This Agreement shall be binding upon the heirs, personal representatives, successors, and assigns of the Undersigned and FINOVA.

Signed and sealed this ___ day of _____, 199_.

(Owner, Landlord or Mortgagee)

By (If Corporation, officer's name and title)

Address

Address

Phone Number

* provided that prior to any such removal, FINOVA shall give Landlord at least 10 days' prior notice and shall repair, at its sole cost and expense, any and all damages caused to the Leased Premises occasioned by such removal.

** 4) All notices given pursuant to this Agreement shall be in writing and sent by registered or certified mail, return receipt requested, to the parties at their respective addresses set forth herein or at such other address as a party may give by notice in accordance with the terms of this paragraph.

(FOR INDIVIDUAL LANDLORD)

STATE OF

)

)

)SS:

)

COUNTY

On the _____ day of _____, 199-, before me personally came _____ to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he/she executed the same.

(seal)

Notary Public

(FOR CORPORATE LANDLORD)

STATE OF

)

)

)SS:

)

COUNTY

On the _____ day of _____, 199-, before me personally came _____ to me known, who being by me duly sworn, did expose and say that he/she resides in _____ and that he/she is the _____ of _____, the corporation described in and which executed the foregoing instrument, that he/she knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he/she signed his/her name thereto, by like order.

(seal)

Notary Public



SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

This AGREEMENT is made and entered into as of _____, 19____, by and among LASALLE NATIONAL BANK, AS TRUSTEE FOR THE COMMERCIAL MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 1996-MDV. ("Lender"), _____ ("Landlord") and _____ ("Tenant").

1. RECITALS.

1.1 Mortgage. Lender is the holder of a Promissory Note dated _____, 19____, in the original principal amount of \$_____ of Landlord, which is secured, *inter alia*, by a Mortgage and Security Agreement (the "Mortgage") and Assignment of Lease and Rents (the "Lease Assignment") covering premises more particularly described in the Mortgage (the "Premises").

1.2 Lease. Landlord and Tenant entered into a Lease dated _____, 19____, (the "Lease"), whereby Landlord demised to Tenant a portion of the Premises (the "Demised Premises").

2. CONSIDERATION. The terms of the Lease constitute a material inducement to Lender's consent thereto and entering into and performing this Agreement.

3. SUBORDINATION OF THE LEASE. This Lease shall be and is hereby made subject and subordinate to the Mortgage.

4. NON-DISTURBANCE. Lender shall not, in the exercise of any right, remedy, or privilege granted by the Mortgage or the Lease Assignment, or otherwise available to Lender at law or in equity, disturb Tenant's possession under the Lease so long as:

(a) Tenant is not in default under any provision of the Lease or this Agreement at the time Lender exercises any such right, remedy or privilege; and

(b) The Lease at that time is in force and effect according to its original terms, or with such amendments or modifications as Lender shall have approved, if such approval is required by the terms of the Mortgage or the Lease Assignment; and

(c) Tenant thereafter continues to fully and punctually perform all of its obligations under the Lease without default thereunder beyond any applicable cure period; and

(d) Tenant attorns to or at the direction of Lender, as provided in Paragraph 5.

Without limiting the foregoing, and so long as the foregoing conditions are met, Lender agrees that (i) Tenant will not be named as a party to any foreclosure or other proceeding instituted by Lender to enforce the terms of the Mortgage or the Lease

Assignment; (ii) any sale or other transfer of the Demised Premises or of the Landlord's interest in the Lease, pursuant to foreclosure or any voluntary conveyance or other proceeding in lieu of foreclosure, will be subject and subordinate to Tenant's possession under the Lease; and (iii) the Lease will continue in force and effect according to its original terms, or with such amendments as Lender shall have approved, if such approval is required by the terms and conditions of the Mortgage or the Lease Assignment.

5. ATTORNNMENT. Tenant shall attorn to Lender, to any receiver or similar official for the Demised Premises appointed at the instance and request, or with the consent, of Lender and to any person who acquires the Demised Premises, or the Landlord's interest in the Lease, or both, pursuant to Lender's exercise of any right, remedy or privilege granted by the Mortgage, or otherwise at law or in equity. Without limitation, Tenant shall attorn to any person or entity that acquired the Demised Premises pursuant to foreclosure of the Mortgage, or by any proceeding or voluntary conveyance in lieu of such foreclosure, or from Lender, whether by sale, exchange or otherwise. Any attornment to anyone other than Lender shall be conditioned upon Tenant receiving a non-disturbance from such entity.

