**Office Use Only:**

Date Pmt Rec'd: _____ Fee Paid: \$ _____ Check No: _____
Police Department approval issued ☐ Notes: _____
Meets applicable zoning bylaws ☐ _____
Certificate of Occupancy issued ☐ _____
Board of Health Permits issued ☐ _____
Board of Selectmen Decision Date _____
Approved ☐ Denied ☐

TOWN OF NATICK

COMMON VICTUALER LICENSE APPLICATION

(Type or print clearly; illegible applications will not be accepted)

For Calendar Year: 2019

Date Submitted: 12/4/18

Fee: \$75.00



New



Renewal

The undersigned hereby applies for a Common Victualer License in accordance with the provisions of the Statutes relating thereto:



Common Victualer License Only



Common Victualer with Liquor License

Name of Person, Firm, or Corporation Making Application:

MASS 5G LLC

Name of Establishment (d/b/a) Five Guys Burgers & Fries

Address of Establishment 211 North Main St. Natick, MA 01760

Mailing address (if different from establishment) P.O. Box 439 Magna, UT 84044

Contact Person (to whom **ALL** licensing information will be sent, **including renewal notice and license**)

Baylee Lalumia

Email Address baylee.hmc@gmail Phone 801-971-0726

Manager of Establishment Jason Nance

Email Address jnance.5guys@gmail Phone 559-201-7880

If Business is a Corporation, Corporate Name and Officers _____

If Business is an LLC, List of Members Jason Nance, Mike Cummings, Jeff Howes

Establishment's Days and Hours of Operation Mon-Sun. 11AM-10PM

Number of Staff 25

Number of Seats 70

Has a Certificate of Occupancy been issued? yes

If not, expected date of issuance _____

Have Board of Health Permits been issued ? No

If not, expected date of issuance Jan. 1, 2019

Additional Information Requested by the Town of Natick Police Department for Background Check

Applicant's Social Security Number or Employee I.D. Number _____

Date of Birth 6/28/81

I, the Undersigned, state that the information provided in this application, and associated attachments, is true and accurate to the best of my knowledge.

Tax Attestation: Furthermore, Pursuant to MGL Ch. 62C, Sec 49A, I certify under the penalties of perjury that I, to the best of my knowledge and belief, have filed all state tax returns and paid all state taxes required under law.

Signature of Applicant Jason Nance

Date 12/4/18

By Corporate Officer _____
(If applicable)

Date _____

Please print and submit completed application and all required supporting materials as listed below to the Board of Selectmen's Office (508-647-6410), Natick Town Hall, 13 East Central Street, Natick, MA 01760. See additional important licensing information on the Town website at natickma.gov: click on Government, then on Board of Selectmen, then on Grants, Licenses & Permits. Contact the Community & Economic Development Office (508-647-6450) and the Board of Health (508-647-6460), both located on the second floor of Town Hall, and the Town Clerk's Office (508-647-6430), located on the first floor of Town Hall, regarding any other zoning regulations, building requirements, permits, etc. pertaining to your application for a common victualer's license. A common victualer's license, if approved, will be issued only if all zoning regulations are met and a Certificate of Occupancy and Board of Health permits are issued.

Required documents:

1. Proof of Workers Compensation Insurance (if applicable)
2. Workers' Compensation Insurance Affidavit
3. Set of floor plans and site plan*** (If renewing a license and changes have been made to the premises in the previous 12 months, a revised set of floor plans and site plan must be submitted)
4. List of equipment and estimated cost***
5. Copy of Bill of Sale or Lease Agreement***
6. If a Corporation, a copy of Articles of Organization; if an LLC, a copy of the Membership Agreement and list of members***
7. \$75.00 Application fee (checks made payable to the Town of Natick)

*** New Applicants Only (see exception for item #3)



Utah Department of Commerce
Division of Corporations & Commercial Code
160 East 300 South, 2nd Floor, S.M. Box 146705
Salt Lake City, UT 84114-6705
Phone: (801) 530-4849
Toll Free: (877)526-3994 Utah Residents
Fax: (801) 530-6438
Web Site: <http://www.commerce.utah.gov>

Registration Number: 11019082-0160
Business Name: MASS 5G LLC
Registered Date: OCTOBER 9, 2018

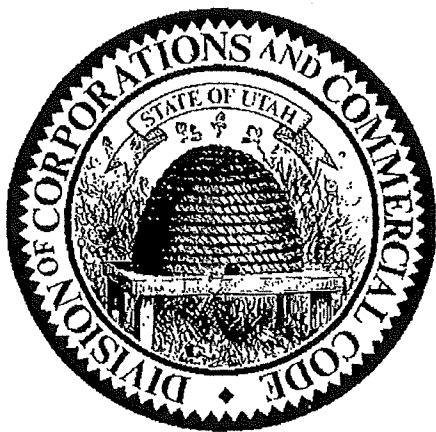
November 2, 2018

CERTIFIED COPY OF CERTIFICATE OF ORGANIZATION

THE UTAH DIVISION OF CORPORATIONS AND COMMERCIAL CODE ("DIVISION") HEREBY CERTIFIES THAT THE ATTACHED IS TRUE, CORRECT, AND COMPLETE COPY OF THE CERTIFICATE OF ORGANIZATION OF

MASS 5G LLC

AS APPEARS OF RECORD IN THE OFFICE OF THE DIVISION.



Jason Sterzer
Director
Division of Corporations and Commercial Code

Div. of Professional Licensing
(801)530-6628

Real Estate
(801)530-6747

Public Utilities
(801)530-6651

Securities
(801)530-6600

Consumer Protection
(801)530-6601

10/09/18
7522675
\$70.00

CERTIFICATE OF ORGANIZATION

OF

MASS 5G LLC

RECEIVED

OCT 09 2018

Utah Div. of Corp. & Comm. Code



The undersigned, acting pursuant to the Utah Revised Uniform Limited Liability Company Act, adopts the following Certificate of Organization for the purpose of organizing a Utah limited liability company (the "Company"):

FIRST: The Company's name is:

MASS 5G LLC

SECOND: The address of the initial principal office of the Company is:

125 West Burton Ave, Ste 2, Salt Lake City, Utah 84115

THIRD: The name and address of its initial registered agent are:

Jeff Howes

125 West Burton Ave, Ste 2, Salt Lake City, Utah 84115

IN WITNESS WHEREOF, the undersigned organizer and initial registered agent of MASS 5G LLC, has executed this Certificate of Organization as of this 10th day of October, 2018.

Jeff Howes

Organizer and Registered Agent

State of Utah
Department of Commerce
Division of Corporations and Commercial Code
I hereby certify that the foregoing has been filed
and approved on this 9 day of Oct 2018
in this office of this Division and hereby issued
This Certificate thereof.

Examiner

LM

Date

10/15/18



Examiner

11019082-0160

Name and home address of Owners

Jason Nance –

Jeff Howes –

Mike Cummin



QUOTE PROPOSAL

PREPARED FOR:

WESTERN FG MA LLC**dba 5 GUYS**

301 COCHITUATE RD · FRAMINGHAM, MA 01701-4631

COVERAGE	QUOTE NUMBER	QUOTE DATE	EFFECTIVE DATE
WORKERS' COMPENSATION	25023	10/01/2018	10/15/2018 - 10/15/2019

AXCESS INSURANCE GROUP LLC

940 NORTH 400 EAST STE 1
NORTH SALT LAKE, UT 84054

About Chubb

Chubb is the world's largest publicly traded property and casualty insurer. With operations in 54 countries, Chubb provides commercial and personal property and casualty insurance, personal accident and supplemental health insurance, reinsurance, and life insurance to a diverse group of clients. We combine the precision of craftsmanship with decades of experience to conceive, craft, and deliver the very best insurance coverage and service.

Premium Summary

Coverage	Quoted Premium
Workers' Compensation	\$50,393.00
Total Quoted Premium	\$50,393.00

We are pleased to offer the attached quote; which will remain **valid for 60 days** from the quote date.

If between the date of this Quote and the Effective Date of the policy there is a significant adverse change in the condition of this Applicant, or an occurrence of an event, or other circumstances which could substantially change the underwriting evaluation of the Applicant, then, at the Insurer's option, this quotation may be withdrawn by written or electronic notice thereof to Applicant. The Insurer also reserves the right to modify the final terms and conditions upon review of the completed application and any other information requested by the underwriter herein. If such material change in the risk is discovered after binding, the insurance coverage will be void ab initio ("from the beginning").

FATCA COMPLIANCE

The U.S. Foreign Account Tax Compliance Act, commonly known as "FATCA", became the law in the U.S. in March of 2010 and becomes effective July 1, 2014. Pursuant to FATCA, brokers, producers, agents and/or clients may need to obtain withholding certificates from insurance companies. For information on how to obtain the applicable withholding certificate from Chubb U.S. insurance companies, please go to the following web site: <http://www2.chubb.com/us-en/u-s-foreign-account-tax-compliance-act-fatca.aspx>.

Dear Western FG MA LLC,

Chubb Small Commercial Insurance leverages superior underwriting expertise and world renowned claims and account services to offer solutions for small businesses. At Chubb, we recognize that every small business is unique. That is why we crafted a customizable suite of state-of-the-art insurance products to fit your needs.

I would like to personally thank you for placing your business with Chubb. We understand that small business owners like you work hard every day to better serve your customers and we share your commitment to hard work and customer service. Above all, you can rely on our exceptional claims service and financial strength to be there when you need us most.

Again, thank you for selecting Chubb to protect your business.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jim Williamson', with a stylized flourish at the end.

Jim Williamson
Division President
Chubb Small Commercial Insurance

Workers' Compensation**Quote Number:** 25023**Quote Date:** 10/01/2018**Account:** Western FG MA LLC**Agent:** AXCESS INSURANCE GROUP LLC**Producer Code:** 0008806-00017**Writing Company:** Federal Insurance Company**Effective Date:** 10/15/2018 - 10/15/2019

Workers' Compensation Premium	\$47,062.00
Terrorism	\$1,444.00
Surcharges / Assessments / Taxes	\$1,887.00
Total Quoted Premium	\$50,393.00

Total Account Payroll: \$4,796,400*Premium is based on estimated payroll and subject to annual audit.***Workers' Compensation****States Covered:** MA

Coverage	Limit of Insurance
Coverage A - Workers' Compensation	Statutory
Coverage B - Employer's Liability	
Bodily Injury by Accident	\$1,000,000 each accident
Bodily Injury by Disease	\$1,000,000 policy limit
Bodily Injury by Disease	\$1,000,000 each employee
Coverage C - Other States Except: ND, OH, WA, WY	

Location Rating Details

States Covered: MA (owners / officers excluded)

Location #1 - 301 Cochituate Rd, Framingham, MA 01701-4631

Class Code	Description	Rate	Premium Basis (Rate per \$100 of Exposure)	Class Premium
9079	Restaurant Noc	\$1.03	295,200	\$3,041

Location #10 - 1030 Main Street Ste 1, Waltham, MA 02451

Class Code	Description	Rate	Premium Basis (Rate per \$100 of Exposure)	Class Premium
9079	Restaurant Noc	\$1.03	295,200	\$3,041

Location #11 - 215 Needham St, Newton, MA 02464

Class Code	Description	Rate	Premium Basis (Rate per \$100 of Exposure)	Class Premium
9079	Restaurant Noc	\$1.03	295,200	\$3,041

Location #12 - 90 Drum Hill Rd, Chelmsford, MA 01824

Class Code	Description	Rate	Premium Basis (Rate per \$100 of Exposure)	Class Premium
9079	Restaurant Noc	\$1.03	295,200	\$3,041

Location #13 - 26 Galaxy Pass Unit C, Sutton, MA 01590

Class Code	Description	Rate	Premium Basis (Rate per \$100 of Exposure)	Class Premium
9079	Restaurant Noc	\$1.03	295,200	\$3,041

Location #2 - 197 Boston Post Rd, Marlborough, MA 01752

Class Code	Description	Rate	Premium Basis (Rate per \$100 of Exposure)	Class Premium
9079	Restaurant Noc	\$1.03	295,200	\$3,041

Location #3 - 65 Station Lndg, 501 Fellsway, Medford, MA 02155

Class Code	Description	Rate	Premium Basis (Rate per \$100 of Exposure)	Class Premium
9079	Restaurant Noc	\$1.03	295,200	\$3,041

Location #4 - 211-213 N Main St, Natick, MA 01760

Class Code	Description	Rate	Premium Basis (Rate per \$100 of Exposure)	Class Premium
9079	Restaurant Noc	\$1.03	1,254,000	\$12,916

Location #5 - 20-7 Boston Tpke, Shrewsbury, MA 01545

Class Code	Description	Rate	Premium Basis (Rate per \$100 of Exposure)	Class Premium
9079	Restaurant Noc	\$1.03	295,200	\$3,041

Location #6 - 525 Lincoln St Ste 3, Worcester, MA 01605

Class Code	Description	Rate	Premium Basis (Rate per \$100 of Exposure)	Class Premium
9079	Restaurant Noc	\$1.03	295,200	\$3,041

Location #7 - 67 N Main St, Stoneham, MA 02180

Class Code	Description	Rate	Premium Basis (Rate per \$100 of Exposure)	Class Premium
9079	Restaurant Noc	\$1.03	295,200	\$3,041

Location #8 - 43 Middlesex Tpke, Burlington, MA 01803

Class Code	Description	Rate	Premium Basis (Rate per \$100 of Exposure)	Class Premium
9079	Restaurant Noc	\$1.03	295,200	\$3,041

Location #9 - 10 Cornerstone Sq, Westford, MA 01886

Class Code	Description	Rate	Premium Basis (Rate per \$100 of Exposure)	Class Premium
9079	Restaurant Noc	\$1.03	295,200	\$3,041

Total Class Premium			49,408
Blanket Waiver	(Basis: 49,408)		0
Increase Limits (.02)	(Basis: 49,408)		990
Total Subject Premium			50,398
Standard Total Premium			50,398
Premium Discount (-.073)	(Basis: 50,398)		-3,674
Expense Constant			338
Terrorism (.03 per \$100 of Payroll)	(Basis: 4,796,400)		1,444
Total Estimated Premium			48,506
MA DIA Assessment (.0383)	(Basis: 49,408)		1,887
Total State Premium			50,393

Conditions

The state in which this policy is issued may require that we advise you that if available, the following condition is added to your policy:

- All references in the policy to "spouse" include a party to a civil union or domestic partnership recognized under the applicable law of the jurisdiction having authority.

Please be advised that Chubb may be required to include independent contractors/subcontractors cost in the determination of premium unless there is valid proof of workers' compensation insurance for the independent contractors / subcontractors.

Premiums shown are estimates and subject to the final rates, premium discounts and other modifications at the time of policy issuance.

Underwriting Notes

Workers' compensation policies are subject to a payroll audit as stipulated in the policy. If you do not allow us to conduct an audit or are otherwise uncooperative or noncompliant during the audit process, we have the right to complete the audit by applying an approved noncompliance charge, where permissible. The noncompliance charge, which varies depending on applicable state law, could result in a charge up to a maximum of 300% of the estimated annual premium.

Coverage Forms

Workers' Compensation

Form Number	Edition	Title
08 02 0109	0484	WORK COMP POLICY COVER PAGE
08 02 0259	0104	COMPLIANCE W/ APPLICABLE TRADE SANCTIONS
08 02 0261	0312	CIVIL UNIONS OR DOMESTIC PARTNERSHIPS
08 10 0239	1003	CONFIDENTIAL REQUEST FOR OWNERSHIP
99 10 0723	0115	QUOTE LETTER
99 10 0792	0904	IMPORTANT NOTICE TO POLICYHOLDERS-OFAC
99 10 0872	0607	AOD POLICYHOLDER
WC 00 00 01A	0588	SCHEDULE OF NAMES & LOCATIONS
WC 00 00 00C	0115	WORKERS COMPENSATION AND EMPLOYERS LIAB
WC 00 00 01A	0588	INFORMATION PAGE WC AND EMPL LIABIL POL
WC 00 00 01A	0588	WC CLASSIFICATION SCHEDULE
WC 00 03 08	0484	PARTNERS, OFFICERS, AND OTHERS EXCL ENDT
WC 00 03 13	0484	WAIVER OF OUR RIGHT TO RECOVER
WC 00 04 06 A	0795	PREMIUM DISCOUNT ENDT
WC 00 04 14	0790	NOTIFICATION OF CHANGE IN OWNERSHIP ENDT
WC 00 04 22 B	0115	TERRORISM RISK PGM REAUTH ACT DISCL ENDT
WC 20 03 01	0484	MA LIMITS OF LIABILITY ENDT
WC 20 03 02 A	0908	MA ASSESSMENT CHARGE
WC 20 03 03 D	0810	MA NOTICE TO POLICYHOLDER ENDT
WC 20 04 05	0601	MA PREMIUM DUE DATE ENDT
WC 20 06 01 A	0708	MA CANCELLATION ENDT
WC99 03 19G	1016	CHUBB GROUP US PRIVACY NOTICE

Installment Plan Options			
Full Pay	2-Pay	4-Pay	10-Pay
100% in 1 payment	60% in 1 payment	40% in 1 payment	25.3% in 1 payment
	40% 1 additional payment in month 7	20% 3 additional payments in months 3, 5, and 7	8.3% 9 additional payments in months 2 through 10

Notes:

1. After your initial payment, each additional payment is assessed a \$10 fee.
2. For customers living in Florida and West Virginia, each additional payment is assessed a \$3 fee only.
3. Accounts with premium amounts under \$1,000 are not eligible for 10-pay.
4. For policies that are issued within 22 days of the effective date, your customer's 10-pay plan will likely be invoiced for the first two payments.

Payment Types

- Accepted credit cards: American Express, Discover, Mastercard, and Visa
- Electronic funds transfer (EFT)
- Debit card
- Check

Payment Options

Chubb Commercial Client Center - Within the Client Center, you have the option to pay your bill or sign up for recurring payments directly from your bank account or by credit or debit card. You can access the Client Center by logging into <https://sciinsured.chubb.com>.

Don't have access to the Client Center? Contact your agent to start the activation process.

Mail - Pay by check by mailing payment to: *Chubb, P.O. Box 382001, Pittsburgh, PA 15250-8001*.

Phone - Call 1.800.372.4822 to pay by EFT, credit card, or debit card.

Need Help?

Email - scibilling@chubb.com

Phone - 1.800.372.4822 from Monday to Friday, 9:00 a.m. - 8:00 p.m. (EST)

**POLICYHOLDER DISCLOSURE
NOTICE OF TERRORISM
INSURANCE COVERAGE**

Coverage for acts of terrorism is included in your policy. You are hereby notified that under the Terrorism Risk Insurance Act, as amended in 2015, the definition of act of terrorism has changed. As defined in Section 102(1) of the Act: The term "act of terrorism" means any act or acts that are certified by the Secretary of the Treasury---in consultation with the Secretary of Homeland Security, and the Attorney General of the United States---to be an act of terrorism; to be a violent act or an act that is dangerous to human life, property, or infrastructure; to have resulted in damage within the United States, or outside the United States in the case of certain air carriers or vessels or the premises of a United States mission; and to have been committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion. Under your coverage, any losses resulting from certified acts of terrorism may be partially reimbursed by the United States Government under a formula established by the Terrorism Risk Insurance Act, as amended. However, your policy may contain other exclusions which might affect your coverage, such as an exclusion for nuclear events. Under the formula, the United States Government generally reimburses 85% through 2015; 84% beginning on January 1, 2016; 83% beginning on January 1, 2017; 82% beginning on January 1, 2018; 81% beginning on January 1, 2019 and 80% beginning on January 1, 2020, of covered terrorism losses exceeding the statutorily established deductible paid by the insurance company providing the coverage. The Terrorism Risk Insurance Act, as amended, contains a \$100 billion cap that limits U.S. Government reimbursement as well as insurers' liability for losses resulting from certified acts of terrorism when the amount of such losses exceeds \$100 billion in any one calendar year. If the aggregate insured losses for all insurers exceed \$100 billion, your coverage may be reduced.

