

**FILE**  
Cafe 201

**LEASE**

**Between**

**BATTERY PARK CITY AUTHORITY, Landlord**

**and**

**GIGINO AT WAGNER PARK LLC, Tenant**

**Premises:**

**approximately 3,171 square feet of space at  
20 Battery Place  
New York, New York 10004**

**LEASE**

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**LEASE**

**BASIC LEASE INFORMATION**

Date of Lease: June 16, 1999

Landlord: Battery Park City Authority ("BPCA")

Landlord's Affiliate Agency: Battery Park City Parks Conservancy Corporation (the "Conservancy")

Tenant: Gigino at Wagner Park LLC, a New York limited liability company

Trade Name: Gigino at Wagner Park

Guarantor: Robert Giraldi and Philip Suarez  
c/o Giraldi Suarez Productions  
270 Lafayette Street, 2<sup>nd</sup> Floor  
New York, New York 10012

Building Address: 20 Battery Place  
New York, New York 10004

Rent Payment Address: Battery Park City Authority  
One World Financial Center  
24<sup>th</sup> Floor  
New York, NY 10281  
Attention: Vice President, Finance

**TERM**

**SECTION**

- |    |  |   |       |
|----|--|---|-------|
| 1. | Building:  | The building and other improvements having a street address of 20 Battery Place, New York, New York 10004 and any other building or improvements now or hereafter constructed on the Premises (as defined in Item No. 8 of the Basic Lease Information).  | 1.01  |
| 2. | Commencement Date:                                 | The date hereof   | 2.01  |
| 3. | Expiration Date:                                   | September 30, 2011  | 2.01  |
| 4. | Landlord's Broker:                                 | New Spectrum Realty Services<br>551 5 <sup>th</sup> Avenue<br>New York, New York 10176  | 17.07 |
| 5. | Notice Addresses for Landlord and the Conservancy: | <div style="margin-left: 20px;">For Landlord:<br/>Battery Park City Authority<br/>One World Financial Center<br/>24<sup>th</sup> Floor<br/>New York, NY 10281<br/>Attention: General Counsel</div> <div style="margin-left: 20px;">For the Conservancy:<br/>Battery Park City Parks Conservancy Corporation<br/>Two South End Avenue<br/>New York, New York 10280<br/>Attention: Tessa Huxley</div> | 17.04 |

|  |   |             |
|--|---|-------------|
| 6. Minimum Annual Rent and Minimum Monthly Rent: | Minimum Annual Rent shall be fifty-three thousand six hundred and ninety three dollars (\$53,693.00), payable in monthly installments of \$4,474.42 (" <b>Minimum Monthly Rent</b> "). Minimum Annual Rent shall be increased by five percent (5%) upon the earlier of (i) the third (3 <sup>rd</sup> ) anniversary of the Rent Commencement Date or (ii) the date on which a hotel opens for business on Site 1 at Battery Park City (such date being the " <b>First Rent Escalation Date</b> "). Thereafter, the then current Minimum Annual Rent shall be increased by five percent (5%) every three (3) years during the Term, beginning on the first day of the fourth year from the First Rent Escalation Date. | 3.01        |
| 7. Permitted Use:                                | Tenant shall use the Premises as a premium quality café and restaurant, where meals and refreshments of superior quality may be procured, of similar quality and service as that certain restaurant known as The Lipstick Café at 885 Third Avenue, New York, NY, and for no other purpose whatsoever.  | 6.01        |
| 8. Premises:                                     | That space shown cross-hatched on the floor plan(s) annexed hereto as <b>Exhibit A</b> .  | 1.01        |
| 9. Land:   | The real property on which the Building is situated, located in the City of New York, County of New York, and State of New York.  | 1.01        |
| 10. Rent Commencement Date:                      | One hundred twenty (120) days from the Commencement Date.   | 3.01        |
| 12. Security Deposit:                            | Twelve Thousand Five Hundred Dollars (\$12,500.00).   | 5.01        |
| 13. Tenant's Broker                              | None.   | 17.07       |
| 14. Tenant's Notice Address:                     | Gigino at Wagner Park, LLC<br>c/o Giraldi Suarez Productions<br>270 Lafayette Street, 2 <sup>nd</sup> Floor<br>New York, New York 10012<br>Attention: Ana Marie Mormondo<br><br>with a copy to:<br><br>Reed Smith Shaw & McClay LLP<br>375 Park Avenue<br>New York, New York 10152<br>Attention: Joseph M. Marger, Esq.   | 17.03       |
| 15. Tenant's Rentable Area:                      | For purposes hereof, Tenant's Rentable Area is deemed to be:<br>Enclosed space: One thousand nine hundred forty (1,940) square feet<br>Terrace: One thousand two hundred thirty-one (1,231) square feet   | 1.01, Ex. A |

16. Term: The period commencing on the 2.01  
Commencement Date and ending on the  
Expiration Date.

The foregoing Basic Lease Information is hereby incorporated into and made a part of the Lease. The Sections of the Lease identified above in the margin are those Sections where references to particular portions of the Basic Lease Information appear. Any capitalized terms set forth in the Lease which are not defined therein shall have the respective meanings ascribed to them in the Basic Lease Information. In the event of any conflict between any Basic Lease Information and the Lease, the latter shall control.

Date: June 24, 1999

BATTERY PARK CITY AUTHORITY, Landlord

By: \_\_\_\_\_

Name: Timothy J. Carey

Title: President + CEO

Date: 6-11, 1999

GIGINO AT WAGNER PARK LLC, Tenant

By: \_\_\_\_\_

Name: PHILIA SUAREZ

Title: MANAGING PARTNER

Tenant Federal Tax I.D. Number or  
Social Security Number: 52-2166106



## **LEASE**

THIS **LEASE** (this "Lease") is entered into by and between Landlord and Tenant as of the Date of Lease specified in the Basic Lease Information.