Upon any attornment under this Paragraph 5, the Lease shall continue in full force and effect as a direct lease between Tenant and the person or entity to whom Tenant attorns, except that such person or entity shall not be:

- (i) liable for any breach, act or omission of any prior landlord; or
- (ii) subject to any offsets, claims or defenses which Tenant might have against any prior landlord; or
- (iii) bound by any rent or additional rent or other payment in lieu of rent which Tenant might have paid to any prior landlord more than 30 days in advance of its due date under the Lease or which such person or entity has physical possession of; or
- (iv) bound by any amendment or modification of the Lease made without Lender's written consent, where such consent is required by the Mortgage; or
- (v) bound by any notice given by Tenant to Landlord, whether or not such notice is given pursuant to the terms of the Lease, unless a copy thereof was then also given to Lender; or
- (vi) be liable for any security deposit or other sums held by any prior landlord, unless actually received.

The person or entity to whom Tenant attorns shall be liable to Tenant under the Lease only during such person or entity's period of ownership, and such liability shall not continue or survive as to the transferor after a transfer by such person or entity of its interest in the Lease and the Demised Premises.

6. REPRESENTATIONS AND WARRANTIES.

6.1 Joint and Several. Landlord and Tenant hereby jointly and severally represent and warrant to Lender as follows regarding the Lease:

(a) A true and correct copy of the Lease (inclusive of all riders and exhibits thereto) is attached to the counterpart of this Agreement being delivered to Lender. There are no other oral or written agreements, understandings or the like between Landlord and Tenant relating to the Demised Premises or the Lease transaction.

(b) Tenant has accepted possession of the Demised Premises, is in occupancy thereof under the Lease, and the term commenced on _____, 19 ____.

(c) Under the Lease, Tenant is presently obligated to pay rent without present right of defense or offset, at the rate of \$ _____ per month. Rent is paid through and including _____, 19 _____. No rent has been paid more than 30 days in advance, and Tenant has no claim against the Landlord for any deposits or other sums.

(d) The Lease has not been modified, altered or amended in any respect.

(e) All of the improvements contemplated by the Lease have been entirely completed as required therein.

(f) The addresses for notices to be sent to Tenant and Landlord are as set forth in the Lease.

(g) To Tenant's knowledge, Tenant has no right of first refusal, option or other right to purchase the Premises or any part thereof, including, without limitation, the Demised Premises.

6.2 Several. Landlord and Tenant severally represent and warrant to Lender with respect to themselves, but not with respect to the other:

(a) The execution of the Lease was duly authorized, the Lease was properly executed and is in full force and effect and is valid, binding and enforceable against Tenant and Landlord and there exists no default, nor state of facts which with notice, the passage of time, or both, could ripen into a default, on the part of either Tenant or Landlord.

(b) There has not been filed by or against nor, to the best of the knowledge and belief of the representing party, is there threatened against or contemplated by, Landlord or Tenant, a petition in bankruptcy, voluntary or otherwise, any assignment for the benefit of creditors, any petition seeking reorganization or arrangement under the bankruptcy laws of the United States or of any state thereof, or any other action brought under said bankruptcy laws,

(c) There has not been any assignment, hypothecation or pledge of the Lease or rents accruing under the Lease, other than pursuant to the Mortgage and the Lease Assignment. Tenant makes the representation set forth in this subparagraph only to its best knowledge and belief.

7. RENTS. Landlord and Tenant jointly and severally acknowledge that the Lease Assignment provides for the direct payment to Lender of all rents and other monies due and to become due to Landlord under the Lease upon the occurrence of certain conditions as set forth in the Lease Assignment without Lender's taking possession of the Demised Premises or otherwise assuming Landlord's position or any of Landlord's obligations under the Lease. Upon receipt from Lender of written notice to pay all such rents and other monies to or at the direction of Lender, Landlord authorizes and directs Tenant thereafter to make all such payments to or at the direction of Lender, releases Tenant of any and all liability to Landlord for any and all payment so made, and shall defend, indemnify and hold Tenant harmless from and against any and all claims, demands, losses, or liabilities asserted by, through or under Landlord (except by Lender) for any and all payments so made. Upon receipt of such notice, Tenant thereafter shall pay all monies then due and becoming due from Tenant under the Lease to or at the direction of Lender, notwithstanding any provision of the Lease to the contrary. Tenant agrees that neither Lender's demanding or receiving any such payments, nor Lender's exercising any other right, remedy, privilege, power or immunity granted by the Mortgage or the Lease Assignment, will operate to impose any liability upon Lender for performance of any obligation of Landlord under the Lease unless and until Lender elects otherwise in writing. Such payments shall continue until Lender directs Tenant otherwise in writing.