The portion of your annual premium that is attributable to coverage for acts of terrorism is disclosed on each quote for lines subject to the Act, and does not include any charges for the portion of losses covered by the United States government under the Act.

I ACKNOWLEDGE THAT I HAVE BEEN NOTIFIED THAT UNDER THE TERRORISM RISK INSURANCE ACT, AS AMENDED, ANY LOSSES RESULTING FROM CERTIFIED ACTS OF TERRORISM UNDER MY POLICY COVERAGE MAY BE PARTIALLY REIMBURSED BY THE UNITED STATES GOVERNMENT AND MAY BE SUBJECT TO A \$100 BILLION CAP THAT MAY REDUCE MY COVERAGE, AND I HAVE BEEN NOTIFIED OF THE PORTION OF MY PREMIUM ATTRIBUTABLE TO SUCH COVERAGE.

Important Notice to Employers Whose Business Organization is a Partnership, Limited Liability Partnership or Limited Liability Company

Please be advised that whether or not partners or members of partnerships, limited liability partnerships or limited liability companies can participate in workers compensation coverage depends upon the law of the jurisdiction in which such partners or members are located.

Furthermore, whether or not the compensation paid partners or members can be “capped” for purposes of determining final payroll at audit is also dependent upon specific law of the jurisdiction, regulations and rules that we must follow.

You are urged to consult with your insurance representative, risk manager, or other persons or organizations providing you with advice concerning the eligibility of partners or members for workers compensation insurance and their election of coverage under worker’s compensation.

Chubb and Son will audit each policy term according to the individual jurisdiction(s) in which you operate.

AGREEMENT OF LEASE

BY AND BETWEEN

**FRLP REALTY TRUST
(LANDLORD)**

AND

**MASS BURGERS NATICK, LLC
d/b/a FIVE GUYS BURGERS AND FRIES
(TENANT)**

MA 4/11

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SHOPPING CENTER LEASE

THIS INSTRUMENT IS AN INDENTURE OF LEASE in which Landlord and Tenant are the parties hereinafter named, and which relates to retail or service store space at the shopping center currently known as Natick 9/27 Shopping Center (The "Shopping Center") located at the intersection of Routes 9 and 27, Natick, Massachusetts. The parties to this instrument hereby agree with each other, as follows:

ARTICLE I

BASIC LEASE DATA, EXHIBITS AND RIDERS

1.1 Introduction

The following set forth basic data and identifying Exhibits and Riders hereinafter referred to in this Lease, and, where appropriate, constitute the terms hereinafter listed.

1.2 Basic Data

DATE OF LEASE EXECUTION: September 30, 2009

LANDLORD: Finard Realty, LLC, Trustee of FRLP Realty Trust under Declaration of Trust dated December 28, 1984, recorded with Middlesex South District Registry of Deeds in Book 15948, Page 160.

MANAGING AGENT: Finard Properties LLC

LANDLORD'S/MANAGING AGENT'S ADDRESS FOR NOTICE:

FRLP Realty Trust
c/o Finard Properties LLC
One Burlington Woods Drive
Burlington, Massachusetts 01803

MAKE RENT CHECKS PAYABLE TO: FRLP Realty Trust

MAIL CHECKS TO: Finard Properties LLC
One Burlington Woods Drive
Burlington, MA 01803

TENANT: Mass Burgers Natick, LLC

TENANT'S ADDRESS (FOR NOTICE AND BILLING): 8 Woodhaven Drive
Franklin, MA 02038

TENANT'S TAXPAYER IDENTIFICATION NUMBER: 27-0771866

TENANT'S TRADE NAME: Five Guys Burgers and Fries

PREMISES: 3,394 square feet, more or less (Rentable Square Footage), in the approximate location shown on Exhibit A. Exhibit A-1 attached hereto shows a diagrammatic (rather than precise) depiction of the Premises and is not to scale. The address of the Premises is 211 North Main Street, Natick, Massachusetts. Tenant shall also have the right to use for exterior seating, subject to the terms hereof, the area in front of the Premises highlighted in gray on the plan attached hereto as Exhibit G. Tenant shall be responsible for obtaining all permits necessary to allow outside seating, at its sole cost and expense ("Outside Seating Permit").

COMMENCEMENT: Term Commencement Date -- The date upon which Landlord delivers possession of the Premises to Tenant in broom clean, "as is" condition, which date shall not be more than ten (10) days following the date upon which Tenant obtains all permits necessary to complete Tenant's Work, install Tenant's signage and conduct the Permitted Use as provided in Section 2.1(e) ("Term Commencement Date Events").

Rent Commencement Date - The earlier of: (i) ninety (90) days following the Term Commencement Date; or (ii) the date upon which Tenant opens for business in the Premises.

INITIAL TERM: Commencing on the Term Commencement Date and expiring at 11:59 p.m. on the date preceding the tenth (10th) anniversary of the Rent Commencement Date, except that if the Rent Commencement Date is other than on the first day of the month, the Initial Term shall end on the last day of the month in which the tenth (10th) anniversary of the Rent Commencement Date occurs ("Expiration Date").

OPTION TERM: Two successive five (5) year terms, the first commencing upon expiration of the Initial Term and the second commencing upon expiration of the first Option Term.

MINIMUM RENT:	INITIAL TERM:	Years 1-5	\$105,214.00 per annum (\$31.00/sq. ft.)
		Years 6-10	\$117,941.50 per annum (\$34.75/sq. ft.)
	OPTION TERM:	Years 11-15	\$131,517.50 per annum (\$38.75/sq. ft.)
		Years 16-20	\$147,639.00 per annum (\$43.50/sq. ft.)

SECURITY DEPOSIT: \$50,000 upon lease execution and an additional \$50,000 upon the later of (a) twelve (12) months from the date of lease execution or (b) six (6) months from the date tenant opens for business in the Premises. See Section 17.20, which permits the use of a letter of credit in lieu of cash for the security deposit.

GUARANTOR: N.A.

**SOCIAL SECURITY NUMBER OR
TAXPAYER IDENTIFICATION
NUMBER OF GUARANTOR:** N.A.

BROKER: Milestone Associates, Inc. and Restaurant Sites

PAYMENTS ON ACCOUNT: 1/12 of Tenant's estimated annual Proportionate Share, monthly, for Real Estate Taxes, Common Area Maintenance, Insurance.

PROPORTIONATE SHARE: The percentage which Tenant's Rentable Square Footage represents of the total rentable floor area of all buildings in the Shopping Center, subject to adjustment under certain circumstances as described in the Lease. Landlord represents that the total rentable area of all buildings in the Shopping Center is 85,211 square feet.

PERMITTED USE: Operation of an eat-in/takeout restaurant, primarily serving hamburgers and french fries, including, as ancillary thereto, office use in a small office within the Premises, and for no other use or purpose unless first approved by Landlord, which approval shall not be unreasonably withheld or delayed so long as it is a restaurant use and does not violate any of the prohibited or exclusive uses set forth in Exhibit D hereto.

1.3 Enumeration of Exhibits

The following Exhibits are a part of this Lease, are attached hereto and incorporated herein by reference, and are to be treated as a part of this Lease for all purposes. Undertakings contained in such Exhibits are agreements on the part of Landlord and Tenant, respectively, to perform the obligations stated therein to be performed by Landlord and Tenant, as and where stipulated therein.

Exhibit A. A plan showing the approximate location of the premises (the "Premises") demised to Tenant under this Lease. Exhibit A is a representation of the building (the "Building"), which is one of the buildings which may now or hereafter constitute the Shopping Center. It is the intention of Exhibit A only to show diagrammatically, rather than precisely, the location of the Building. Any dimensioning on Exhibit A is approximate and not to scale. Notwithstanding the foregoing, it is a condition of this Lease that the Premises hereunder shall be

substantially as shown and located as depicted on Exhibit A. Further, the designation or use from time to time of portions of the Shopping Center as common areas shall not restrict Landlord's use of such areas for building, Landlord hereby reserving the unrestricted right to build structures anywhere upon, and make any use of areas within, the Shopping Center, provided such construction and use do not have a material adverse effect on accessibility to the Premises or visibility of Tenant's signs.

Exhibit A-1. This Exhibit, if attached hereto, shows a depiction of the Premises. It is not precise and not to scale and is intended to show an approximate layout of the Premises.

Exhibit B. Description of Landlord's Work and Tenant's Work.

Exhibit C. Approved Sign Design (if attached).

Exhibit C-1. Pylon Panel Location

Exhibit D. Prohibited and Exclusive Uses.

Exhibit E. Collateral Assignment of Lease

Exhibit F. Relocation Areas

Exhibit G. Outdoor Seating Area

ARTICLE II

DESCRIPTION OF PREMISES AND APPURTENANT RIGHTS

2.1 Location and Condition of Premises, Rights and Reservations

(a) Landlord hereby demises and leases to Tenant, and Tenant hereby accepts from Landlord, upon the terms and conditions set forth herein, the Premises identified on Exhibits A and A-1 attached hereto and made a part hereof, containing an agreed upon 3,394 square feet of floor area. The Premises are a portion of the Shopping Center currently known as Natick 9/27 Shopping Center. For purposes of this Lease, the term "Shopping Center" should be deemed to mean the property owned by Landlord located at the northeast corner of the intersection of Routes 9 and 27 in Natick, Massachusetts, such property being the Building shown schematically on Exhibit A and the parking areas, pylon signs, sidewalks and other common areas associated therewith. Landlord does not own the remainder of the Natick 9/27 Shopping Center. If at any time Landlord acquires all or any portion of such remainder or other land adjoining the property owned by Landlord, then such remainder or additional land shall comprise part of the Shopping Center.

(b) Landlord may increase or reduce the number or size of interior retail spaces and may change the number, dimensions or locations of the walks, buildings, mall areas, parking

areas and common facilities of the Shopping Center in any manner whatsoever as Landlord shall deem proper, and Landlord reserves the right to lease space in the Shopping Center, build additional buildings in the Shopping Center or permit tenants or others to do so and to build additions to the buildings in the Shopping Center or permit tenants or others to do so, provided that Landlord shall not add any stories directly above the Premises as the same may be relocated pursuant to Section 17.26 hereof; and further provided, that Landlord shall not in the exercise of such rights substantially interfere with Tenant's conduct of Tenant's business or with Tenant's use or enjoyment of the Premises. Tenant acknowledges that ordinary and usual construction activities necessary to deliver other premises in the Shopping Center to other tenants shall not constitute substantial interference with Tenant's conduct of its business or use and enjoyment of the Premises.

(c) There is appurtenant to this Lease of the Premises the right to use in common with others the common areas and facilities of the Shopping Center as hereinafter more fully provided, including any common corridor in the Building to the rear of the Premises for the purpose of delivering merchandise and other materials to the Premises, but except as specifically permitted in this Lease, nothing herein contained shall be construed as a grant or rental by Landlord to Tenant of any portion of the roof or exterior walls of the Building or buildings of which the Premises form a part, or of the walls, parking areas, mall areas or other common areas of the Shopping Center. Landlord reserves the right to place within the Premises (in such manner as to reasonably minimize the interference with Tenant's use of the Premises) utility lines, pipes and the like to serve premises other than the Premises and to replace, maintain, and repair such utility lines, pipes and the like in, over, under and upon the Premises as may have been installed in the Building.

(d) Promptly following the delivery of Premises to Tenant, Tenant shall perform, at its own cost and expense, all of Tenant's Work described in Section II of Exhibit B attached hereto and made a part hereof, shall equip the Premises with new trade fixtures and all personal property necessary or proper for the operation of Tenant's business, and open for business as soon thereafter as possible, but in no event later than sixty (60) days following the Rent Commencement Date. The parties agree that Tenant is fully aware of the existing condition of the Premises and notwithstanding anything to the contrary contained in this Lease, agrees to take the same on a strictly "as is" basis, without any further obligation whatsoever on the part of Landlord with respect thereto except as otherwise specifically described in Section I of Exhibit B. Tenant's failure to complete the Tenant's Work and to open the Premises for business within sixty (60) days of the Rent Commencement Date shall in no event extend the Rent Commencement Date. Following completion of Tenant's Work, and delivery to Landlord of (i) final lien waivers from the contractor and each of the subcontractors and materialmen who worked on or supplied materials to the Premises and (ii) reasonable evidence of the cost of the buildout, Tenant shall be entitled to a credit equal to the lesser of the cost of the buildout or \$101,820, which shall be applied until exhausted against the monthly payments of Minimum Rent first due following satisfaction of the foregoing conditions.

(e) Within thirty (30) days of the date hereof (being the date the Lease is signed by both Landlord and Tenant), Tenant, if required by the Town of Natick, shall file its site plan

review application with the Town of Natick Planning Board and apply for all other permits necessary for the completion of Tenant's Work, the installation of Tenant's signage and the conduct of the Permitted Use in the Premises ("Required Permits"), provided that the Outside Seating Permit shall not be one of the Required Permits. In the event Tenant fails to obtain all of the Required Permits not subject to further appeal within ninety (90) days of the date hereof ("Permit Approval Deadline"), Tenant agreeing to notify Landlord of the date of such filing and to use commercially reasonable efforts to obtain the Required Permits, then either party shall have the right to terminate this Lease at any time thereafter unless all Required Permits are issued prior to either party terminating, whereupon this Lease shall be null and void without further recourse to either party hereto. Notwithstanding the foregoing, in the event Tenant has failed to obtain all of the Required Permits not subject to further appeal by the Permit Approval Deadline, Tenant shall have the right to extend the Permit Approval Deadline for a period of not more than thirty (30) days, by giving Landlord written notice prior to the expiration of the Permit Approval Deadline that Tenant is exercising its right to extend the Permit Approval Deadline, which extension shall contain Tenant's representation to Landlord that: (i) Tenant timely filed for the Required Permits; (ii) one or more of the Required Permits is still pending or is subject to further appeal and specifying the Required Permit(s) then pending or subject to further appeal; (iii) Tenant is diligently pursuing the pending Required Permit(s); (iv) no adverse action, other than the pro forma denial of the building permit to prompt the filing of the site plan review application, has been taken by the board or department having jurisdiction over any pending Required Permit(s); and (v) no appeal has been taken with regard to any issued Required Permit(s) or if an appeal has been taken, there is a reasonable likelihood that the appeal will be resolved prior to the expiration of the Permit Approval Deadline.

ARTICLE III

TERM OF LEASE

3.1 Initial Term

The Initial Term of this Lease (sometimes hereinafter referred to as the "Term") shall be as set forth in Section 1.2, commencing as of the Term Commencement Date. Except as hereinafter provided in this Section 3.1, in the event Landlord fails to deliver possession of the Premises by the Term Commencement Date, the Landlord shall not be liable for any damages caused thereby, nor shall this Lease be void or voidable, but the Term Commencement Date and Rent Commencement Date shall be extended by the period of delay in the delivery of possession of the Premises. In the event Landlord fails to deliver possession of the Premises to Tenant in or within forty-five (45) days following the date upon which the Term Commencement Date Events are satisfied, Tenant shall have the right to terminate this Lease at any time thereafter unless Landlord delivers possession of the Premises to Tenant prior to Tenant terminating. If so requested by either party, both parties will promptly execute a certificate confirming the Term Commencement Date for purposes of this Lease. Notwithstanding the foregoing, in the event that Landlord is unable to obtain a waiver on or before September 8, 2009 from Stop & Shop of the restaurant restriction set forth in Exhibit D hereof so as to permit Tenant to be able to operate in the Premises for the Permitted Use, Tenant shall have the right to terminate this Lease at any

time thereafter (unless the Term Commencement Date occurs prior to Tenant terminating), in which event Landlord shall reimburse Tenant for the actual and reasonable attorneys' fees incurred by Tenant in connection with the negotiation of this Lease, and this Lease shall be null and void without further recourse to either party hereto.

3.2 Extended Term

Provided that Tenant (a) is not in default under this Lease beyond any applicable grace period either (i) at the time of the exercise of any option granted hereunder, or (ii) thereafter at any time prior to the expiration of the Term then in effect, (b) is occupying the Premises for the Permitted Use, and (c) has not assigned this Lease or sublet any portion of the Premises, Tenant shall have the option, exercisable by written notice to Landlord to such effect given not more than eighteen (18) months and not less than twelve (12) months prior to the expiration of the Initial Term, as to the first Option Term, and given not more than eighteen (18) months and not less than twelve (12) months prior to the expiration of the first Option Term, as to the second Option Term, to extend the term of this Lease for the period of each Option Term indicated in Section 1.2, commencing immediately upon the expiration of the Initial Term or first Option Term, as applicable. The Option Term shall be on the same terms and conditions as provided herein, except that the Minimum Rent during the applicable Option Term shall be as set forth in Section 1.2 and there shall be no further right of extension after the Option Term. Once the Initial Term has been duly extended, the word "Term" as used herein shall mean the Initial Term, as extended by the applicable Option Term.

ARTICLE IV

RENT

4.1 Minimum Rent

Tenant agrees to pay to Landlord, at Landlord's mailing address, or at such other place as Landlord shall from time to time designate by notice, monthly, in advance, on the Rent Commencement Date, and on the first day of each and every calendar month during the Term, a sum equal to the monthly Minimum Rent specified in Section 1.2 hereof. All monies payable by Tenant to Landlord under this Lease shall be rent and payable and recoverable as rent in a manner herein provided. Rent shall be paid to Landlord, without any withholding, offset, reduction, prior notice or demand. Minimum Rent for any partial month shall be paid by Tenant to Landlord at such rate on a pro rata basis, and if the Rent Commencement Date is on a day other than the first day of a calendar month, the Minimum Rent payment for such month shall be the proportionate part of such monthly Minimum Rent for the partial month from the Rent Commencement Date to the first day of the succeeding calendar month and shall be paid in advance.

Other rent and charges payable by Tenant on a monthly basis, as hereinafter provided, shall likewise be prorated, and the first payment on account thereof shall be determined in similar

fashion. Other provisions of this Lease calling for monthly payments shall be read as incorporating this undertaking by Tenant.

For and with respect to each installment of rent that is not paid within five (5) days of the due date, Tenant shall pay to Landlord on demand, as additional rent, a late charge in an amount equal to five percent (5%) of the amount of the overdue payment for the purpose of defraying Landlord's administrative expenses relative to handling such overdue payment.

In the event Tenant pays any rent or other charge by check or draft, and said check or draft is not honored by the bank on which it is drawn, an additional charge of \$50.00 shall be due from Tenant to Landlord within five (5) days of demand, which amount shall constitute additional rent hereunder.

4.2 Lease Year

The term "Lease Year" means a period of twelve (12) consecutive calendar months, beginning with the first day of the calendar month following the Rent Commencement Date and ending on the last day of the twelfth month thereafter, except that if the Rent Commencement Date is other than the first day of a month, the first Lease Year of the Term shall also include the period from the Rent Commencement Date to the first day of the month following the Rent Commencement Date.

ARTICLE V

USE OF PREMISES

5.1 Permitted Use

Tenant agrees that the Premises shall be used and occupied by Tenant or any occupant rightfully claiming under Tenant, as provided herein, only for the Permitted Use specified in Section 1.2 of this Lease and for no other use or purpose. In no event shall the Permitted Use be interpreted to include or permit any exclusive use or use which is prohibited or restricted by the terms of Exhibit D hereto.

Tenant further agrees to conform to the following provisions during the entire Term of this Lease:

(a) Tenant agrees to conduct Tenant's business at all times in a first-class, high grade manner consistent with reputable business standards and practices and in such manner that the high reputation of the Shopping Center is furthered. Accordingly, Tenant shall not operate its business in such a manner so as to be classified as a "discount house", "cut-rate store", "outlet store" or the like;

(b) Tenant shall always conduct its operation in the Premises under Tenant's Trade Name stated in Section 1.2 (Tenant representing that it has the right so to use such name), unless Landlord shall otherwise consent;

(c) No auction, fire, distress or bankruptcy sales may be conducted within the Premises without the prior consent of Landlord;

(d) Tenant shall not use any portion of the sidewalks adjacent to the Premises for any purpose whatsoever except for access, egress, and outside seating, and shall require its employees to park their automobiles in areas from time to time designated by Landlord as employee parking areas. Tenant will in no event unreasonably obstruct the sidewalk in connection with its outdoor seating operations. Tenant further agrees that it will, if and when so requested by Landlord, furnish Landlord with the license numbers of any vehicle of Tenant, any concessionaire, and their respective officers, employees and agents;

(e) Tenant shall cause all freight to be delivered or removed and all garbage or refuse to be removed at Tenant's expense, in accordance with reasonable rules and regulations established by Landlord therefor. Tenant shall be responsible for providing and arranging for the emptying of its own dumpster, to be located in an area designated by Landlord adjacent to and in the rear of the Premises. Deliveries to the Premises may be effected (i) through the rear door of the Premises at any time and (ii) through that portion of the Premises fronting on any sidewalks only during non-peak Shopping Center hours and at times that will not cause material disruption of either pedestrian or vehicular traffic flow outside the Premises;

(f) Until such removal is effected, Tenant shall keep all garbage or refuse in the Premises suitably covered and/or contained in leakproof containers which are not visible to the public from the front of the Premises nor overflowing; removal shall be in such a manner so as to prevent any accumulations; all grease traps and exhaust hood filters shall be cleaned regularly and as necessary, and all refuse containers shall be kept sanitary and odor-free. Subject to all applicable governmental laws, ordinances, regulations, and Tenant's compliance with all legal requirements, Landlord will permit Tenant to maintain a closed dumpster at the rear of the Premises adjacent to the dumpster maintained by Panera located on the north wall of the Building, as shown on Exhibit A, provided it is always maintained in a neat and sanitary manner free from rodents and other pests, removed on a regular basis and frequently enough to prevent any accumulations, and is screened from view in an attractive manner to be approved by Landlord, such approval not to be unreasonably withheld. If Landlord provides one or more dumpsters or compactors for use by Tenant and possibly other tenants, or designate a service for picking up garbage and refuse, Tenant shall use the same. Tenant shall pay the cost of garbage and trash removal directly if not arranged by Landlord. If arranged by Landlord, Tenant shall pay to Landlord an equitable share of the cost, as reasonably determined by Landlord;

(g) Tenant shall keep the sidewalks adjacent to the Premises and the outdoor seating area free from refuse and shall be responsible for promptly clearing any refuse that might blow from the outdoor seating area;

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(h) Tenant shall not install any signs on the exterior of the Premises except for one sign approved by and in a location designated by Landlord, which sign approval shall not be unreasonably withheld so long as the signage (a) is consistent with Five Guys standard promotional signage, plans of which have first been provided to Landlord, (b) satisfies all applicable legal requirements without variance, (c) is professionally prepared and erected in accordance with all required permits, licenses and approvals, (d) is maintained in good, safe and, if applicable, workable (including, without limitation, lighting) condition, and (e) is erected and maintained in compliance with any insurance company requirements ("Approval Criteria"). Landlord hereby approves the design of Tenant's storefront sign attached hereto as Exhibit C, if any. Tenant shall pay all costs and expenses of any approved sign installation, maintenance and repair. If Tenant fails to maintain the sign in a good, safe and, if applicable, workable condition, Landlord may, following written notice to Tenant and failure of Tenant to correct the condition specified within ten (10) days of receipt of the notice, revoke its approval of the sign, in which event Tenant agrees to promptly remove the same and repair all damages to the Building caused by the sign's installation and removal. Tenant agrees that if Landlord shall deem it necessary to remove any sign in order to paint or to make repairs, alterations or improvements to the Building, including the installation of a new Building façade, Landlord shall have the right to do so, in which event Landlord shall be responsible for the cost of removal and replacement of the sign. Tenant shall also be permitted to maintain its sign panels on the Shopping Center pylon sign in the location shown on Exhibit C-1. The panels shall be the same size as the existing panel area. The panels shall be maintained by Tenant at its sole cost and expense and shall be subject to Landlord's approval, which approval will not be unreasonably withheld if consistent with the other tenant panels;

(i) Except as otherwise expressly set forth herein, Tenant will not place on the exterior walls or on the roof of the Premises, or in any part of the Shopping Center outside of the Premises, any symbol, advertisement, neon light, other light, antenna, satellite dish or any other object or thing without the express prior written consent of Landlord, which may be withheld in Landlord's sole discretion. Notwithstanding the foregoing, Tenant shall be entitled to remodel the storefront with Landlord's approval, which approval shall not be unreasonably withheld so long as the storefront (a) satisfies all applicable legal requirements without variance, (b) is aesthetically consistent in both design and color with other storefronts in the Shopping Center, (c) is erected in accordance with all required permits, licenses and approvals, (d) is professionally designed consistent with other Five Guys storefronts being opened or operated in Eastern Massachusetts, (e) is maintained in good, safe condition and (f) is erected and maintained in compliance with any reasonable insurance company requirements. Tenant shall pay all costs and expenses of any approved storefront installation and its continuing maintenance and repair. Further, subject expressly to (i) all applicable laws and ordinances and (ii) Landlord's prior written consent not to be unreasonably withheld, Tenant shall be permitted to install, in a neat and well kept manner professionally manufactured signs and merchandise on the inside of its windows for display purposes. Landlord may require Tenant to remove such signs or merchandise if the same are not properly maintained or are displayed in an offensive manner and contrary to the display plan approved by Landlord. Further, Tenant shall be permitted to install (a) one satellite dish at the rear of the Premises in a location approved by Landlord, which dish shall be removed by Tenant at its sole cost and expense upon expiration of earlier termination of

this Lease and the area of installation restored to its original condition, and (b) one air conditioning unit on the roof of the building above the Premises in a location approved by Landlord, provided such installation is done by Landlord's preferred roofing vendor (as further described in Section 7.1 hereof) at Tenant's sole cost and expense, in a manner approved by the preferred vendor and Landlord so as to preserve the existing roof warranty.

(j) Tenant shall not perform any act or carry on any practice which may injure the Premises or any other part of the Shopping Center, or overload the floors or walls, beyond design loads, or cause any offensive odor or loud noise, or constitute a nuisance or a menace to any other Tenant or Tenants or other persons in the Shopping Center, or which is otherwise out of harmony with the general character of the Shopping Center. Tenant shall install a code compliant ventilation system for its operations in the Premises capable of eliminating food odors on the outside of the Premises and keeping the venting area free of grease exhaust;

(k) Tenant shall continuously, throughout the Term of this Lease, operate the Premises for the use specified in Section 1.2 using a sufficient number of adequately trained managers and personnel for efficient service, and Tenant shall keep the Premises open for business seven days of each week from at least 11:00 A.M. to 10:00 P.M., all subject to temporary closings as specified by Landlord on account of casualty or government regulations applicable to businesses such as Tenant's generally;

(l) Tenant shall store, and/or stock in the Premises only such merchandise of such quantity, character and quality so as to maximize gross sales and only such quantity as Tenant intends to offer for retail sale in or on the Premises within a reasonable time after receipt thereof; and Tenant will use for office, clerical or other non-selling purposes only such space in the Premises as is reasonably required for and is incidental to Tenant's business thereon, and not perform therein any functions for any other store of Tenant or for any other person. Tenant shall operate the entire Premises, without concessionaires, licensees or the like;

(m) Tenant shall at all times appropriately light, heat and air-condition the Premises at its sole cost and expense and in any event, Tenant shall at all times heat the Premises to the extent necessary to prevent the freezing of plumbing facilities; and Tenant shall keep the Premises in the condition required by Article VII. Without limiting the generality of the foregoing, Tenant at all times shall keep the Premises in a clean, sanitary and healthful condition, free of rodents and other pests and insects, and in compliance with orders and standards of all regulatory bodies governing Tenant's business operation;

(n) Tenant shall not make any structural alterations in or additions to the Premises, except as expressly provided by any Exhibits to this Lease, without the prior written consent of Landlord. Tenant may make non-structural alterations to the interior of the Premises, provided that the same are in accordance with all applicable laws and regulations, performed in a good and first-class workmanlike manner using new, first-quality materials, and kept free of mechanics' or materialmen's liens, and provided further that such changes do not affect any utility or other common system of the Shopping Center. Tenant shall obtain all required permits and approvals for the alterations and pay for all utility costs needed to effect the alterations. If any structural or

nonstructural alterations or additions violate any law, regulation or insurance company requirement, Tenant shall, at its own cost, make any necessary change to ensure that such alterations or additions comply with said law, regulation or insurance company requirement. Notwithstanding the foregoing, nonstructural alterations in excess of \$20,000 shall not be made without the prior written consent of Landlord, which consent shall not be unreasonably withheld if in compliance with the second sentence of this paragraph. The foregoing provisions regarding alterations shall not be deemed to affect or prohibit Tenant from managing the appropriate and reasonable display of its merchandise, including, without limitation, the use of display stands, signs, tables, chairs, booths, counters and the like, and Landlord's consent shall not be required therefor. Tenant shall be responsible for and shall pay to Landlord, as additional rent, the entire amount of any real estate taxes attributable to any alterations, additions or improvements made by Tenant pursuant to this Section;

(o) Tenant agrees to abide by and conform to reasonable rules and regulations as promulgated and/or modified from time to time by Landlord, in writing, upon reasonable advance notice. In the event that there shall be any conflict between such rules and regulations and the provisions of this Lease, the provisions of this Lease shall control;

(p) Tenant agrees to keep the Premises equipped with all safety appliances required by law or ordinance or any other regulation of any public authority because of any use made by Tenant and to procure all licenses and permits so required because of such use and, if requested by Landlord to do any work so required because of such use, it being understood that the foregoing provisions shall not be construed to broaden in any way Tenant's Permitted Use; and

(q) Tenant agrees that, within and with respect to the interior of and immediate entrance to the Premises, it shall be responsible for compliance with the Americans with Disabilities Act and the Regulations and Accessibility Guidelines for Buildings and Facilities issued pursuant thereto ("ADA Requirements"), Landlord agreeing that it shall be responsible for compliance with the ADA Requirements with respect to the Shopping Center parking lot and sidewalk.

(r) Tenant agrees not to engage in any of the prohibited or exclusive uses set forth in Exhibit D, Landlord warranting to Tenant that there are no other existing restrictions in the Shopping Center that would affect the Permitted Use.

ARTICLE VI

ASSIGNMENT, SUBLETTING AND MORTGAGING

6.1 Procedures

(a) Tenant will not by operation of law or otherwise, assign, mortgage or encumber this Lease, or sublet or permit the Premises or any part thereof to be used by others, without Landlord's prior express written consent in each instance. The consent by Landlord to any assignment or subletting shall not in any manner be construed to relieve Tenant from obtaining

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Landlord's express written consent to any other or further assignment or subletting, nor shall any assignment or subletting, with or without consent by Landlord serve to relieve or release Tenant from its obligations to fully and faithfully observe and perform all of the terms, covenants and conditions of this Lease on Tenant's part to be observed and performed. In no event shall Tenant have a claim, and Tenant hereby waives the right to any claim, against Landlord for money damages by reason of any refusal, withholding, or delaying by Landlord of any consent of such sublease or assignment of this Lease.

(b) If Tenant shall desire to assign this Lease or to sublet all or a portion of the Premises, Tenant shall give notice thereof to Landlord including (i) the name of the proposed assignee or subtenant; (ii) the terms and conditions of the proposed assignment or subletting; (iii) the nature and character of the business and credit of the proposed assignee or subtenant, and any other information and/or documentation reasonably requested by Landlord. Upon receipt of such notice, Landlord shall have the option, to be exercised within thirty (30) days from receipt of Tenant's notice, to cancel and terminate this Lease as of the date proposed by Tenant for such assignment or subletting, and thereupon the term of this Lease shall cease and expire with the same force and effect as if such date were originally provided herein as the expiration of the Term.

If Landlord shall not exercise its foregoing option to terminate this Lease within the time set forth, its consent to any such proposed assignment or subletting shall not be unreasonably withheld or delayed, provided, however, that Landlord may withhold consent thereto if, in the exercise of its sole judgment, it determines, inter alia, that:

1. The financial condition or general reputation of the proposed assignee or subtenant are not consistent with the extent of the obligations proposed to be undertaken as a result of the proposed assignment or sublease;
2. The proposed use of the Premises is not appropriate for the Shopping Center or in keeping with the character of the existing tenancies, violates any of the prohibited or exclusive uses set forth in Exhibit D or is not permitted by this Lease as set forth in Section 1.2 (but the foregoing shall not be deemed to enlarge the purposes for which the Premises are permitted to be used, as set forth in this Lease);
3. The proposed use of the Premises will violate any other agreement relating to the Shopping Center of which the Premises constitute a part;
4. The nature of the occupancy of the proposed assignee or sublessee will cause an excessive density of employees or traffic or make excessive demands on the Shopping Center's services or facilities or in any way will lessen the character of the Shopping Center; or
5. Tenant proposes to assign or sublet to one who at the time is a Tenant or occupant of premises in the Shopping Center or of other premises owned or operated by any affiliate of Landlord, or to one with whom Landlord or its agents are or have been negotiating for space in the Shopping Center.

If Tenant shall duly comply with all of the foregoing then, as aforesaid, Landlord shall not unreasonably withhold or unduly delay its consent to such assignment or subletting, provided the form of sublease or assignment to be executed by Tenant and subtenant or assignee comply with the provisions of subsection (c) below.

(c) Each such permitted sublease shall expressly be made subject to the provisions of this Lease and shall be subject to the review and approval of Landlord. If Tenant assigns any of its rights and interests under this Lease, the assignee under such assignment shall expressly assume all of the obligations of Tenant hereunder in a written instrument satisfactory to Landlord at the time of such assignment. Tenant shall promptly reimburse Landlord for all reasonable attorneys' fees and expenses, and court costs incurred by Landlord in connection with the proposed assignment or subletting, which reimbursement shall be additional rent hereunder. No assignment or sublease shall impose any obligations on Landlord or otherwise affect any of the rights of Landlord under this Lease nor shall it affect or reduce any of the obligations of Tenant hereunder, and all such obligations shall continue in full effect as obligations of a principal and not as obligations of a guarantor or surety to the same extent as though no assignment or subletting had been made.

(d) It is agreed that if Landlord shall not exercise its option to terminate this Lease and shall consent to such assignment or subletting, or if Landlord's consent is not required under Section 6.2 and Tenant shall thereupon assign this Lease or sublease the Premises for rent or other consideration in excess of the rent payable hereunder for the whole Premises or, in the case of a partial sublease, in excess of the rent allocable to that portion of the Premises, Landlord shall receive, as additional rent, fifty (50%) percent of all such excess rent or other consideration, less reasonable out of pocket costs actually incurred by Tenant and paid to unaffiliated third parties in connection with making such assignment or sublease, plus the amounts, if any, payable by such assignee or subtenant to Tenant pursuant to any side agreement as consideration, partial or otherwise, for Tenant making such assignment or subletting. Such additional rent payment shall be made monthly within five (5) days after receipt of the same by Tenant or within five (5) days after Tenant is credited with the same by the assignee or sublessee. At the time of submitting the proposed assignment or sublease to Landlord, Tenant shall certify to Landlord in writing whether or not the assignee or subtenant has agreed to pay any monies to Tenant in consideration of the making of the assignment or sublease other than as specified and set forth in such instruments, and if so, Tenant shall certify the amounts and time of payment thereof in reasonable detail. Tenant shall, concurrently with the execution and delivery of such permitted assignment or sublease, deliver a duplicate original thereof to Landlord, plus a processing fee of \$500 for each assignment and/or subletting. No assignment or sublease shall be binding on Landlord unless, as hereinbefore provided, such assignee, sublessee or Tenant shall deliver to Landlord such duplicate original and shall obtain from Landlord the aforesaid written consent prior thereto. Any assignment, sublease or agreement permitting the use and occupancy of the Premises on any part thereof to which Landlord shall not have expressly consented in writing shall be deemed null and void and of no force and effect.

(e) If this Lease shall be assigned, or if the Premises or any part thereof be sublet or occupied by any person or persons other than Tenant, Landlord may, after default by Tenant, collect rent from the assignee, subtenant or occupant and apply the net amount collected (which may be treated by Landlord as rent or as use and occupancy) to the rent herein reserved, but no such assignment, subletting, occupancy or collection of rent shall be deemed a waiver of the covenants in this Article nor shall it be deemed acceptance of the assignee, subtenant or occupant as a Tenant, or a release of Tenant from the full performance by Tenant of all the terms, conditions and covenants of this Lease.

(f) Each permitted assignee or transferee shall assume and be deemed to have assumed this Lease and shall be and remain liable jointly and severally with Tenant for the payment of the rent, additional rent and adjustments of rent, and for the due performance of all the terms, covenants, conditions and agreements herein contained on Tenant's part to be performed for the term of this Lease, and the instrument of assignment or sublease shall contain language to effect the foregoing.

(g) Neither this Lease nor the Term shall be mortgaged, pledged or encumbered by Tenant, nor shall Tenant mortgage, pledge or encumber the interest of Tenant in and to any sublease of the Premises or the rental payable thereunder, without the prior written consent of Landlord, which consent may be granted or withheld in the sole discretion of Landlord, and Tenant shall not allow or permit any transfer of this Lease or any interest hereunder by operation of law. Any such mortgage, pledge, encumbrance, sublease or assignment made in violation of this Section shall be null and void and of no force and effect.

6.2 Change in Control of Tenant

A change in a majority or controlling beneficial interest or record ownership of any class of capital stock of any tenant of the Premises, a transfer of a majority or controlling partnership interest in any Tenant of the premises, a transfer of a majority or controlling membership interest or beneficial interest in Mass Burgers Natick LLC or any subsequent tenant of the Premises, a sale of all or substantially all of the assets of Mass Burgers Natick LLC or any subsequent tenant of the Premises or Mass Burgers Natick LLC or any subsequent tenant of the Premises entering into of a management agreement or agreement in the nature thereof shall be treated as and deemed to be an event of assignment of this Lease and shall be subject to the provisions of this Article VI, if the effect of same shall be to result in a change in management or control of Tenant or the transfer of a substantial percentage of the profits and losses from the business operations of Tenant.

For purposes of this Section, "Tenant" means the Tenant, or any entity of which Tenant now or hereafter is a subsidiary, or, of which Tenant's parent is now, or then, a subsidiary, or which entity otherwise controls, directly or indirectly, Tenant.