Tenant agrees not to pay any rent under the Lease more than 30 days in advance without Lender's consent. The provisions of this Paragraph 7 will apply from time to time throughout the term of the Lease.

8. CURE. If Tenant becomes entitled to terminate the Lease or offset, withhold or abate rents because of any default by Landlord, then Tenant shall give Lender written notice specifying Landlord's default. Lender then shall have the right, but not the obligation, to cure the specified default within the following time periods:

(a) Fifteen days after receipt of such notice with respect to defaults that can be cured by the payment of money; or

(b) Thirty days after receipt of such notice with respect to any other default; unless the cure requires Lender to obtain possession of the Demised Premises, in which case such thirty day period shall not commence until Lender acquires possession, so long as Lender proceeds promptly to acquire possession of the Demised Premises with due diligence, by foreclosure of the Mortgage or otherwise.

Nothing contained in this Paragraph 8 shall require Lender to commence or continue any foreclosure or other proceedings, or, if Lender acquires possession of the Demised Premises, to continue such possession, if all defaults specified by Tenant in its notice are cured. Possession by a receiver, or other similar official appointed at the instance,



or with the consent, of Lender shall constitute possession by Lender for all purposes under this Paragraph 8.

9. ESTOPPEL LETTERS. Whenever reasonably requested by Lender, Landlord and Tenant from time to time shall severally execute and deliver to or at the direction of Lender, and without charge to Lender, one or more written certifications of all of the matters as set forth in Paragraph 6, whether Tenant has exercised any renewal option or options and any other information the Lender may reasonably require to confirm the current status of the Lease, including, without limitation, a confirmation that the Lease is and remains subordinated as provided in this Agreement.

10. CASUALTY AND EMINENT DOMAIN. Landlord and Tenant jointly and severally agree that the Mortgage permits Lender, at its option, to apply to the indebtedness from time to time secured by the Mortgage any and all insurance proceeds payable with respect to any casualty loss at the Demised Premises and any and all awards or other compensation that may be payable for the condemnation of all or any portion of the Demised Premises, or any interest therein, or by way of negotiated settlement or conveyance in lieu of condemnation; and Landlord and Tenant jointly and severally consent to any such application by Lender. Notwithstanding the foregoing, Landlord and Lender agree that any and all insurance or condemnation proceeds payable with respect to Tenant's property or the interruption or relocation of Tenant's business (except for rental loss insurance proceeds) will be paid to Tenant, so long as they do not reduce the proceeds otherwise payable to Lender.

11. NOTICES. All notices, demands, and other communications that must or may be given or made in connection with this Agreement must be in writing and, unless receipt is expressly required, will be deemed delivered or made 5 days after having been mailed by registered or certified mail, return receipt requested, or by express mail, in any event with sufficient postage affixed, and addressed to the parties as follows:

TO LENDER:

c/o AMRESKO Management, Inc.
235 Peachtree Street, N.E.
Suite 900
Atlanta, Georgia 30303
Attn.: Private Sector Servicing

TO LANDLORD:

TO TENANT:

Such addresses may be changed by notice pursuant to this Paragraph 11; but notice of change of address is effective only upon receipt. Landlord and Tenant jointly and severally agree that they will furnish Lender with copies of all notices relating to the Lease. All communications to Lender shall reference "AMRESKO Loan No.: _____."

12. SUCCESSORS AND ASSIGNS. As used in this Agreement, the word "Tenant" shall mean Tenant and any subsequent holder or holders of an interest under the Lease, as the text may require, provided that the interest of such holder is acquired in accordance with the terms and provisions of the Lease and the word "Lender" shall mean Lender or any other subsequent holder or holders of the Mortgage or any party acquiring title to the Demised Premises by purchase at a foreclosure sale, by deed of the Lender, or otherwise. Subject to the foregoing, this Agreement shall bind and inure to the benefit of Landlord, Tenant and Lender, their legal representatives, successors and assigns. The terms Lease, Mortgage and Lease Assignment shall include any and all amendments, modifications, replacements, substitutions, extensions, renewals and supplements thereto.

13. FURTHER ASSURANCES. Landlord and Tenant from time to time shall execute and deliver at Lender's request all instruments that may be necessary or appropriate to evidence their agreement hereunder provided such instrument neither increases Tenant's obligations or decreases its rights under the Lease.

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

15. SEVERABILITY. A determination that any provision of this Agreement is unenforceable or invalid shall not affect the enforceability or validity of any other provision, and any determination that the application of any provision of this Agreement to any person or to any person or to particular circumstances is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to other persons or circumstances.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

LENDER:

**LASALLE NATIONAL BANK, AS TRUSTEE
FOR COMMERCIAL MORTGAGE PASS-
THROUGH CERTIFICATES, SERIES 1996-
MDV**

By: **AMRESKO Services, L.P.,
its authorized agent**

By: **AMRESKO Mortgage Capital, Inc.,
Its general partner**

By: _____

Printed Name: _____

Title: _____

LANDLORD:

By: _____

Name: _____

Title: _____

TENANT:

By: _____

Name: _____

Title: _____



EXHIBIT C

signed copy

June 16, 2008

Bay Plaza Shopping Center
2100 Bartow Avenue
Bronx NY 10475

Attention: Mr. David Malanga

Reference: Janitorial Services for: 2100 Bartow Avenue, Bronx NY 10475

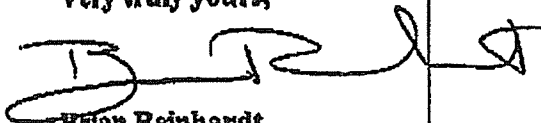
Dear Mr. Malanga,

Accolade Building Maintenance Corp. is pleased to submit the attached proposal for the janitorial services for your building located at 2100 Bartow Avenue.

We are confident this proposal will meet every aspect of your cleaning requirements and that Accolade will maintain the building to your complete satisfaction.

Thank you for the courtesies extended to us!

Very truly yours,



Brian Reinhardt
Chief Operations Officer
Accolade Building Maintenance Corporation

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PROPOSED SPECIFICATION

2100 Bartow Avenue
Bronx NY 10475

Accolade Building Maintenance will provide janitorial and related services for your building located at, 2100 Bartow Avenue by performing services Monday through Saturday, five (5) days per week during the hours of 6:00 PM till 11:00 PM and Saturday evening for public areas only holidays excluded.

- New Years Day
- Presidents Day
- Memorial Day
- 4th of July
- Labor Day
- Thanksgiving Day
- Christmas Day



2100 Bartow Avenue Cleaning Specifications

A. LOBBY, HALLWAYS, AND COMMON AREAS

1. Tile floors to be swept and mopped daily.
2. Glass doors to be cleaned, including frames.
3. Edges and ledges in lobby to be dusted.
4. Handrails to be dusted and cleaned.
5. Elevators to be cleaned inside and outside daily. All metal to be polished.
6. Steps to be swept and mopped.
7. All carpet, carpeted runners and mats to be swept and vacuumed daily.
8. Entrance area to be thoroughly cleaned, including outside the doors.
9. All doors, doorframes, light switches and walls to be spot cleaned (finger prints, smudges, and dust).
10. Thoroughly clean and disinfect, water dispensers and drinking fountains.
11. Glass rail on 2nd/3rd floor to be cleaned.

B. OFFICE AREAS

1. Furniture and work stations to be hand dusted and cleaned with specially treated dust cloths.
2. All shelving, counters, windowsills, and file cabinets to be dusted.
3. Computers, calculators, and fax machines to be hand dusted.
4. Thoroughly clean and disinfect telephones.
5. Thoroughly clean and disinfect water dispensers and drinking fountains.
6. All chrome and metal surfaces to be cleaned and polished.



7. Empty and clean all waste paper baskets. Waste materials to be removed as directed to a designated area. Waste baskets to be washed and disinfected as necessary and a new poly liner to be inserted.
8. Properly arrange all office furniture.
9. Vacuum carpeting as needed.
10. Copy rooms and pantries to be swept and mopped, and counters wiped.
11. All door, doorframes, light switches, and walls to be spot cleaned (finger prints, smudges, and dust).

C. EMPLOYEE KITCHEN/LUNCH ROOM/LOCKER ROOM

1. Damp wipe tabletops.
2. Dust mop and wet mop floors using a germicidal cleaner.
3. Exterior of refrigerator and cabinets to be dusted and spot cleaned daily.
4. All counter tops to be washed and sanitized.
5. Walls to be spot cleaned.
6. Remove trash, clean trash receptacle exterior and interior, and change liners necessary.
7. Paper towels dispensers to be filled.
8. Soap dispensers to be cleaned and refilled.
9. Clean inside microwave ovens.