The provisions of this Article VI shall not apply to an assignment of this Lease by Tenant to its wholly-owned subsidiary or immediate controlling entity (for such period of time as such entity remains such a subsidiary or such a controlling entity, respectively, it being agreed that the

subsequent sale or transfer of stock or membership interest resulting in a change in control, or any other transaction(s) having the overall effect that such entity ceases to be such a subsidiary or such a controlling entity, respectively, of Tenant, shall be treated as if such sale or transfer or transaction(s) were, for all purposes, an assignment of this Lease governed by the provisions of this Section 6.2), provided, and it shall be a condition of the validity of any such assignment, that such wholly-owned subsidiary or such immediate controlling entity first agree in writing directly with Landlord to be bound by all of the obligations of Tenant hereunder, including, without limitation, the obligation to pay rent and other amounts provided for under this Lease, the covenant to use the Premises only for the Permitted Use and the covenant against further assignment, but such assignment shall not relieve Tenant herein named of any of its obligations hereunder, and that Tenant shall remain fully liable therefor.

Landlord agrees: (i) to consent to the collateral assignment of this Lease by Tenant to Five Guys Enterprises, LLC, Tenant's Franchisor ("Franchisor") in the form attached hereto as Exhibit E; (ii) to notify Franchisor in writing of and upon Tenant's failure to cure any default by Tenant under the Lease; and (iii) that Franchisor will have the right, but not the obligation, to cure any default by Tenant under the Lease within thirty (30) days after Landlord's delivery of the notice of Tenant's default to Franchisor. In the event Franchisor notifies Landlord that it has taken possession of the Premises under the collateral assignment of the Lease, confirms to Landlord in writing that it will be bound by all of the obligations of Tenant hereunder and fully cures within the thirty (30) day notice period Tenant's default under the Lease, Landlord agrees to recognize Franchisor as tenant under the Lease and Tenant agrees to attorn to Landlord. Landlord further agrees that Franchisor may sublease the Premises or assign this Lease to another Five Guys franchisee or that Tenant may assign this Lease to another Five Guys franchisee with Landlord's approval, which approval shall not be unreasonably withheld in the event that: (i) such franchisee shall have a proven retailing experience and the ability to efficiently and effectively operate the Premises in a manner consistent with the standard of operation as then exists in the Premises; (ii) the business conducted in the Premises by such franchisee shall be conducted for the Permitted Use and under the same trade name required to be used by Tenant under the Lease; and (iii) franchisee shall be in good standing with the Franchisor, provided and it shall be a condition of the validity of any such assignment or subletting that such franchisee first agree in writing directly with Landlord to be bound by all of the obligations of Tenant hereunder, including, without limitation, the obligation to pay rent and other amounts provided for under this Lease, the covenant to use the Premises only for the Permitted Use and the covenant against further assignment or subletting. Upon such further assignment or subletting by Franchisor to a potential franchisee, Franchisor shall be relieved of liability under the Lease, so long as Franchisor first certifies to Landlord that the business in the Premises shall be conducted for the Permitted Use and under the same trade name required to be used by Tenant, but such assignment or subletting shall not relieve Tenant named herein of any of its obligations hereunder, and Tenant shall remain fully liable therefor. In the event of a direct assignment by Tenant to another Five Guys franchisee, the validity of such assignment shall be conditioned upon Franchisor first certifying to Landlord that the assignee is a Five Guys franchisee in good standing with Franchisor and that the business in the Premises shall be conducted for the Permitted Use and under the same trade name required to be used by Tenant hereunder.

6.3 Further Limitations

In no event shall Landlord be obligated either to consider or permit any proposed assignment or subletting or if (i) at the time of proposal of assignment or subletting, Tenant is in default under the terms hereof, or (ii) if any of the Landlord's then mortgagees to whom this Lease is assigned or who shall otherwise have rights to do so shall fail to consent.

ARTICLE VII

RESPONSIBILITY FOR REPAIRS AND UTILITIES

7.1 Repairs

Other than as provided elsewhere in this Lease, Landlord agrees to keep in good order, condition and repair the roof, foundations and structural portions of the Premises, except:

- (a) any glass in the Premises and the so-called storefront, whether or not constructed by Landlord;
- (b) any condition in the Premises caused by any act or neglect of Tenant, any subtenant or assignee, or any employees, agents, licensees, contractor or invitee of Tenant; and
- (c) any repairs which are the responsibility of Tenant under this Section.

Without limitation, Landlord shall not be responsible for the making of any improvements or repairs in the Premises other than as expressly in this Section, except for repairs for which Landlord expressly may be responsible under the terms of other provisions of this Lease dealing with fire, casualty or eminent domain.

Further, Landlord shall never be liable for any failure to make repairs which, under the provisions of this Section or elsewhere in this Lease, Landlord has undertaken to make unless:

- (i) Tenant has given notice to Landlord of the need to make such repairs, or a condition of the Premises requiring repair; and
- (ii) Landlord has failed to commence to make such repairs within a reasonable time after receipt of such notice.

Tenant agrees that, from and after the date that possession of the Premises is delivered to Tenant and until the end of the Term, Tenant will keep neat and clean and maintain in good order, condition and repair the Premises and every part thereof (other than those portions thereof and those repairs, for which this Section 7.1 provides expressly that Landlord is responsible), including, without limitation: the interior of the Premises, and the fixtures and equipment therein and appurtenant thereto, including, without limitation, the exterior and interior windows, window



frames, doors, door frames and entrances, store fronts, signs, showcases, floor coverings, nonstructural interior walls, columns and partitions; lighting, electrical equipment, plumbing and sewerage facilities and equipment; any heating, ventilating and/or air-conditioning equipment exclusively serving the Premises; and the exterior seating area. Tenant shall be responsible for any electrical, sewerage or plumbing issues outside the Premises caused by its acts. Without limitation, Tenant shall maintain and use the Premises in accordance with all directions, rules and regulations of the proper offices of governmental agencies having jurisdiction, and shall, at Tenant's own expense, obtain all permits, licenses and the like, and make all repairs and necessary replacements to the Premises required by applicable law. Tenant shall not permit or commit any waste. With respect to the HVAC system and equipment serving the Premises, Tenant specifically agrees to maintain at all times during the term of this Lease an annual maintenance and service contract with respect thereto, furnishing evidence thereof (including renewals) to Landlord, and to replace, as necessary, any HVAC equipment, including any specialty ventilation systems, exclusively serving the Premises.

If repairs or replacements are required to be made by Tenant pursuant to the terms hereof, Landlord may, by written notice to Tenant, demand that Tenant make the same forthwith, and if Tenant refuses or neglects to commence such repairs and complete the same with reasonable dispatch after such demand, Landlord may (but shall not be required to do so) make or cause such repairs to be made and shall not be responsible to Tenant for any loss or damage that may accrue to Tenant's stock or business by reason thereof, including reasonable costs for supervision of such repairs. If Landlord makes or causes such repairs to be made, Tenant agrees that Tenant will forthwith, on demand, pay to Landlord the cost thereof, including reasonable costs for supervision of such repairs, and said cost will be deemed to be additional rent under this Lease.

Tenant shall use Landlord's preferred vendors for electrical work and roof work because of the substantial work Landlord recently completed at the Building by such vendors and the preservation of the warranties for such work. Landlord's preferred vendor for electrical work is O.H. Burg Corp. (781-344-0522) and for roofing work is RCH Roofing Corporation (781-834-9000).

7.2 Utilities

Tenant shall pay for all Tenant's requirements for utilities, such as gas, water and electricity, all costs relating to the heating and air-conditioning units and equipment that exclusively serve the Premises, and all equipment costs relative to all the foregoing utilities, to the extent that the same are located in or exclusively serve the Premises. In the event Landlord shall elect to supply water and/or gas and/or electricity to the Premises, Tenant covenants and agrees to purchase the same from Landlord, provided the rate does not exceed the rate which Tenant would be required to pay to the utility company furnishing the same to the Shopping Center. If a charge shall be made separate and apart from real estate taxes by the public authority having jurisdiction over the use of the sewer system, Tenant shall pay as additional rent its Proportionate Share thereof, subject to adjustment only if the Proportionate Share changes, as provided in this Lease, or such other amount if the taxing authority directly attributes an amount to the Premises. Landlord shall not be liable to Tenant for any interruption in service of water,

electricity, heating, air-conditioning or other utilities and services caused by an unavoidable delay, by the making of any necessary repairs or improvements, by unavailability of fuel, or by any cause beyond Landlord's reasonable control. Tenant agrees that it will not install any equipment which shall exceed or overload the capacity of any utility facilities and that if any equipment installed by Tenant shall require additional utility facilities, the same shall be installed at Tenant's expense and only upon written consent of Landlord in accordance with plans and specifications to be approved in writing by Landlord.

ARTICLE VIII

TENANT'S SHARE OF MAINTENANCE COSTS

8.1 Control of Common Area

All common areas and other facilities in or about the Shopping Center provided by Landlord shall be subject to the exclusive control and management of Landlord. Landlord shall have the right to construct, maintain and operate lighting and other facilities on all said areas and improvements; to police the same; from time to time to change or reduce the area, level, location, size and arrangement of parking areas and other facilities; to build multi-story parking facilities; to restrict parking by Tenant, its officers, agents, employees, contractors, servants, and licensees by number of spaces or to designated locations; to close all or any portion of said areas or facilities to such extent as may be legally sufficient in the opinion of Landlord's counsel to prevent a dedication thereof or the accrual of any right to any person or the public therein; to close temporarily all or any portion of the parking areas or facilities to discourage non-customer parking; to erect improvements or buildings on such parking areas for lease or sale purposes and on other common areas and to lease area improvements and to do and perform such other acts in and to said areas and improvements as, in the use of good business judgment, Landlord shall determine to be advisable with a view to the improvement of the convenience and use thereof by tenants of the Shopping Center, their officers, agents, employees, contractors, servants, licensees, and customers, provided that no such changes shall deny or materially interfere with ingress to or egress from the Premises. Landlord shall not permanently reduce the number of parking spaces in the Shopping Center below the minimum needed or required by any zoning, building or similar governmental law or regulation. Landlord shall operate and maintain the common facilities in a clean and orderly fashion and in good repair customary for similar shopping centers in the area, and Landlord shall have full right and authority to employ and discharge all personnel with respect thereto. Landlord agrees to keep the Shopping Center common area lighting lit after dark until at least 11:00 P.M. during all nights that Tenant is open for business, subject to utility service interruption and Landlord repairs and replacements.

8.2 Cost of Common Area Maintenance

All costs and expenses incurred by Landlord (including, as an expense, amounts determined as reasonable and appropriate reserves for the replacement of equipment not real estate in nature used incident thereto) in removing snow, ice and refuse from, cleaning, providing water and other utilities for, insuring, operating, managing, equipping, policing (if and to the

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extent provided by Landlord, without representation that it will be provided), lighting, repairing, replacing, maintaining, heating and air-conditioning, landscaping and gardening the common areas and facilities of the Shopping Center (including the maintenance of utilities conduits, fixtures and equipment located therein) shall be determined, and Tenant shall share in paying the cost thereof, all as hereinafter provided. Such costs and expenses shall also include the cost (amortized with interest on such reasonable basis as Landlord shall determine) of any capital improvement (including, without limitation, any equipment installed as a fixture) made by Landlord for the purpose of reducing the operating expenses or complying with any governmental requirement applicable to all or any part of the Shopping Center. For purposes hereof, an administrative fee of 10% thereof shall be included as part of all costs and expenses, respectively. Tenant's share of such costs and expenses shall be computed by multiplying the whole of such costs and expenses by Tenant's Proportionate Share. If the number of square feet of total rentable floor area in the Shopping Center shall change from time to time, or the Rentable Square Footage of the Premises changes as a result of condemnation or rebuilding following fire or other casualty, an appropriate adjustment shall be made in Tenant's Proportionate Share. Payment on account of Tenant's Proportionate Share shall be made as part of Tenant's total rent, monthly, and at the times and in the fashion herein provided for the payment of Minimum Rent.

Landlord may from time to time reasonably estimate the amount due from Tenant under this Section with respect to any calendar year and Tenant shall pay monthly one-twelfth (1/12th) of Landlord's estimate as rent with each payment of monthly Minimum Rent. Such estimates shall be based on the previous year's actual expenses, as adjusted by known changes, except in Tenant's first year, in which event the estimate shall be based on Landlord's reasonable judgment. Within one hundred twenty (120) days after the end of each calendar year, Landlord shall make a determination of Tenant's Proportionate Share of said costs and expenses; and if the payment theretofore made on account for such period by Tenant exceeds Tenant's Proportionate Share, Landlord shall, except as hereinafter provided, give Tenant credit for same against future monthly payments of maintenance costs except for the final year of the Lease Term, in which event Tenant's overpayment shall be refunded so long as no sums are then owing from Tenant to Landlord and Tenant has no further obligations to Landlord; and if Tenant's share is greater than such payments theretofore made on account for such period, Tenant shall make a suitable payment to Landlord within ten (10) days of written demand by Landlord. Failure by Landlord to determine Tenant's Proportionate Share of maintenance costs and expenses within one hundred twenty (120) days after the end of any calendar year shall not constitute a waiver of any rights of Landlord to collect any amounts owed by Tenant on account thereof.

Appropriate adjustments shall be made for any partial month at the end of the first Lease Year.

8.3 Control of Common Areas

In order to establish that the Shopping Center, and any portion thereof, is and will continue to remain private property, Landlord shall have the unrestricted right in Landlord's sole but commercially reasonable discretion, with respect to the entire Shopping Center, and/or any portion thereof owned or controlled by Landlord, to take such actions as may be necessary to

prevent a claim of adverse possession or easement by prescription against the Shopping Center or any part thereof, provided that Landlord shall not have the right to close off access to the Shopping Center. All common areas and facilities which Tenant may be permitted to use and occupy are to be used and occupied as a right appurtenant to the Premises and if the size of such areas is changed or diminished, Landlord shall not be subject to any liability nor shall Tenant be entitled to any compensation or diminution or abatement or rent nor shall revocations or diminution of such areas be deemed constructive or actual eviction; provided, however, if such change or diminution in size of common areas and facilities is due to a voluntary act by Landlord, Landlord shall not substantially interfere with the continuing operation of the business of Tenant conducted in the Premises.

8.4 Examination of Records

Tenant shall have the right to inspect Landlord's records relating to the common area maintenance costs and expenses in order to verify the accuracy of any common area maintenance charge for which Tenant is responsible. Such inspection will be conducted only during regular business hours at Landlord's office and at Tenant's cost and only after Tenant gives Landlord ten (10) days prior written notice. Any such inspection shall be conducted within ninety (90) days after Landlord notifies Tenant of its actual Proportionate Share of the common area maintenance costs and expenses for any calendar year. Tenant shall be entitled to inspect only those records that are necessary to verify the aforementioned charges and such inspection shall not be a condition precedent to Tenant paying any amounts due hereunder when due.

ARTICLE IX

REAL ESTATE AND OTHER TAXES

9.1 Real Estate Taxes

The real estate taxes on the Shopping Center shall consist of all real estate taxes, betterments, and other general or special assessments, payable on account of the buildings or other improvements in the Shopping Center, including any and all building components, and on account of the land area of the Shopping Center as it exists from time to time.

9.2 Initial Responsibility

The initial responsibility for the payment of such real estate taxes shall be upon Landlord, and Landlord agrees to pay the same as required by law, but in any event so as to assure that Tenant's right to occupy the Premises and use the common areas of the Shopping Center shall not be disturbed or threatened. Further, in light of the fact that Tenant is required to participate in the payment of such real estate taxes, Landlord shall furnish to Tenant copies of all tax bills. In the event of any abatements, refunds or rebates of the real estate taxes upon the Shopping Center, an appropriate adjustment shall be made between Landlord and Tenant to take into account such abatements, refunds or rebates, less all costs and expenses of securing the same.

9.3 Tenant's Proportionate Share of Real Estate Taxes

Tenant shall pay to Landlord as additional rent hereunder, Tenant's Proportionate Share of the real estate taxes levied upon the Shopping Center for each tax year or appropriate portion thereof during the Term and Landlord's expenses in contesting the validity of, or seeking a reduction in, or seeking to prevent an increase in any such tax or assessment, or attempting to obtain any refund thereof or reassessment in the value of the Shopping Center or any portion thereof. If there shall be more than one taxing authority, the real estate taxes for any period shall be the sum of the real estate taxes for said period attributable to each taxing authority. Tenant shall not be obligated to pay any share of the real estate taxes levied against any separately assessed building in the Shopping Center if another tenant is paying all of the real estate taxes on account thereof, and Tenant's Proportionate Share shall be equitably adjusted to reflect the elimination of the area of the separately assessed building from the total rentable floor area of all of the buildings in the Shopping Center.

Landlord may from time to time reasonably estimate the amount due from Tenant under this Section with respect to any calendar year portion thereof, and Tenant shall pay periodically as Landlord may determine, but not more frequently than monthly, the amount of Landlord's estimate as rent with the next due payment of monthly Minimum Rent.

Subsequent to Landlord's receipt of the actual tax bill from the taxing authority, Landlord shall render Tenant a statement showing for the applicable period Landlord's tax expense and any other amount due from Tenant or any credit due to Tenant hereunder. Payment by Tenant of any amount due shall be made as additional rent with Tenant's next due payment of monthly Minimum Rent and Landlord shall credit the amount of any overpayment against subsequent obligations of Tenant under this clause (or refund such overpayment, if the term of this Lease has ended and Tenant has no further obligations to Landlord).

9.4 Tenant's Personal Property, Equipment and Other Taxes

Tenant shall pay such taxes which may be lawfully charged, assessed, or imposed upon all fixtures, equipment, leasehold improvements, alterations and additions of every type and also upon all merchandise and personal property in said Premises, and Tenant shall pay all license fees which may lawfully be imposed upon the business of Tenant conducted upon the Premises and impact or similar fees payable as a result of Tenant's use or occupancy of the Premises.

If at any time during the Term, the present system of ad valorem taxation of real property shall be changed so that in lieu of, or in addition to the whole or any part of the present type of ad valorem tax on real property, there shall be assessed on Landlord or the Shopping Center a capital levy or other tax on the rents or lease payments received, or a tax on mortgages with respect to the Shopping Center, or a federal, state, county, municipal, or other local income, franchise, excise or similar tax, assessment, levy or charge (distinct from any now in effect) measured by or based, in whole or in part, upon any such rents, lease payments, or mortgages, then any and all of such taxes, assessments, levies or charges, to the extent so measured or based, shall be deemed to be included within the term "real estate tax". Tenant shall pay the amount of

said tax upon receipt of written notice thereof from Landlord, and in the event that a tax is imposed which shall be due on a continuing basis, the same shall be due and payable with each payment of monthly Minimum Rent. The taxes for which Tenant shall be responsible hereunder shall in no event include inheritance, estate, succession, transfer, gift, franchise, or capital stock tax, or any income taxes arising out of or related to ownership and operation of income producing real estate.