D. LAVATORIES

1. Lavatories to be thoroughly cleaned and sanitized including stalls and walls.
2. Toilet tissue, paper towels, soap dispensers, sanitary napkins dispensers, and toilet seat cover dispensers to be checked and refilled as necessary.
3. Floors swept, washed, and disinfected.
4. Ceramic and vitreous tile floor to be swept, mopped, and disinfected.
5. Ceramic and vitreous tile walls to be damp wiped and disinfected.

Q.L.

6. Mirrors and glass surfaces to be cleaned and polished.
7. Sinks and faucets to be cleaned, disinfected, and polished.
8. Toilet bowls and urinals, including sides and underneath areas to be scrubbed clean and disinfected.
9. All counters, metal surfaces, handrails, and dispensers to be cleaned and polished.
10. Waste containers and sanitary napkins disposals to be emptied, disinfected, and placed into designated area.

E. PERIODIC CLEANING

1. Vacuum all upholstered furniture.
2. Wax and buff copy rooms, cafeteria, pantries, and locker room floor.
3. High dusting of hanging TVs.
4. Dust HVAC diffusers.

Note: All cleaning supplies and all paper goods to be supplied by customer.



Accolade Building Maintenance will furnish all labor, supervision, material and equipment, insurance, including Social Security, Public Liability, Property Damage, Workmen's Compensation and New York State Disability and Unemployment Insurances.

All work will be performed in a thorough and Workmanlike manner by competent, trained workers, insured and supervised by highly trained personnel.

Upon completion of cleaning each night, all lights will be closed, offices secured and alarm set. Any irregularities will be reported to David Malanga.

Bay Plaza Shopping Center will not employ an Accolade employee any time during the contract period, or within one (1) year of termination of said contract.

Providing that the foregoing is satisfactory, this proposal shall become a contract when signed below in the space provided for signature, with an effective date and one executed copy of this agreement returned to Accolade.

This contract shall run continually in force for an indefinite period, but may be terminated at any time upon thirty (30) days written notice by either party to the other specifying an intention to cancel this agreement. Customer agrees to pay any legal expenses incurred by Accolade Building Maintenance in the collection of monies due

AGREED TO : ACCOLADE BUILDING MAINTENANCE CORP.

Signature:

[Handwritten Signature]

Title:

COO

Date:

6/30/08

AGREED TO: BAY PLAZA SHOPPING CENTER

Signature:

[Handwritten Signature]

Title:

Property Manager

Date:

6/30/08

EFFECTIVE DATE OF SERVICE:

Date:

6/30/08



AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
 :
 COUNTY OF NEW YORK)
 SS.:

BRIANA GREENIDGE, being duly sworn, deposes and says:

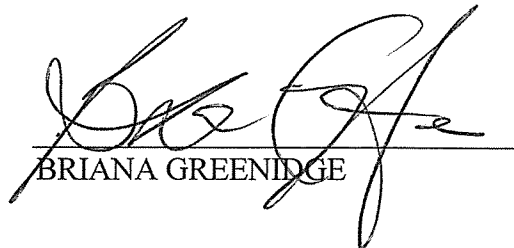
That I am not a party to their action, and am over 18 years of age.

On the 24th day of March, 2016, I served the within **SUPPLEMENTAL RESPONSE TO COURT ORDER OF NOVEMBER 24, 2015** upon the attorneys whose name(s) and address(es) are set forth below, by enclosing a true copy thereof in a securely sealed envelope/container, with proper postage, addressed to their respective office(s), and by depositing the same in an official box of the U.S. Post Office regularly maintained by the United States Government at 12 East 41st Street, New York, New York 10017.

TO: KRAVET, HOEFER & MAHER, P.C.
Attorneys for Plaintiff
JACKELINE MONTOYA
1135A Morris Park Avenue, Suite 202
Bronx, New York 10461
(718) 931-3131

FUREY, FUREY, LEVERAGE, MANZIONE,
WILLIAMS & DARLINGTON, P.C.
Attorneys for Defendant
ACCOLADE BUILDING MAINTENANCE CORP.
600 Front Street
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File: 7024

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BRIANA GREENIDGE

Sworn to before me this
24th day of March, 2016.

Notary Public

in file 82-459 motions, discovery, notices etc/supp resp to ct order.doc