ARTICLE X

INDEMNITY AND PUBLIC LIABILITY AND OTHER INSURANCE

10.1 Tenant's Indemnity

To the maximum extent this agreement may be made effective according to law, Tenant agrees to pay, and to protect, exonerate, indemnify and save harmless Landlord, its managers, officers, directors, employees and agents from and against any and all claims of whatever nature arising from any act, omission or negligence of Tenant, or Tenant's contractors, licensees, invitees, agents, officers, servants or employees, arising from any accident, injury or damage whatsoever caused to any person, or the property of any person, occurring after the commencement of this Lease or entry by Tenant, if earlier, and until the end of the Term of this Lease and thereafter, so long as Tenant is in occupancy of any part of the Premises, in or about the Premises, or arising from any accident, injury or damage occurring outside of the Premises but within the Shopping Center, where such accident, damage or injury results or is claimed to have resulted from any act or omission on the part of Tenant, or Tenant's contractors, licensees, invitees, agents, officers, servants or employees.

This indemnity and hold harmless agreement shall include indemnity against all costs, expenses and liabilities incurred in connection with any such claim or proceedings brought thereon, and the defense thereof with counsel acceptable to Landlord.

10.2 Tenant's Risk

To the maximum extent this agreement may be made effective according to law, Tenant agrees to use and occupy the Premises and to use such other portions of the Shopping Center as Tenant is herein given the right to use at Tenant's own risk; and Landlord and Landlord's trustees, beneficiaries, managers, officers, contractors, agents and employees shall have no responsibility or liability for and Tenant waives all claims for any loss of or damage to fixtures or other personal property or person sustained by Tenant or any part claiming through or under Tenant by way of subrogation or otherwise resulting from any accident or occurrence in or upon the Premises, the Building of which the Premises shall be a part or the Shopping Center. In no event shall Landlord be liable for the loss of stored data or for consequential damages. The provisions of this Section shall be applicable from and after the execution of the Lease and until the end of the Term of this Lease, and during such further period as Tenant may use or be in occupancy of any part of the Premises or of the Shopping Center. Article X shall always be subject to exceptions mandated by law.

10.3 Injury Caused by Third Party

To the maximum extent this agreement may be made effective according to law, Tenant agrees that Landlord shall not be responsible or liable to Tenant, or to those claiming by, through or under Tenant, for any loss or damage that may be occasioned by or through the acts or omissions of persons occupying adjoining premises or any part of the premises adjacent to or connecting with the Premises or any part of the Shopping Center, or otherwise, or for any loss or damage resulting to Tenant or those claiming by, through or under Tenant, for its or their property, from the breaking, bursting, stopping or leaking of electric transformers, cables and wires, and water, gas or sewer pipes. Nothing herein shall be construed as an indemnification of Landlord by Tenant for the negligence or deliberate acts of Landlord, its employees, agents or contractors.

10.4 Public Liability Insurance

Tenant agrees to maintain, at its expense, in full force and effect from the date upon which Tenant first enters the Premises for any reason, throughout the Term of this Lease, and thereafter so long as Tenant is in occupancy of any part of the Premises, a policy of public liability and property damage insurance under which Tenant is the named insured and Landlord (and such others in interest whom Landlord may designate) are named as additional insureds and covering all cost, expense and/or liability arising out of or based upon any and all claims, accidents, injuries and damages mentioned in the sections of this Article X and included under "extended coverage" policies in the broadest form of such coverage from time to time reasonably available in the jurisdiction in which the Premises are located. Each such policy shall be non-amendable and non-cancelable with respect to Landlord and Landlord's said designees without twenty (20) days' prior written notice to Landlord, and a duplicate original thereof and a certificate of insurance together with evidence of the payment of all premiums therefor shall be delivered to Landlord on or before the Term Commencement Date and Tenant shall within thirty (30) days prior to the expiration of any such insurance, deliver other certificates of insurance evidencing the renewal or replacement of such insurance, together with evidence of the payment of all premiums therefor. The minimum limits of liability of such insurance shall be \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate, with a \$2,000,000 umbrella. All of such insurance shall be with responsible companies qualified to do business in the jurisdiction in which the Premises are located and in good standing therein. Such insurance may be covered by Tenant under blanket coverage. From time to time during the Term hereof, the aforesaid limits of coverage shall be for such higher limits, if any, as are customarily carried to the area in which the Premises are located with respect to similar properties. If Tenant fails to comply with the foregoing requirements, Landlord may obtain such insurance and keep same in effect, and all sums paid for insurance by Landlord hereunder (together with Landlord's reasonable administrative expense in procuring such insurance) shall be and are hereby declared additional rent, due and payable forthwith.

10.5 Property Insurance

Tenant shall carry "all risk" property insurance in an amount adequate to cover the cost of replacement of Tenant's property located within the Premises and improvements made to the Premises by Tenant, which insurance shall provide coverage from the earliest date Tenant first enters upon the Premises to prepare for or improve same for occupancy, thereafter throughout the Term of this Lease, and thereafter so long as Tenant is in occupancy of any part of the Premises.

ARTICLE XI

LANDLORD'S ACCESS TO PREMISES

11.1 Landlord's Right of Access

Landlord shall have the right to place, maintain and repair all utility equipment of any kind in, upon or under the Premises as may be necessary for the servicing of the Premises and other portions of the Shopping Center. Landlord shall also have the right to enter the Premises at all reasonable times to inspect or to exhibit the same to prospective purchasers, mortgagees, and tenants and to make such repairs, additions, alterations or improvements as Landlord may deem desirable. Landlord shall use reasonable efforts not to unreasonably interfere with Tenant's business. Landlord shall be allowed to take all material in, to and upon said Premises that may be required therefor without the same constituting an eviction of Tenant in whole or in part and the rents reserved shall in no way abate while said work is in progress by reason of loss or interruption of Tenant's business or otherwise and Tenant shall have no claim for damages. If Tenant shall not be personally present to permit an entry into said Premises when for any reason an entry therein shall be permissible, Landlord may enter only in the case of emergency, by the use of force without, in any event, incurring liability therefor and without in any manner affecting the obligations of this Lease. The provisions of this paragraph shall in no way be construed to impose upon Landlord any obligation whatsoever for the maintenance or repair of the Building or any part thereof except as otherwise herein specifically provided. During the three (3) months prior to the expiration of the Term, Landlord may place upon the said Premises "To Let" or "For Sale" signs which Tenant shall permit to remain thereon. Landlord shall have a right of access if necessary to effect Section 16.9. For the purpose of this Article XI, the Term "Landlord" shall mean Landlord, its managing agent, employees or servants or any person authorized by Landlord to enter the Premises pursuant to the provisions of this Article XI.

ARTICLE XII

DAMAGE CLAUSE

12.1 Partial Damage

If, after the commencement of the Term, and prior to the expiration or earlier termination hereof, the Premises shall be partially damaged (as distinguished from "substantially damaged", as that term is hereinafter defined) by fire or casualty, Landlord shall promptly proceed to restore the Premises to the extent originally constructed by Landlord to substantially the condition in

which the Premises were in at the time of such damage, but Landlord shall not be responsible for delay which may result from any cause beyond the reasonable control of Landlord. Upon Landlord's substantial completion of its work in such a manner that the remaining work will not materially interfere with Tenant completing the repairs required to be made by it hereunder, Tenant will promptly complete any repairs required of it necessary to occupy and open the damaged areas.

12.2 Substantial Damage

If, after the commencement of the Term of this Lease, and prior to the expiration or earlier termination hereof, the Premises shall be substantially damaged (as that term is hereinafter defined) by fire or casualty, the risk of which is covered by Landlord's insurance, Landlord shall, promptly after such damage and the determination of the net amount of insurance proceeds available to Landlord, expend as much as may be necessary of such net amount to restore (consistent, however, with zoning laws and building codes then in existence), the Premises to substantially the condition in which the Premises were in at the time of such damage, except as hereinafter provided, but Landlord shall not be responsible for delay which may result from any cause beyond the reasonable control of Landlord. Should the net amount of insurance proceeds available to Landlord be insufficient to cover the cost of restoring the Premises, in the sole reasonable estimate of Landlord, Landlord may, but shall have no obligation to, supply the amount of such insufficiency and restore the Premises with all reasonable diligence, or Landlord may terminate this Lease by giving notice to Tenant not later than fifteen (15) days after Landlord has determined the estimated net amount of insurance proceeds available to Landlord and the estimated cost of such restoration; provided, however, that Landlord may, in lieu of terminating this Lease, give Tenant the option, to be exercised within thirty (30) days after receiving Landlord's notice of this option, to pay to Landlord at the time Tenant notifies Landlord of Tenant's decision to exercise such option, the difference between the amount of insurance proceeds and the cost of repair and restoration, in which case Landlord shall repair and restore the Premises as aforesaid and shall provide Tenant with satisfactory evidence that all sums contributed by Tenant have been expended by Landlord in paying the cost of such repair and restoration. After Landlord's substantial completion of restoration of the Premises, if the Lease has not been terminated, Tenant will complete its repairs, if any, necessary to occupy and open the damaged areas.

12.3 Definition of "Substantial Damage"

The terms "substantial damage" and "substantially damaged", as used herein, shall refer to damage of such character that the same cannot, in ordinary course, reasonably be expected to be repaired within thirty (30) days from the time that such work would commence.

12.4 Damage to Other Portions of the Shopping Center and Uninsured Casualty

If, however, the Building of which the Premises are a part (or other buildings hereafter constructed at the Shopping Center) shall be substantially damaged or destroyed by fire or casualty, or if, as the result of a risk not covered by the forms of hazard insurance at the time then

customarily carried on like improvements in the locality in which the Premises are located (the parties agreeing that, as of the date of execution hereof, such form of insurance coverage is commonly known as Fire with Extended Coverage Endorsement No. 4 and Vandalism and Malicious Mischief coverage), the Premises or the Building are substantially damaged, Landlord shall promptly restore (consistent however, with zoning laws and building codes then in existence) the Premises or the Building, or so much thereof as was originally constructed by Landlord, to substantially the condition thereof at the time of such damage, unless Landlord, within ninety (90) days after such loss, gives notice to Tenant of Landlord's election to terminate this Lease. If Landlord shall give such notice, then this Lease shall terminate as of the date of such notice with the same force and effect as if such date were the date originally established as the expiration date hereof. Further, if there shall be damage or destruction from any cause to buildings within the Shopping Center to such extent that continued operation of the Shopping Center would in Landlord's sole judgment, be uneconomic, Landlord shall also have the right, promptly after such damage, to terminate this Lease by suitable notice to Tenant in which is stated a date as of which Landlord desires surrender of Tenant's Premises, and this Lease shall terminate as of the date so stipulated as if the same were the date originally established as the expiration date hereof. After Landlord's substantial completion of restoration of the Premises, if the Lease has not been terminated, Tenant will promptly complete its repairs, if any, necessary to occupy and open the damaged areas.

12.5 Damage During Last Year of Term

If the Premises shall be substantially damaged by fire or casualty within the last year of the Term of this Lease, either party shall have the right, by giving notice to the other not later than sixty (60) days after such damage, to terminate this Lease, whereupon this Lease shall terminate as of the date of such notice with the same force and effect as if such date were the date originally established as the expiration date hereof.

Notwithstanding the foregoing, if within thirty (30) days of Landlord's exercise of the termination right of this Section 12.5, Tenant exercises all remaining options to extend the Term (if any options remain to be exercised), Landlord's exercise of the termination right shall be null and void, and the Lease shall be deemed extended for and through the date of expiration set forth as to the final option period. The foregoing nullification shall not apply if termination is based on other than the provisions of this Section 12.5.

12.6 Abatement of Rent

If the Premises shall be damaged by fire or casualty, the Minimum Rent and the charges payable by Tenant under Section 7.2, Article VIII and Section 9.3 hereof shall abate or be reduced proportionately for the period in which, by reason of such damage, there is substantial interference with the operation of Tenant's business in the Premises, having regard to the extent to which Tenant may be required to discontinue Tenant's business in the Premises, but such abatement or reduction shall end upon completion by Landlord of the work which Landlord is required to do under this Article in restoration of the Premises.

12.7 Time Period for Completion of Landlord's Work

If the Lease is not otherwise terminated on account of damage by fire or other casualty, Tenant shall have the right to terminate the Lease within the following time periods:

(a) If the Premises alone are damaged, and if Landlord's restoration work has not been completed, within six (6) months of the casualty;

(b) If other portions of the Shopping Center are also damaged, and if Landlord's restoration work has not been completed, within twelve (12) months of the casualty.

Termination is conditioned on written notice to Landlord within fifteen (15) days following expiration of the six (6) and twelve (12) month periods, respectively, and provided further that Landlord shall not have substantially completed its restoration work prior to such notice.

ARTICLE XIII

EMINENT DOMAIN

13.1 Rights of Termination for Taking

If the whole of the Premises, or such portion thereof as to render the balance of the Premises (if reconstructed to the maximum extent practicable in the circumstances) unsuitable for Tenant's purposes, shall be taken by condemnation or right of eminent domain, Landlord or Tenant shall have the right to terminate this Lease by notice to the other of its desire to do so, provided that such notice is given not later than thirty (30) days after Tenant has been deprived of possession. This Lease shall terminate as of the date possession shall be taken by such taking authority, and Tenant shall pay rent and perform all of its obligations under this Lease up to such date with a proportionate refund by Landlord of any rent which shall have been paid in advance for periods subsequent to such date.

Further, if so much of the Shopping Center shall be so taken that continued operation of the Shopping Center would be uneconomic, Landlord shall have the right to terminate this Lease by giving notice to Tenant of Landlord's desire to do so not later than forty-five (45) days after the effective date of such taking, provided Landlord shall also terminate all other leases in the Building of which the Premises are part. If this Lease is so terminated, it shall terminate as of the date possession is taken by such taking authority and Tenant shall pay rent and perform all of its obligations under this Lease up to such date with a proportionate refund by Landlord of any rent which shall have been paid in advance of periods subsequent to such date. Should any of the Premises be so taken or condemned and such taking or condemnation occurs after the commencement of the Term of this Lease, and should this Lease be not terminated in accordance with the foregoing provisions, Landlord agrees promptly after such taking or condemnation, and the determination of Landlord's award on account thereof, to expend so much as may be necessary of the net amount which may be awarded to Landlord in such condemnation proceedings in restoring (consistent, however, with zoning laws and building codes then in

existence) the Premises to an architectural unit as nearly like their condition prior to such taking as shall be practicable. Should the net amount so awarded to Landlord be insufficient to cover the cost of restoring the Premises, in the reasonable estimate of Landlord, Landlord may, but shall have no obligation to, supply the amount of such insufficiency and restore the Premises to such an architectural unit, with all reasonable diligence, or either Landlord or Tenant may terminate this Lease by giving notice to the other not later than a reasonable time after Landlord has determined the estimated net amount which may be awarded to Landlord and the estimated cost of such restoration.

13.2 Payment of Award

Landlord shall have and hereby reserves and excepts, and Tenant hereby grants and assigns to Landlord, all rights to recover for damages to the Shopping Center site, to the Premises, the Building in which the same are located, including without limitation any and all damages as compensation for diminution in value of the leasehold, reversion and fee of the Premises and any other compensation accrued or hereafter to accrue by reason of such taking, damage or destruction, and by way of confirming the foregoing, Tenant hereby grants and assigns, and covenants with Landlord to grant and assign to Landlord all rights to such damages or compensation. Nothing contained herein shall be construed to prevent Tenant from prosecuting in any condemnation proceedings a claim for the value of any Tenant's usual trade fixtures installed in the Premises by Tenant at Tenant's expense and for relocation expenses, provided that such action shall not affect the amount of compensation otherwise recoverable by Landlord from the taking authority.

13.3 Abatement of Rent

In the event of any such taking of the Premises, the Minimum Rent and other charges, or a fair and just proportion thereof, according to the extent of the taking shall be abated or reduced proportionately for the period in which, by reason of such taking, there is substantial interference with the operation of Tenant's business in the Premises, having regard to the extent to which Tenant may be required to discontinue Tenant's business in the Premises, but such abatement or reduction shall end upon completion by Landlord of Landlord's restoration, if any, hereunder.

ARTICLE XIV

INSURANCE

14.1 Non-Subrogation

Insofar as, and to the extent that, the following provision may be effective without invalidating or making it impossible to secure insurance coverage obtainable from responsible insurance companies doing business in the locality in which the Premises are located (even though extra premium may result therefrom), Landlord and Tenant mutually agree that, with

respect to any hazard which is covered by insurance then being carried by them, all such policies shall contain a clause that the insurer will agree to waive any right of subrogation against Landlord or Tenant, as the case may be, in connection with or arising from fire or other risks or casualty covered by said insurance. If, at the request of one party, this release and nonsubrogation provision is waived, nothing contained in this Section shall derogate from or otherwise affect releases elsewhere herein contained of either party's claims.

14.2 Extra Hazardous Use

Tenant covenants and agrees that Tenant will not do or permit anything to be done in or upon the Premises, or bring in anything or keep anything therein, which shall increase the rate of insurance on the Premises, the Building or on any of the other buildings located in the Shopping Center above the standard rate applicable to non-hazardous retail uses; and Tenant further agrees that in the event that Tenant shall do any of the foregoing, or if Tenant's permitted use itself shall cause such insurance rate to be greater, Tenant will pay to Landlord, within five (5) days of demand, any such increase resulting therefrom which shall be due and payable as additional rent hereunder.

14.3 Proportionate Share of Insurance Costs

Pursuant to Section 8.2, and as part of the common area maintenance costs and expenses, Tenant shall pay to Landlord as additional rent Tenant's Proportionate Share of the annual costs of Landlord's fire and casualty insurance on the buildings and other improvements in the Shopping Center (and other property insurance with respect to the Shopping Center) and public liability insurance with respect to the Shopping Center, all as may be carried by Landlord from time to time.

ARTICLE XV

OTHER STORES

15.1 Advertising

Tenant agrees to use its best efforts to cause the business located in the Premises to be included in Tenant's advertising program, if any, so that said business will receive at least equivalent treatment with respect to advertising and publicity as is afforded other like businesses presently owned, operated or hereafter owned or operated by Tenant and to cause mention of the tradename and location of said business in such advertising and publicity.

15.2 Restrictions on Other Operations of Tenant and Tenant's Guarantor

Tenant agrees (so far as and to the extent it may lawfully so agree) that during the Term, neither Tenant, any guarantor of this Lease or any affiliated or subsidiary company, directly or indirectly, will own, lease or operate another store, department within a store, or any structure or

site for the operation of a restaurant engaging in the Permitted Use within one (1) mile of any point in the Shopping Center.

ARTICLE XVI

DEFAULT

16.1 Events of Default

Any of the following occurrences or acts shall constitute an event of default under this Lease:

(a) Tenant shall fail to pay the Minimum Rent, additional rent, or other charges on or before the date on which the same becomes due and payable, and the same continues for seven (7) days after written notice from Landlord thereof; or

(b) Landlord having rightfully given the notice specified in Subsection (a) above to Tenant more than twice in any twelve (12) month period to pay the Minimum Rent or other charges on or before the date on which the same becomes due and payable; or

(c) Tenant shall fail to perform or observe some term or condition of this Lease which, because of its character, would constitute a present danger to persons or property in the Shopping Center or would immediately jeopardize Landlord's interest in the Premises or Shopping Center and Tenant shall not cure such failure immediately upon receiving a written notice from Landlord if such notice can reasonably be given in the circumstances; or

(d) Tenant shall fail to perform or observe any other term or condition contained in this Lease and Tenant shall not cure such failure within thirty (30) days after notice from Landlord to Tenant thereof; or

(e) Intentionally Deleted

(f) Tenant shall fail to open for business in or within sixty (60) days following the Rent Commencement Date hereof, provided that if Tenant promptly commenced Tenant's Work following the Term Commencement Date, is diligently pursuing completion of Tenant's Work, is not in default on the payment of Minimum Rent or Additional Rent beyond applicable notice and cure periods and requests Landlord in writing for an extension of not more than thirty (30) days within sixty (60) days following the Rent Commencement Date, then if Tenant shall fail to open for business within the requested extension period; or

(g) Tenant shall discontinue the conduct of its business in the Premises or carry on a use of the Premises other than the Permitted Use specified in Section 1.2, or fail to conform to the provisions of Section 5.1(k); or



(h) Tenant shall remove or commence to remove Tenant's goods or property from or out of the Premises otherwise than in the ordinary and usual course of business without having first paid and satisfied Landlord for all rent which may become due during the entire Term of this Lease; or

(i) If the estate hereby created shall be taken on execution by other process of law, or if Tenant or any guarantor hereof shall be judicially declared bankrupt or insolvent according to law, or if any assignment shall be made of the property of Tenant or any guarantor hereof for the benefit of creditors, or if a receiver, guardian, conservator trustee in involuntary bankruptcy or other similar officer shall be appointed to take charge of all or any substantial part of Tenant's property or the property of any guarantor hereof by a court of competent jurisdiction, or if a petition shall be filed for the reorganization of Tenant or any guarantor hereof under the provisions of the Bankruptcy Code now or hereafter enacted and providing a plan for a debtor to settle, satisfy or extend the time for the payment of debts.

16.2 Right to Terminate

If an event of default shall have occurred (notwithstanding any license of any former breach of covenant or waiver of the benefit hereof or consent in a former instance), Landlord lawfully may, immediately or at any time thereafter, give Tenant written notice of Landlord's election to terminate this Lease on a date specified in such notice. Upon the giving of such notice, this Lease shall terminate and the estate hereby granted shall expire and terminate on such date as fully and completely and with the same effect as if the date were the date originally fixed for expiration of the Term and the rights of Tenant hereunder shall terminate; however, Tenant shall remain liable as set forth below.

16.3 Right of Re-Entry

If any event of default (as defined in Section 16.1) shall have occurred, Landlord shall have the immediate right, whether or not this Lease shall have been terminated pursuant to Section 16.2, without demand or notice, to enter into and upon the Premises or any part thereof in the name of the whole and repossess the same as Landlord's former estate, and expel Tenant and those claiming through or under Tenant and remove its or their effects by force, if necessary, summary proceedings, ejectment or otherwise without being guilty of trespass and without prejudice to any remedies which might otherwise be used for arrears of rent or preceding breach of covenant. No such re-entry or taking shall be construed as an election on Landlord's part to terminate this Lease unless a written notice of such election is given to Tenant pursuant to Section 16.2 or unless so decreed by a court of competent jurisdiction. Tenant covenants and agrees, notwithstanding any entry or re-entry by Landlord, whether by summary proceedings, termination, or otherwise, to pay and be liable for, on the days originally fixed herein for the payment thereof, amounts equal to the several installments of rent and other charges reserved as they would, under the terms of this Lease, become due if this Lease had not been terminated or if Landlord had not entered or re-entered, as aforesaid.

16.4 Right to Relet

At any time or from time to time after the repossession of the Premises or any part thereof pursuant to Section 16.3, whether or not this Lease shall have been terminated pursuant to Section 16.2, Landlord may relet the Premises or any part thereof for the account of Tenant, in the name of Tenant or Landlord or otherwise, without notice to Tenant, for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the Term) and on such conditions (which may include concession or free rent) and for such uses as Landlord, in its absolute discretion, may determine, and Landlord may collect and receive any rents payable by reason of such reletting. Landlord shall not be responsible or liable for any failure to collect any rent due upon such reletting.

16.5 Tenant to Remain Liable

No expiration or termination of this Lease pursuant to Section 16.2, by operation of law or otherwise, and no repossession of the Premises or any part thereof pursuant to Section 16.3 or otherwise, and no reletting of the Premises or any part thereof pursuant to Section 16.4, shall relieve Tenant of its liabilities and obligations hereunder, all of which shall survive such expiration, termination, repossession or reletting.

16.6 Damages

In the event of any expiration or termination of this Lease or repossession of the Premises or any part thereof by reason of the occurrence of an event of default, Tenant will pay to Landlord Minimum Rent, additional rent and other sums required to be paid by Tenant under the terms of the Lease until the end of what would have been the Term of the Lease (including any extension of the Term if any option to extend has been exercised) in the absence of such expiration, termination or repossession and whether the Premises be relet or remain vacant in whole or in part, or for a period less than the remainder of the Term, but in the event the Premises be relet by Landlord, Tenant shall be entitled to a credit in the net amount of rent received by Landlord in reletting, after deducting all expenses incurred in reletting the Premises (including without limitation, legal fees, remodeling costs, brokerage fees and the like) and in collecting the rent in connection therewith.

Amounts received by Landlord after reletting shall first be applied against such Landlord's reasonable expenses, until the same are recovered, and until such recovery, Tenant shall pay, as of each day when a payment would fall due under this Lease, the amount which Tenant is obligated to pay under the terms of this Lease (Tenant's liability prior to any such reletting and such recovery not in any way to be diminished as a result of the fact that such reletting might be for a rent higher than the rent provided for in this Lease); when and if such expenses have been completely recovered, the amounts received from reletting by Landlord as have not previously been applied shall be credited against Tenant's obligations as of each day when a payment would fall due under this Lease, and only the net amount thereof shall be payable by Tenant. Further, amounts received by Landlord from such reletting for any period shall be credited only against obligations of Tenant allocable to such period, and shall not be credited against obligations of Tenant hereunder accruing subsequent or prior to such period; nor

shall any credit of any kind be due for any period after the date when the Term of this Lease is scheduled to expire according to its terms.

As an alternative, at the election of Landlord, Tenant will, upon such termination, pay to Landlord, as damages, such a sum as at the time of such termination represents the amount of the excess, if any, of the then value of the total rent and other benefits (making reasonable assumptions with respect to additional rent) which would have accrued to Landlord under this Lease for the remainder of the Lease Term if the Lease terms had been fully complied with by Tenant over and above the then cash rental value (in advance) of the Premises for the balance of the Term.

16.7 Rights Cumulative, Non-Waiver

No right or remedy herein conferred upon or reserved to Landlord is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder or now or hereafter existing at law or in equity or by statute. The failure of Landlord to insist at any time upon the strict performance of any covenant or agreement or to exercise any option, right, power or remedy contained in this Lease shall not be construed as a waiver or relinquishment thereof for the future. The receipt by Landlord of any rent, additional rent or any other sum payable hereunder with knowledge of the breach of any covenant or agreement contained in this Lease shall not be deemed a waiver of such breach, and no waiver by Landlord of any provision of this Lease shall be deemed to have been made unless expressed in writing and signed by Landlord. In addition to the other remedies provided in this Lease, Landlord shall be entitled, to the extent permitted by applicable law, to injunctive relief in case of the violation, or attempted or threatened violation, of any of the covenants, agreements, conditions or provisions of this Lease, or to a decree compelling performance of this Lease, or to any other remedy allowed to Landlord at law or in equity.

16.8 Expenses

Without limiting any of Landlord's or Tenant's rights and remedies hereunder, and in addition to all other amounts Tenant or Landlord is otherwise obligated to pay, it is expressly agreed that either party shall be entitled to recover from the other party all costs and expenses, including reasonable attorneys' fees and expenses, and court costs, incurred by the enforcing party in enforcing this Lease and the other party's obligations and covenants hereunder.

16.9 Landlord's Right to Cure

Landlord may, but shall not be obligated to, cure any default by Tenant after complying with the notice provisions herein set forth, and whenever Landlord so elects, all costs and expenses paid or incurred by Landlord in curing such default including, without limitation, reasonable attorneys' fees and expenses, and court costs, shall be payable on demand with interest as provided in Section 4.1 hereof.

16.10 Landlord's Default

Landlord shall in no event be in default in the performance of any of Landlord's obligations hereunder unless and until Landlord shall have failed to perform such obligations within thirty (30) days, or such additional time as is reasonably required to correct any such default, after written notice by Tenant to Landlord properly specifying wherein Landlord has failed to perform any such obligation. Tenant shall not assert any right to deduct the cost of repairs or any monetary claims against Landlord theretofore accrued from rent thereafter due and payable but, subject to the provisions of Section 17.3, shall look solely to Landlord's interest in the Shopping Center for satisfaction of such claim.

16.11 Bankruptcy or Insolvency

If Tenant shall become a debtor under the United States Bankruptcy Code, 11 U.S.C. §101 et seq. (the "Bankruptcy Code"), then, to the extent that the Bankruptcy Code may be applicable or affect the provisions of this Lease, the following provisions shall also be applicable. If the trustee or debtor-in-possession shall fail to elect to assume this Lease within sixty (60) days after the commencement of a case under the Bankruptcy Code, or within such additional time as the court having jurisdiction, for cause, within such 60 day period, fixes, this Lease shall be deemed to have been rejected; and Landlord shall be thereafter immediately entitled to possession of the Premises and this Lease shall be terminated subject to and in accordance with the provisions of this Lease and of law (including such provisions for damages). No election to assume (and, if applicable, to assign) this Lease by the trustee or debtor-in-possession shall be permitted or effective unless: (i) all defaults shall have been cured and Landlord shall have been provided with adequate assurances reasonably satisfactory to Landlord, including any reasonably required guaranties and/or security deposits; (ii) neither such assumption nor the operation of the Premises subsequent thereto shall, in Landlord's reasonable judgment, cause or result in any breach or other violation of any provision of this or any applicable lease, mortgage or other contract; (iii) the assumption and, if applicable, the assignment of this Lease satisfies in full the provisions of the Bankruptcy Code, including, without limitation, Sections 365(b)(1) and (3) and (f)(2); and (iv) the assumption has been ratified and approved by order of such court or courts as have final jurisdiction over the Bankruptcy Code and the case. No assignment of this Lease by the trustee or debtor-in-possession shall be permitted or effective unless the proposed assignee likewise shall have satisfied (i), (ii), (iii) and (iv) of the preceding sentence regarding such assignment, and any such assignment shall, without limitation, be subject to the provisions of Article VI hereof. Neither Tenant's interest or estate in the Premises herein or created hereby nor any lesser interest or estate of Tenant shall pass to anyone under any law of any state or jurisdiction without the prior written consent of Landlord. In no event shall this Lease, if the Term hereof has expired or has been terminated in accordance with the provisions of this Lease, be revived, and no stay or other proceedings shall nullify, postpone or otherwise affect the expiration or earlier termination of the Term of this Lease pursuant to the provisions of this Section 16.11 or prevent Landlord from regaining possession of the Premises thereupon.

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ARTICLE XVII

MISCELLANEOUS PROVISIONS

17.1 Waiver

Failure on the part of Landlord or Tenant to complain of any action or non-action on the part of the other, no matter how long the same may continue, shall never be a waiver by Landlord or Tenant of any of their respective rights hereunder; but the foregoing shall not apply to provisions of this Lease, where a right of Tenant is dependent upon notice to be given within a specified period. Further, no waiver at any time of any of the provisions hereof by Landlord or Tenant shall be construed as a waiver of any of the other provisions hereof, and waiver at any time of any of the provisions hereof shall not be construed as a waiver at any subsequent time of the same provisions. The consent or approval of Landlord or Tenant to or of any action by the other requiring such consent or approval shall not be construed to waive or render unnecessary consent or approval to or of subsequent similar actions by the other.

No payment by Tenant, or acceptance by Landlord, of a lesser amount than shall be due from Tenant to Landlord shall be treated otherwise than as a payment on account. The acceptance by Landlord of a check for a lesser amount with an endorsement or statement thereon, or upon any letter accompanying such check that such lesser amount is payment in full, shall be given no effect, and Landlord may accept such check without prejudice to any other rights or remedies which Landlord may have against Tenant, and Landlord may apply said check in its discretion against any charges then owed by Tenant.

17.2 Covenant of Quiet Enjoyment

If and so long as Tenant shall pay the rent specified herein and observe and perform all covenants, agreements and obligations required by it to be performed and observed hereunder, Tenant shall lawfully, peacefully and quietly have, hold, occupy and enjoy the Premises during the Term hereof, without hindrance or ejection by any persons lawfully claiming under Landlord to have title to the Premises superior to Tenant. The foregoing covenant of quiet enjoyment is in lieu of any other such covenant, express or implied; and it is understood and agreed that this covenant and any and all other covenants of Landlord contained in this Lease shall be binding upon Landlord and Landlord's successors only with respect to breaches occurring during Landlord's and Landlord's successors' respective ownership of Landlord's interest hereunder. The foregoing is expressly subject, however, to Landlord's mortgagees agreeing to subordinate their mortgage interests to this Lease.

17.3 Limitation of Landlord's Liability

Tenant specifically agrees to look solely to Landlord's then equity interest in the Shopping Center and net cash flow after the payment of all ordinary and usual Shopping Center operating expenses, real estate taxes and mortgage payments for recovery of any judgment from

Landlord arising out of or in connection with this Lease or Tenant's occupancy of the Premises, it being specifically agreed that Landlord, any successor holder of Landlord's interest hereunder, any limited or general partner of Landlord, any beneficiary of a trust, any member of any limited liability company, or any person from time to time holding Landlord's interest as Trustee shall not be required to respond in monetary damages from Landlord's assets other than Landlord's equity interest and net cash flow as aforesaid in the Shopping Center. In no event shall Landlord ever be liable to Tenant for any indirect or consequential damages by reason of Landlord's breach or default of the terms of this Lease.

17.4 Force Majeure

With respect to any services to be furnished by either party to the other, each shall in no event be liable for failure to furnish the same when prevented from doing so by strike, lockout, breakdown, accident, order or regulation of or by any governmental authority, or failure of supply, or inability by the exercise of reasonable diligence to obtain supplies, parts or employees necessary to furnish such services, or because of war or other emergency, but nothing herein shall be construed to excuse Tenant from paying without setoff or deduction Minimum Rent and all items of additional rent and other charges when the same are due and payable.

17.5 Mechanics and Other Liens

Tenant agrees immediately to discharge (either by payment or by filing the necessary bond, or otherwise) any mechanics, materialmen's or other lien against the Premises and/or Landlord's interest therein, which liens may arise out of any payment due for or purported to be due for any labor, services, materials, supplies or equipment alleged to have been furnished to or for Tenant in, upon or about the Premises, and agrees to indemnify Landlord and hold Landlord harmless from and against all loss, costs and expenses, including reasonable attorneys' fees and expenses, and court costs, arising out of or in connection with Tenant's failure to discharge any such lien.

17.6 No Brokerage

Landlord and Tenant each warrants and represents that it has dealt with no broker in connection with the consummation of this Lease other than the Broker(s) named in Section 1.2, and each agrees to indemnify and hold the other harmless from any other claims predicated upon its acts. Landlord agrees to defray the relevant fee charged by the Broker(s) named in Section 1.2.

17.7 Invalidity of Particular Provisions

If any term or provision of this Lease, or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforceable to the fullest extent permitted by law.

17.8 Provisions Binding

Except as herein otherwise expressly provided, the terms hereof shall be binding upon and shall inure to the benefit of the successors and assigns, respectively of Landlord and Tenant and, if Tenant shall be an individual, upon and to his heirs, executors, administrators, successors and assigns. Each term or each provision of this Lease to be performed by Tenant shall be construed to be both a covenant and a condition. The reference contained to successors and assigns of Tenant is not intended to constitute a consent to assignment by Tenant, but has reference only to those instances in which Landlord may later give consent to a particular assignment as required by those provisions of Article VI hereof.

17.9 Recording

Both Landlord and Tenant agree not to record the Lease, but each party hereto agrees, on the request of the other, to execute a so-called notice of lease or short form lease in recordable form and complying with applicable law and reasonably satisfactory to Landlord. In no event shall such document set forth the rental or other charges payable by Tenant under this Lease; and any such document shall expressly state that it is executed pursuant to the provisions contained in this Lease, and is not intended to vary the terms and conditions of this Lease.

17.10 Notices

Whenever, by the terms of this Lease, notice shall or may be given either to Landlord or to Tenant, such notice shall be deemed to have been properly given if in writing and personally delivered, or sent by registered or certified mail, postage prepaid, return receipt requested, or by recognized overnight delivery service, such as Federal Express, UPS or United States Postal Service Express Mail, for next business day delivery, addressed to Tenant at Tenant's address set forth in Section 1.2 of this Lease or addressed to Landlord at Landlord's address as set forth in Section 1.2 of this Lease, as the case may be. Notice so mailed shall be deemed to have been delivered on the second business day following deposit in the mail and notice sent by overnight delivery service shall be deemed to have been delivered on the date delivery is made, first attempted or refused, as evidenced by the records of the delivery service. Landlord and Tenant shall have the right from time to time to specify as its address for purposes of this Lease any other address in the United States of America upon three days' notice thereof, similarly given to the other party.

17.11 When Lease Becomes Binding

Employees or agents of Landlord have no authority to make a lease or any other agreement or undertaking in connection herewith. The submission of this document for examination and negotiation does not constitute an offer to lease, or a reservation of, or option for, the Premises, and this document shall become effective and binding only upon the execution and delivery hereof by both Landlord and Tenant. This Lease contains all of the agreements of the parties with respect to the subject matter hereof and supersedes all prior dealings between

Landlord and Tenant with respect to such subject matter. All negotiations, considerations, representations and understandings between Landlord and Tenant, including specifically all representations with respect to possible construction and configuration of the Building and Shopping Center and all representations with respect to other present or proposed tenants of the Shopping Center are incorporated herein and may be modified or altered only by written agreement between Landlord and Tenant, and no act or omission of any employee or agent of Landlord shall alter, change or modify any of the provisions hereof.

17.12 Paragraph Headings

The paragraph headings and captions throughout this instrument are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Lease.

17.13 Rights of Mortgagee

(a) This Lease is and shall be automatically deemed to be subject and subordinate to any mortgage subsequently given to an institutional lender. Notwithstanding the foregoing, at the election of the holder of such mortgage by notice to such effect, this Lease will be prior to the mortgage as provided in subparagraph (b) below.

(b) If any holder of a mortgage which encumbers the Premises, originally given to an institutional lender, and executed and recorded prior to the date of this Lease, shall so elect, this Lease and the rights of Tenant hereunder, shall be superior to rights of such holder, with the same force and effect as if this Lease had been executed and delivered, and recorded, or a statutory notice hereof recorded, prior to execution, delivery and recording of any such mortgage.

(c) Tenant also agrees to attorn to the holder of any such mortgage upon foreclosure or any purchaser at foreclosure, and to enter into attornment agreements at the request of the holder from time to time (and appoints Landlord as its attorney-in-fact to enter into such agreements on its behalf).

Any election as to subsection (b) above shall become effective upon either notice from such holder to Tenant in the same fashion as notices from Landlord to Tenant are to be given hereunder or by the recording in the appropriate registry or recorder's office of an instrument, in which such holder subordinates its rights under such mortgage to this Lease.

After receiving notice from any person, firm or other entity that it holds a mortgage or ground lease which includes the Premises as part of the mortgaged or leased premises, as appropriate, no notice from Tenant to Landlord relating to a default of Landlord which might give rise to a termination of this Lease or a reduction of the rent hereunder shall be effective unless and until a copy of the same is given to such holder, and the curing of any of Landlord's defaults by such holder will be treated as performance by Landlord.

Tenant agrees to give the mortgagee or ground lessee, as appropriate, by registered mail, a copy of any notice of default served upon Landlord, provided that prior to such notice Tenant has been notified in writing, (by way of Notice of Assignment of Rents and Leases, or otherwise) of the address of such mortgagee. Tenant further agrees that if Landlord shall have failed to cure such default within the time provided for in this Lease, then the mortgagee or ground lessee, as appropriate, shall have an additional sixty (60) days within which to cure such default or if such default cannot be cured within that time, then such additional time as may be necessary to cure such default shall be granted if within such sixty (60) days mortgagee or ground lessee, as appropriate, has commenced and is diligently pursuing the remedies necessary to cure such default (including, but not limited to, commencement of foreclosure proceedings, if necessary to effect such cure), in which event the Lease shall not be terminated while such remedies are being so diligently pursued.

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 Premises, Tenant agrees:

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

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

Where a party acquires the lessor's interest in property (whether land only, or land and buildings) which includes the Premises, and simultaneously leases the same back, such acquisition shall 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.

17.14 Definition of "Rentable Square Footage"

The term "Rentable Square Footage" (or "square feet"), as used herein, shall mean the number of square feet of floor area lying within the Premises, measured from center line of the portions that separate the Premises from adjoining rentable areas or the outside of the building, as the case may be, plus a core factor for certain of the common areas, pursuant to BOMA standards. No deductions shall be made for columns and projections appropriate to the structure or design of the Premises or the Building of which the Premises are a part.

17.15 Estoppel Certificates

Tenant shall, without charge (unless Landlord requests more than two (2) estoppel certificates in any one year, in which event Landlord shall pay Tenant's reasonable administrative

expenses for preparing the additional certificates in that year), at any time and from time to time, within twenty (20) days after written request by Landlord, certify by written instrument (in recordable form if requested) duly executed, acknowledged and delivered to Landlord, or to any mortgagee or proposed mortgagee, or any purchaser or proposed purchaser, or to any other entity reasonably specified by Landlord:

(1) The Term Commencement Date, the Rent Commencement Date, the original expiration date, the present expiration date, and the existence, number and term of any option periods;

(2) Whether or not Landlord is in default, in any way, in the performance of any of the covenants, conditions and agreements to be performed by Landlord in accordance with this Lease and if there is any such default, specifying the nature of same;

(3) What the amount of rent is pursuant to the terms of this Lease, and the dates, if any, to which the Minimum Rent and other charges hereunder have been paid in advance;

(4) That this Lease is unmodified and in full force and effect, or in the event that there have been modifications, that the same is in full force and effect as modified and setting forth the modifications;

(5) Whether or not there are then existing any claims, setoffs or defenses against the enforcement of any of the agreements, terms, covenants or conditions hereof upon the part of Tenant to be performed or complied with, and if so, specifying the same; and

(6) The status of any other matter relative to this Lease or the relation of the parties;

Upon the failure of Tenant to deliver such certificates within the time above specified, such failure shall be deemed tantamount to the delivery of the certificate by Tenant to Landlord to the effect that this Lease is valid and in full force and effect and that no party at the time is in default under any of the terms of this Lease, and no advance payments have been made. If, fifteen (15) days after the date of a written request by Landlord to execute such certificates, Tenant shall not have executed the same, Landlord may, at its option, declare such failure to be an event of default hereunder for which Tenant shall have no additional grace period.

17.16 Surrender of Premises

On the expiration or earlier termination of the Term of this Lease, Tenant shall peaceably leave and surrender the Premises in neat and clean condition and in good order, condition and repair and otherwise in the condition in which the Premises were in at the Term Commencement Date or put in thereafter by or with the approval of Landlord, reasonable wear and tear excepted, except for Tenant's signs, decorative lighting fixtures, trade fixtures, alterations made without Landlord's consent or permitted by Landlord on condition that they be removed upon Lease expiration and furniture brought into the Premises at Tenant's sole cost and expense (collectively, "Removable Items"), which Removable Items shall be removed by Tenant upon the



expiration of the Term of this Lease (Tenant not then being in default) and shall be removed to the extent directed by Landlord upon Lease termination resulting from Tenant's default. Tenant agrees to repair any and all damages to the Premises resulting from such removal. Any or all of the Removable Property to be removed by Tenant from the Premises as herein provided which is not so removed shall, at Landlord's option, either become the exclusive property of Landlord or may be disposed of by Landlord, at Tenant's cost and expense, without further notice to or demand upon Tenant.

Tenant shall surrender all keys for the Premises to Landlord at the place then fixed for the payment of rent and shall inform Landlord of all combinations of locks, safes and vaults, if any, in the Premises.

17.17 Holding Over

If Tenant shall continue to occupy the Premises after expiration or sooner termination of this Lease, Tenant shall pay, as a charge for use and occupancy and liquidated damages (and not as rent), for each month or portion thereof of continued occupancy an amount equal to double the total rent and all charges being paid for the month the Lease expires or is terminated and also to pay all damages, consequential as well as direct, sustained by Landlord on account thereof. No receipt of money by Landlord from Tenant after expiration or termination of this Lease shall reinstate or extend this Lease or affect any prior notice given by Landlord to Tenant, and it is acknowledged that Tenant has no right to hold over or to occupy the Premises after the termination hereof.

17.18 Excavation

If an excavation shall be made upon Shopping Center land adjacent to the Premises, Tenant shall permit Landlord, or persons authorized by Landlord, to enter into the Premises for the purpose of performing such work as Landlord considers necessary or appropriate to preserve the walls of the Premises or of the Building of which the Premises are a part from damage and to support the same by proper foundations. If, by reason of such entry, there is substantial interference with the operation of Tenant's business in the Premises, the Minimum Rent and other charges payable by Tenant under Article VIII or Section 9.3 hereof shall abate or be reduced proportionately for the period in which there is such interference, having regard to the extent to which Tenant may be required to discontinue Tenant's business in the Premises, but such abatement or reduction shall end upon completion of any such work in or from the Premises.

17.19 Governing Law

This Lease shall be governed exclusively by the provisions hereof and by the laws of the state in which the Premises are located, as said laws may from time to time exist.

17.20 Security Deposit

Upon the execution of this Lease, Tenant shall pay over to Landlord the sum specified in Section 1.2 as the Security Deposit, which may be held by Landlord throughout the Term of this Lease without interest as a security deposit for the faithful performance of all of the terms, covenants, and conditions herein. Landlord shall have the option to apply any part or the whole of the Security Deposit to the curing of any default that may exist from time to time, without prejudice to any other remedy which Landlord may have on account thereof. Tenant shall, upon written demand, forthwith remit to Landlord a sufficient amount to restore the Security Deposit to the original sum deposited hereunder. Landlord shall have the same rights and remedies for the non-payment by Tenant of any amounts due on account of the Security Deposit as Landlord has hereunder for the failure of Tenant to pay Minimum Rent. In no instance shall the amount of the Security Deposit be considered a measure of liquidated damages. Should the Premises be conveyed by Landlord, the Security Deposit or the balance thereof may be turned over by Landlord to Landlord's transferee and if such is done, Tenant hereby releases Landlord from any and all liability with respect to the Security Deposit and its application or return, and Tenant agrees to look only to such transferee thereafter. No mortgagee of a mortgage to which this Lease is subordinate shall be responsible in connection with the Security Deposit, by way of credit or payment of rent, or otherwise, unless such mortgagee actually shall have received the Security Deposit hereunder. Landlord shall have the right to commingle the funds comprising the Security Deposit with Landlord's other funds. If Tenant shall have fully and promptly complied with all of the terms of this Lease during the Term hereof, the Security Deposit or remaining balance thereof shall be paid over to Tenant after the expiration of the Term. Tenant will not assign or encumber or attempt to assign or encumber the monies deposited herein as security and neither Landlord nor its successors or assigns shall be bound by any such assignment, encumbrance, attempted assignment or attempted encumbrance.

Tenant has given Landlord a \$50,000 Security Deposit on the date hereof either in the form of cash or a letter of credit satisfying the requirements of the following paragraph. Tenant will deliver an additional \$50,000 Security Deposit to Landlord either in the form of cash or a letter of credit satisfying the requirements of the following paragraph on the later of (i) twelve (12) months from the date hereof or (ii) six (6) months from the date Tenant opens for business in the Premises. Provided there has been no event of default hereunder (as defined in Section 16.1) by Tenant beyond applicable grace and cure periods for a period of three (3) years from the Rent Commencement Date, Landlord shall return \$50,000 of the Security Deposit to Tenant. Provided there has been no event of default hereunder (as defined in Section 16.1) by Tenant beyond applicable grace and cure periods for a period of six (6) years from the Rent Commencement Date, Landlord shall return \$25,000 of the Security Deposit to Tenant.

The initial and additional Security Deposits may be satisfied by delivery to Landlord of irrevocable standby letters of credit in form and substance and drawn on financial institutions reasonably satisfactory to Landlord for a term of not less than one (1) year from the date of delivery to Landlord, with provisions (subject to the provisions of this paragraph) for automatic renewal thereof from year to year thereafter through that date which is thirty (30) days following the expiration of the Term, as the same may be extended (each such date being an "Expiration Date") and issued in the name of Landlord as beneficiary (subject, however, to the issuing bank's right not to renew such letter of credit by written notice given at least forty-five (45) days prior to

the expiration of the then current one (1) year term of such letter of credit). If at any time prior to an applicable Expiration Date, either the issuer of the letter of credit gives at least forty-five (45) days' notice of its election not to renew such letter of credit so that the term thereof will expire prior to the applicable Expiration Date, or Landlord notifies Tenant at least forty-five (45) days prior to the expiration of any annual extension that the issuer of such letter of credit is no longer satisfactory to Landlord, then Tenant shall, on or before the date thirty (30) days prior to the expiration of the term of the existing letter of credit held by Landlord, deliver to Landlord a new irrevocable standby letter of credit satisfying the conditions hereof in replacement of such expiring letter of credit. In the event Landlord is required to return to Tenant a portion of the Security Deposit in accordance with the terms of the preceding paragraph and is not then holding a letter of credit for the amount to be returned, Landlord agrees to cooperate with Tenant so as to permit the substitution of a reduced letter of credit in place of the one being returned to Tenant.

Landlord shall have the right to draw down the entire amount of the letter of credit without further notice in the event Tenant fails to timely deliver to Landlord a replacement letter of credit for any then expiring letter of credit or Tenant fails to correct a default for which written notice was given within applicable grace and cure periods, and in any event, to hold the proceeds thereof as security for Tenant's timely performance of its obligations under the Lease, and Landlord shall have the right to treat the same as a Security Deposit made in cash hereunder.

17.21 Waiver of Trial by Jury

Landlord and Tenant do hereby waive trial by jury in any action, proceeding or counterclaim brought by either against the other upon any matters whatsoever arising out of or in any way connected with this Lease, Tenant's use or occupancy of the Premises and/or claim of injury or damage.

17.22 Hazardous Waste

(a) Tenant shall not generate, store, treat or dispose of Hazardous Substances (hereinafter defined) on the Premises or anywhere within the Shopping Center, or discharge or present a threat of discharge of any Hazardous Substances on or from the Premises or anywhere within the Shopping Center, including, without limitation, into any surface water, groundwater, subsurface sewage disposal system or municipal or private sewer. Tenant shall not release, emit or otherwise discharge on or from the Premises or anywhere within the Shopping Center any air pollutant or operate any type of fuel burning equipment.

(b) Tenant shall indemnify, defend and hold harmless Landlord from all claims, costs, liabilities and expenses, including reasonable attorneys' fees and expenses, court costs, and other costs of every type and description resulting from the breach by Tenant of the provisions of Paragraph (a) of this Section 17.22.

(c) "Hazardous Substances" as used herein shall include, but is not limited to, any petroleum based products, paints and solvents, lead, cyanide, DDT, printing inks, acids, pesticides, ammonium compounds, asbestos, PCBs and toxic chemical products, and any other

substances now or hereafter defined or classified as hazardous substances, wastes or materials by applicable laws. The term "applicable laws" as used herein shall mean any federal, state or local law, rule, regulation, order or ordinance for the protection of health, safety and the environment now or hereafter enacted by any governmental authority.

17.23 Business Methods

Tenant agrees that Landlord shall have the right to prohibit the continued use by Tenant of any unethical or unfair method of business operation, advertising or interior display if, in Landlord's opinion, the continued use thereof would impair the reputation of the Shopping Center as a desirable place to shop or is otherwise out of harmony with the general character thereof, and upon notice from Landlord, Tenant shall forthwith refrain from and discontinue such activities.

17.24 Corporation Tenants

In the event Tenant hereunder is a corporation, the persons executing this Lease on behalf of Tenant hereby covenant and warrant that Tenant is a duly constituted corporation qualified to do business in the state in which the Shopping Center is located, all Tenant's franchise and corporate taxes have been paid to date, all future forms, reports, fees and other documents necessary for Tenant to comply with applicable laws will be filed by Tenant when due, and such persons are duly authorized by the governing body of such corporation to execute and deliver this Lease on behalf of the corporation.

17.25 Intentionally Deleted

17.26 Relocation

Notwithstanding the initial location of the Premises as reflected on Exhibit A attached hereto, it is expressly understood and agreed that Landlord shall have the right at any time to relocate the Premises to any of the areas marked on Exhibit F, provided that:

(i) the size and configuration of the Premises shall remain approximately the same;

(ii) Landlord shall give not less than forty-five (45) days' prior written notice of the relocation to Tenant;

(iii) Landlord shall (a) relocate all of Tenant's equipment, fixtures, supplies, furniture and inventory to the new premises and in the event any of such items are damaged or destroyed, Landlord shall replace and install the same at its sole cost and expense, and (b) complete all leasehold improvements in the new premises which may include rebuilding facilities that cannot be relocated, such as, by way of example, the food locker;

(iv) Tenant shall incur no cost in connection with such relocation;

(v) the relocation shall be completed in or within three (3) days and Tenant's business shall not be closed for business for more than three (3) days, Landlord agreeing to use best efforts to plan the closure for Monday, Tuesday and/or Wednesday and Landlord and Tenant acknowledging that Franchisor is required to approve the improvements in the new premises and Landlord shall not be responsible for any closure caused by the failure of the Franchisor to timely approve the improvements; and

(vi) Landlord will remit to Tenant in good funds an amount equal to the gross receipts of Tenant less the cost of food and supplies for the number of days that Tenant must be closed for business due to Landlord's relocation to the new premises, such amount to be determined by using the figures for the Premises for a like number of days and for the same days of the week averaged over the preceding six (6) weeks, such payment to be made on the fifth (5th) day after Landlord provides to Tenant an occupancy permit issued by the appropriate boards/departments of the Town of Natick for the relocated premises and Tenant provides to Landlord the calculation of the amount due Tenant in accordance with the foregoing.

17.27 Tenant Representation

Tenant warrants and represents to Landlord that Tenant is an authorized franchisee of Franchisor and that Franchisor has approved the operation of a Five Guys Burgers and Fries franchise by Tenant in the Premises.

17.28 Sales Reports

Tenant agrees to provide monthly sales reports to Landlord on or before the tenth (10th) day of the month following the month for which the report is being made, such report to be in such detail as may be reasonably requested by Landlord.

17.29 Tenant Exclusive

So long as Tenant or a permitted assignee or sublessee is open and operating as a Five Guys Burgers and Fries and is not in default hereunder beyond applicable grace and cure periods, Landlord shall not enter into a lease for the operation of an eat-in/take out restaurant primarily serving hamburgers and french fries with any party other than Tenant or its permitted assignee or sublessee within the Shopping Center or within any other property owned by Landlord or an affiliate of Landlord within one (1) mile of the perimeter of the Shopping Center, provided that the foregoing restriction shall not apply to (i) any property Landlord or any affiliate of Landlord may acquire within one (1) mile of the perimeter of the Shopping Center which has any of the Prohibited Restaurants (hereinafter defined), McDonald's, Burger King or Wendy's as a then existing tenant; (ii) the space in any such shopping center, the use of which is not subject to the control of Landlord or its affiliate, or (iii) the space occupied by Stop & Shop or its successors or assigns in the Shopping Center for as long as the Stop & Shop lease remains in effect at the Shopping Center, or, following the expiration or earlier termination of the Stop & Shop lease, the space occupied by any supermarket occupying at least 25,000 square feet of the space formerly occupied by Stop & Shop. Without limiting the generality of the foregoing but subject to the

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exceptions referenced in the preceding sentence, Landlord shall not, during the period this restriction is in effect, enter into any lease or occupancy agreement for, or permit or consent to any sublease or assignment of other space in the Shopping Center for the operation of a Fuddruckers, Johnny Rockets, In-N-Out Burger, Checkers or Wild Willy's Burgers ("Prohibited Restaurants"). The foregoing restriction shall not apply to (a) the sale of hamburgers and french fries by a full service sit down restaurant, or (b) the incidental sale of burgers and fries by any tenant, so long as such sales do not exceed ten (10%) percent of its annual gross revenue.

17.30 Counterparts

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

[balance of page intentionally left blank]

IN WITNESS WHEREOF, this Lease has been duly executed and delivered by Landlord and Tenant as of the date first above written.

LANDLORD:

Finard Realty, LLC, Trustee of FRLP Realty
Trust and not individually

By: 

TENANT:

Mass Burgers Natick, LLC
d/b/a Five Guys Burgers and Fries

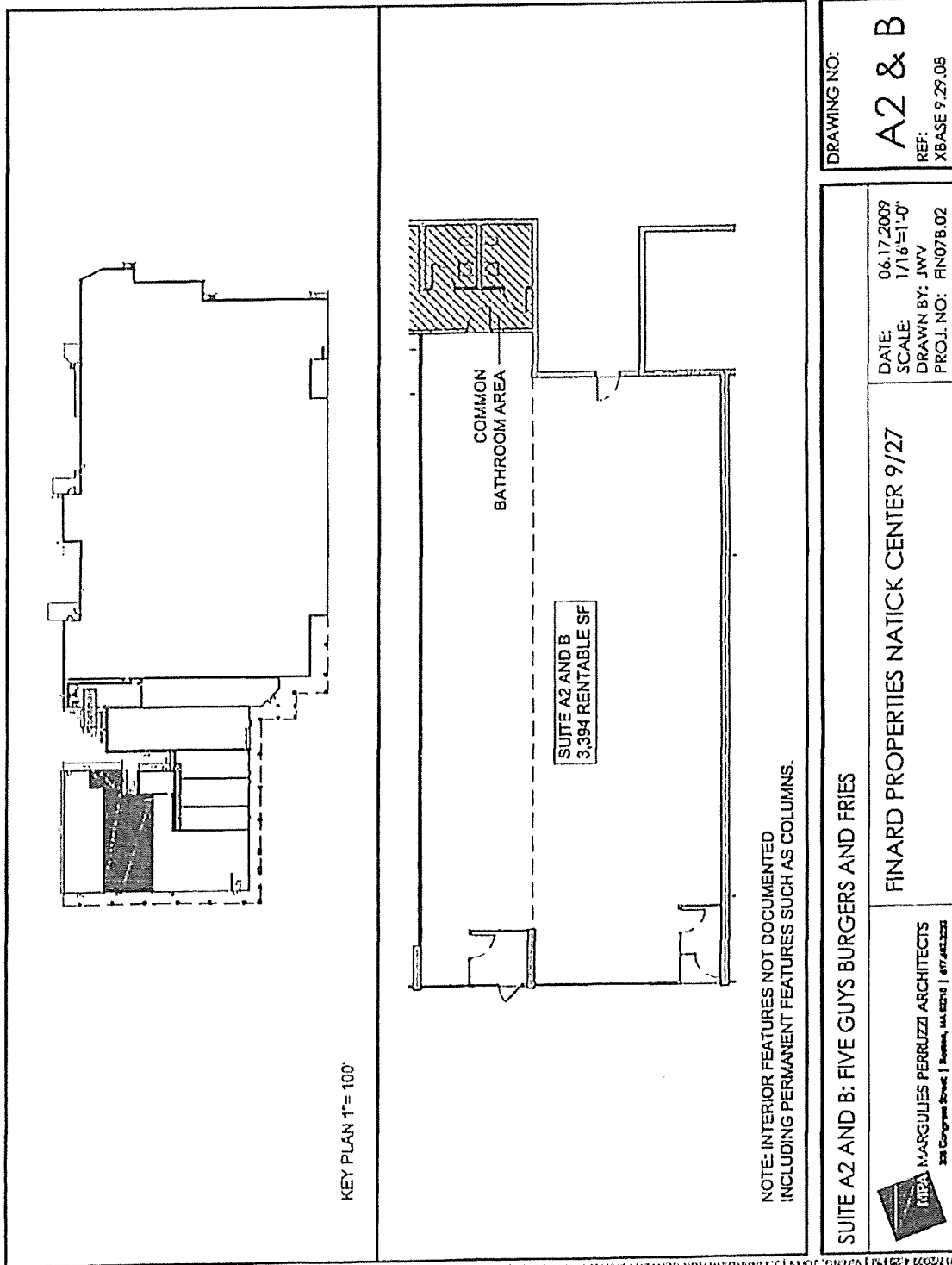
By: 


Manager, duly authorized



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EXHIBIT A-1 – DEPICTION OF PREMISES



A1-1

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EXHIBIT B - DESCRIPTION OF LANDLORD'S WORK AND TENANT'S WORK

CONSTRUCTION

I. DESCRIPTION OF LANDLORD'S WORK

Landlord will not be required to perform any pre-delivery work and the Premises are being delivered and accepted in broom-clean "as is" condition.

II. DESCRIPTION OF TENANT'S WORK

The Tenant will complete all work necessary to construct a complete, fully operating Five Guys Burgers and Fries restaurant, including fixturing, equipping and finishing of the Premises at the Tenant's cost and expense, in accordance with Tenant's complete and detailed plans and specifications and by Tenant's contractors, all of which first shall have been submitted to and approved in writing by Landlord, in a good and workmanlike, first-class manner and in accordance with all applicable provisions of this lease and with all applicable code and insurance requirements ("Tenant's Work"). Tenant agrees to supply and maintain in the Premises as part of Tenant's Work any fire prevention equipment reasonably required pursuant to a request from Landlord's insurance carrier, as well as any such equipment as may be required pursuant to any law, ordinance, regulation or requirement of any public authority or insurance rating bureau. The Tenant's Work shall be coordinated with any work being performed in or about the Shopping Center by Landlord or other tenants and occupants of the Shopping Center, and shall be performed in a manner so as to cause no interference with any such work being performed by such other parties or with their conduct of business. The Tenant shall not commence Tenant's Work until furnishing Landlord with insurance certificates evidencing insurance as required by the provisions of this lease (including, if appropriate, and whether or not otherwise required, so-called builder's risk and workers' compensation insurance) relating to the performance by the Tenant and its contractors of Tenant's Work. Tenant shall use (and require any contractors to use) every legal effort to prevent work stoppages attributable to work being performed by or on behalf of Tenant. Neither any loud or disruptive work nor any exterior work will be performed while other tenants are open for business. Unless otherwise specifically agreed in writing by Landlord, all roof work and any fire sprinkler system drain-downs and other life safety systems work (and any required testing) shall be done by Landlord's approved contractor (but still at Tenant's cost and otherwise as set forth herein). The Tenant shall make arrangements satisfactory to Landlord for collection and disposal of rubbish, debris and any other construction-related materials not intended to be incorporated or installed in the Premises, and otherwise shall comply with the Landlord's design criteria (including sign criteria), rules, regulations and directions regarding construction and the related activities of the Tenant and its workmen. Tenant shall use Landlord's preferred vendors for electrical work and roof work because of the substantial work Landlord recently completed at the Building by such vendors and the preservation of the warranties for such work. Landlord's preferred vendor for electrical work is

O.H. Burg Corp. (781-344-0522) and for roofing work is RCH Roofing Corporation (781-834-9000).

[HERE ENDS EXHIBIT "B"]

pb 7/18/11

EXHIBIT C - APPROVED SIGN DESIGN

(None Attached)

EXHIBIT C-1 - PYLON PANEL LOCATION

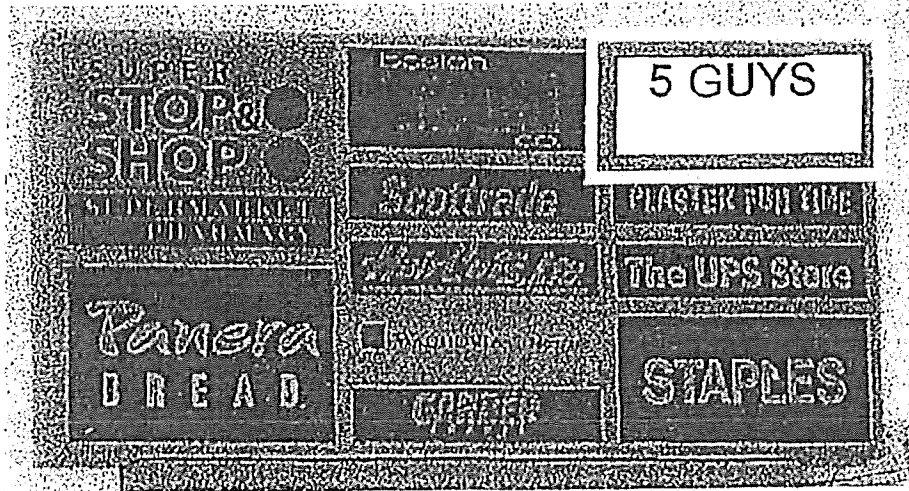


EXHIBIT D - PROHIBITED AND EXCLUSIVE USES

Tenant's Prohibited Uses are as follows:

1. For the sale of food or beverages (including, without limitation, alcoholic beverages) intended for consumption on or off the Premises, whether by humans or animals. Provided, however, Landlord may lease Premises in the Shopping Center for one restaurant so long as (i) the restaurant shall contain no more than 4,000 square feet of floor area; (ii) such restaurant shall have no entertainment other than a juke box or background music (but no disc jockeys); (iii) such restaurant shall only be allowed a small lounge area, incidental to their primary business as a restaurant; (iv) the only entrance and exit to the restaurant shall be on the west side of the Shopping Center; (v) the restaurant may provide meals for pick up and delivery for off-Premises consumption; and (vi) if the restaurant is similar in operation to a Papa Gino's, it may sell beer and wine incidental to its principal business as a restaurant, provided there shall be no separate "bar" for the sale of beer and wine, and otherwise alcoholic beverage sales are prohibited.
2. for the operation of a food supermarket;
3. for the operation of a department store or junior department store;
4. for the operation of a drug store or pharmacy and/or for the sale of health and beauty aids, perfumes, cosmetics, vitamins, medicines, rubber goods and/or hospital or "sickroom" supplies;
5. for any purpose other than retail purposes, provided that the term "retail business" shall include a stock brokerage business;
6. for the sale of greeting cards and/or "party goods";
7. principally for the retail sale or display of electronic equipment and components, or the sale, display or promotion of off-premises access services, access devices or related goods, service equipment or accessories which enable connection to the "internet" or any enhancement thereof or successor thereto;
8. for the conduct of a business operation which regularly or with significant frequency sells merchandise of the types or qualities now commonly known as "odd lot", "factory reject", "sample", "floor model", "demonstrator", "obsolescent", "distressed", "bankruptcy", "fire sale", or "damaged";
9. for the operation of a motel or tourist court;
10. for any "amusement operation", so-called, which term shall mean and include any activity consisting wholly or in substantial part of the furnishing of entertainment or amusement facilities, whether or not as a business or as a part of aspect of a business, or for a massage parlor, so-called, or for a business which sells so-called "adult material" such as, without limitation, magazines, books, movies and photographs;
11. for any automobile or truck sales, storage, services, fueling, washing or repair operation;
12. for any office or storage operations except office and storage operations which are part of the conduct of a retail business in the Premises;
13. for the operation of a drop-off dry-cleaning establishment;
14. for the operation of a business the principal business of which shall be the sale of postal services, mail box rentals, UPS, DHL, FedEx, and other similar delivery services, facsimile for profit, meter mail, and copying services;

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15. for the operation of a hair salon;
16. for the sale, rental, trading, licensing and/or distribution of pre-recorded video cassettes, tapes and disks, entertainment software and video merchandise, including the sale, rental and/or trading of any substitutes for, or items which are a technological evolution of the foregoing items;
17. for the sale of merchandise at a discount or at cut rate prices pursuant to a tenant's usual and ordinary business policy, including a discount department store or discount junior department store, provided the restriction shall not apply to premises containing 5,000 square feet or less of floor area; or
18. for any combination of the foregoing purposes.

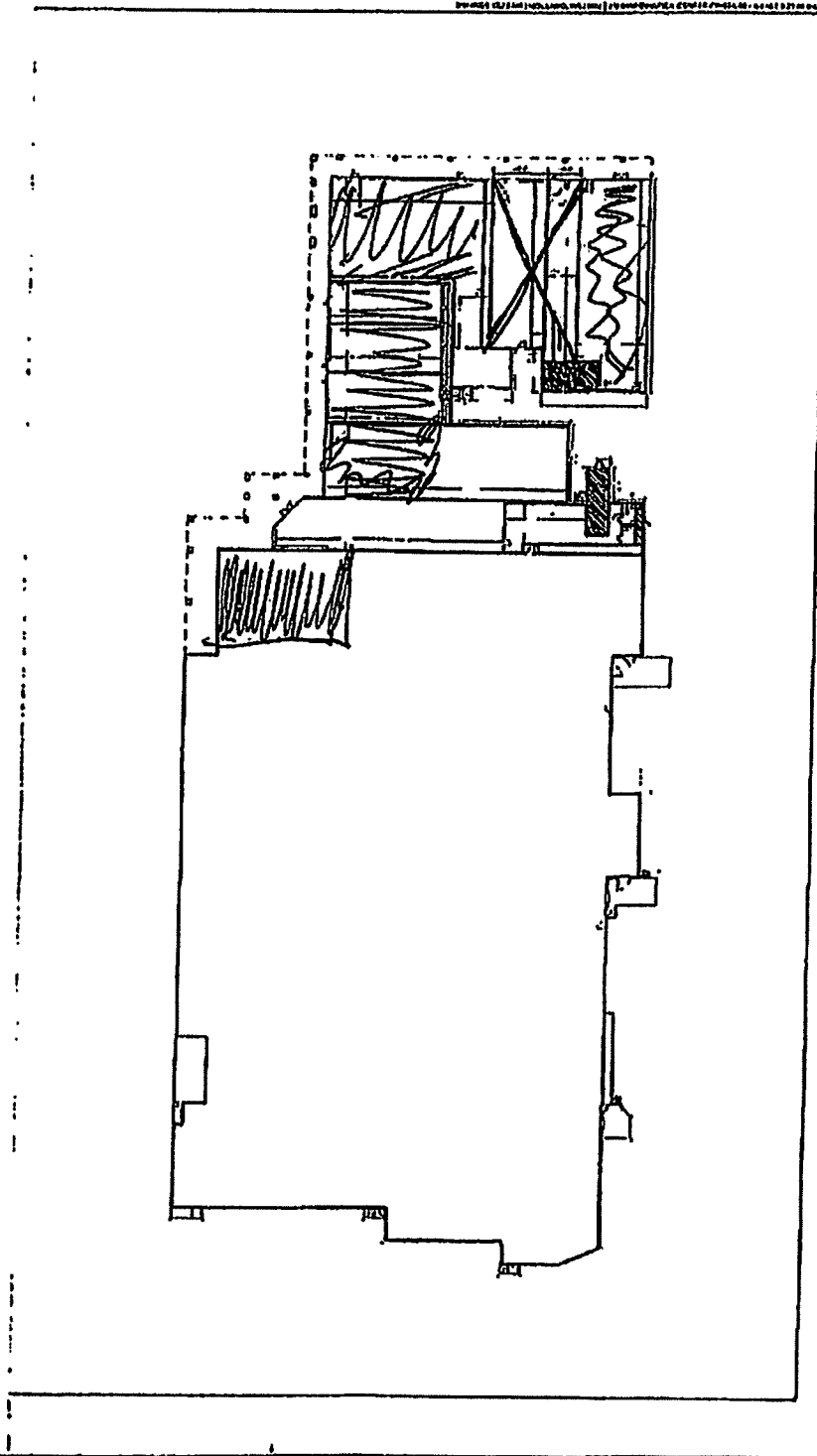
In addition, no use shall be allowed which (i) causes or creates a nuisance; (ii) is obnoxious; or (iii) generally detracts from the general retail nature of the Shopping Center. Such unpermitted uses shall include, but not be limited to, (a) second hand stores or flea markets, (b) storage of motor vehicles, boats or trailers, (c) automobile repair operations, (d) "head shops" or similar type uses, (e) automobile sales, (f) educational facilities, (g) vocational schools or training classes unrelated to a primary retail use, (h) manufacturing or assembly facilities, (i) churches or places of religious congregations, and (j) any other non-retail uses which cause or contribute to excessive use of the parking areas of the Shopping Center, including, but not limited to, event or valet parking.

Exclusive Use granted to Panera

So long as Tenant or a permitted assignee or sublessee is open and operating as a "Panera Bread" or under such other name as bakery/cafe operating under the name "Panera Bread" use from time to time in Massachusetts ("Protected Period"), Tenant shall have the exclusive right within the Shopping Center, excepting, however, the space occupied by Stop & Shop or its successors or assigns for as long as the Stop & Shop lease remains in effect, or, following the expiration or earlier termination of the Stop & Shop lease, the space occupied by any supermarket occupying at least 25,000 square feet of the space formerly occupied by Stop & Shop, for the sale of breads and bakery items, sandwiches (which term shall include, without limitation, conventional sandwiches, wraps, tacos, quesadillas, burritos, gyros, pita products, calzones and submarine sandwiches), salads and/or soups in a quick serve or so-called "fast casual" food service format. Without limiting the generality of the foregoing, Landlord shall not, during the Protected Period, enter into any lease or occupancy agreement for, or permit or consent to any sublease or assignment of other space in the Shopping Center for any sale of the foregoing items and, without limitation, for operation as Quizno's, Qdoba, Subway, Au Bon Pain, Cost, Anna's Tiqueria, Baja Fresh or D'Angelo's. The foregoing restrictions shall not apply to (i) the premises occupied by Stop & Shop or its successors or assigns for as long as the Stop & Shop lease remains in effect or, following the expiration or earlier termination of the Stop & Shop lease, the space occupied by any supermarket occupying at least 25,000 square feet of space formerly occupied by Stop & Shop, (ii) the sale of such items by a full service sit-down restaurant, or (iii) the incidental sale of the foregoing items by any tenant, so long as such sales do not exceed ten percent (10%) of its annual gross revenue or \$25,000 per annum, whichever is less, provided that the sale of pre-packaged commercial baked goods by any such tenant is permitted and the value of such sales shall not be included in the incidental sale cap.

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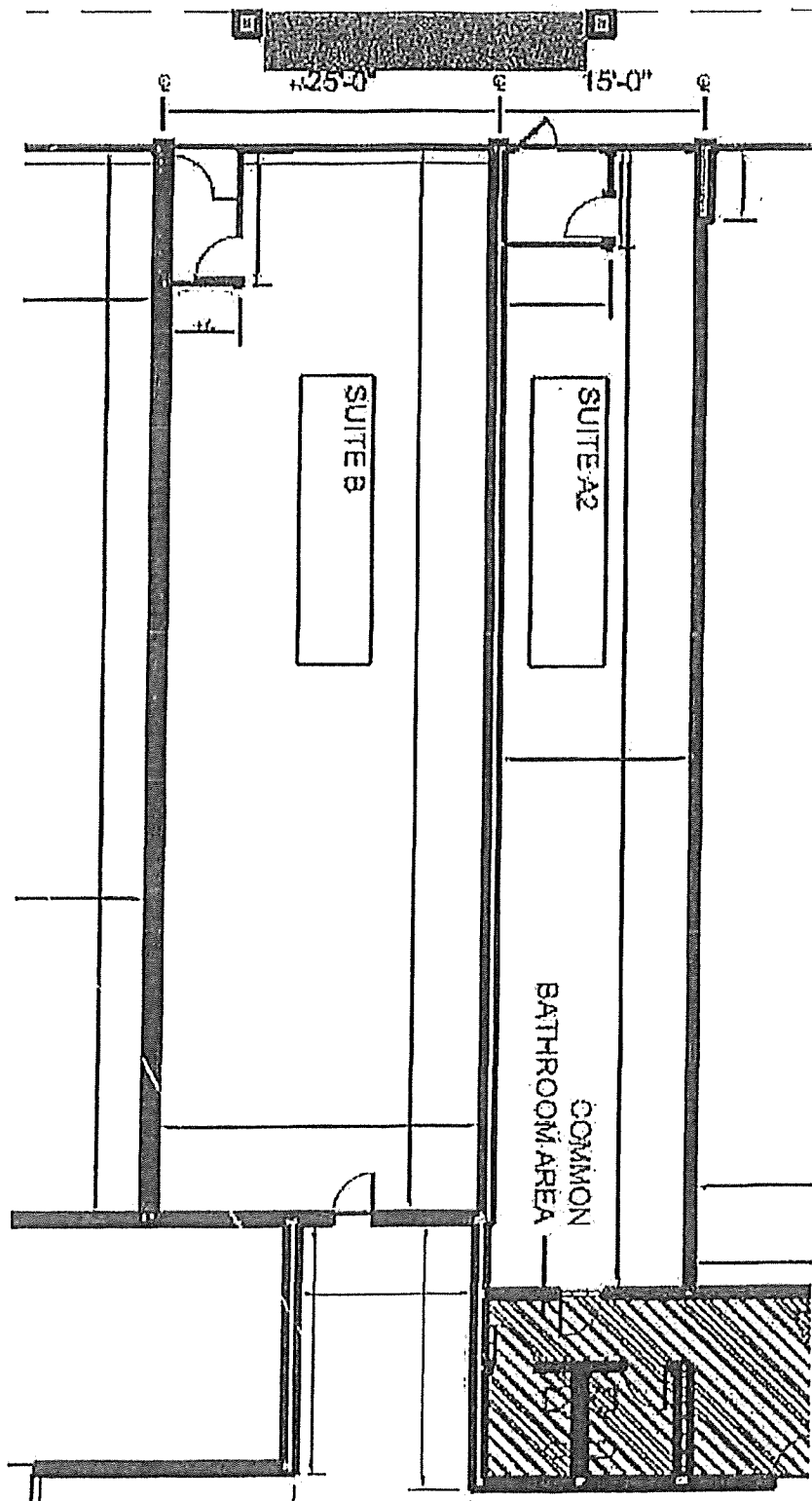
EXHIBIT F
RELOCATION AREAS



10/2/82

EXHIBIT G

Approved Outdoor
Seating Area



AD 7/18/82