### **WITNESSETH:**

The parties hereto, for themselves, their heirs, distributees, executors, administrators, legal representatives, successors and assigns, hereby covenant and agree as follows:

#### **ARTICLE 1**

##### **Premises**

**Section 1.01. Premises.** Subject to the agreements, conditions and provisions contained in this Lease, Landlord hereby leases to Tenant and Tenant hereby hires from Landlord the Land (the "**Land**") and the building located thereon (the "**Building**") shown on **Exhibit A** annexed hereto and described in the Basic Lease Information (the Building and the Land are sometimes hereinafter collectively referred to as the "**Premises**", as the context may require).

#### **ARTICLE 2**

##### **Term**

**Section 2.01. Term.** The Term of this Lease shall commence on the Commencement Date and, unless sooner terminated as hereinafter provided, shall end on the Expiration Date. If Landlord shall fail to tender possession of the Premises for any reason whatsoever on the Commencement Date, Landlord shall not be deemed in default or liable to Tenant for any claims, damages, or liabilities in connection therewith or by reason thereof, and the Term shall not be extended by reason of any such delay. No such delay shall affect the validity of this Lease or the obligations of Tenant hereunder. Within ten (10) days after the Commencement Date, Landlord and Tenant shall execute the Acceptance Letter annexed hereto as **Schedule A**, but the failure of either Landlord or Tenant to execute such instrument shall not affect the Commencement Date.

**Section 2.02. Acceptance of Premises.** The taking of possession of the Premises by Tenant shall constitute Tenant's acknowledgment that the Premises are in good order and satisfactory condition, except for latent defects. Landlord shall not have any liability to Tenant for any latent or other defect or change in the condition of the Premises other than Landlord's repair obligations under this Lease. Rent and Additional Rent may not be withheld or diminished by reason of any defect or change in the condition of the Premises or by reason of any change thereto occurring during the Term or by reason of any restricted use imposed by applicable governing authorities.

**Section 2.03. Certain Obligations Effective Prior to the Commencement Date.** The parties hereto agree that in the event Tenant takes possession or enters into occupancy of the Premises prior to the Commencement Date, for any reason, such possession or occupancy shall be pursuant to all of the terms, covenants and conditions of this Lease, excluding the obligation to pay Minimum Annual Rent which shall commence on the Rent Commencement Date. Tenant hereby expressly waives any right to rescind or terminate this Lease under Section 223-a of the New York Real Property Law or any successor statute of similar import then in force and further waives the right to recover any damages which may result from Landlord's failure to deliver possession of all or any portion of the Premises to Tenant on or before the Commencement Date.

#### **ARTICLE 3**

##### **Rent**

**Section 3.01. Minimum Annual Rent.** Tenant shall pay Landlord Minimum Annual Rent, without notice or demand in equal monthly installments in advance, commencing on the Rent Commencement Date and on the first (1st) day of each calendar month thereafter during the Term at the Rent Payment Address set forth in the Basic Lease Information or at such other place as Landlord may designate in writing, without any set-off, abatement or counterclaim whatsoever, except Tenant shall pay the first monthly installment of Minimum Annual Rent upon the execution of this Lease. If the Rent Commencement Date shall occur on a date other than the first (1st) day of any calendar month or, if the Term expires or is terminated on a day other than the last day of a calendar month, Minimum Annual Rent and any Additional Rent payable hereunder shall be prorated for such partial month on the basis of a thirty (30) day month. Tenant shall pay

Landlord such prorated amount payable for the month in which the Rent Commencement Date occurs on the first (1st) day of the next succeeding calendar month.

**Section 3.02. Rent.** All sums of money required to be paid under this Lease, including those items described in Article 4 of this Lease or otherwise required to be paid by Tenant to Landlord hereunder ("**Additional Rent**"), shall be considered rent (and are sometimes collectively referred to herein as "**Rent**") whether or not specifically designated as such.

**Section 3.03. Deferment of Minimum Annual Rent.** Notwithstanding anything contained in this Lease to the contrary, Tenant shall be permitted to defer until January 1, 2000, its obligation to pay Minimum Annual Rent to Landlord for the period commencing on the Rent Commencement Date through and including, December 31, 1999 (the "**Deferment Period**"). Commencing on January 1, 2000, the Minimum Annual Rent due for the period from January 1, 2000 through June 30, 2000 shall be increased by one-sixth (1/6th) of the total aggregate amount of Minimum Annual Rent required to be paid (but for said deferment) by Tenant to Landlord for the Deferment Period.

## ARTICLE 4

**Section 4.01. Intentionally Omitted.**

## ARTICLE 5

### Security Deposit

**Section 5.01. Security Deposit.** Tenant shall deposit with Landlord on the signing of this Lease the Security Deposit as security for the faithful performance and observance by Tenant of the terms, conditions and provisions of this Lease, including without limitation the surrender of possession of the Premises to Landlord as herein provided. Landlord shall not be required to segregate the Security Deposit from other funds of Landlord or pay interest thereon, unless required by applicable law. If Tenant does not fulfill any of its obligations under the Lease, Landlord may apply or retain the Security Deposit on account of such obligation or to reimburse Landlord for any sum which Landlord may expend or may be required to expend by reason of Tenant's default, including, but not limited to, any damages or deficiency in the reletting of the Premises, whether such damages or deficiency accrue or accrues before or after summary proceedings or other reentry by Landlord. If Landlord applies or retains any part of the Security Deposit, Tenant, within three (3) days after notice from Landlord, shall deposit with Landlord the amount so applied or retained so that Landlord shall have the full Security Deposit on hand at all times during the Term. If Tenant shall fully comply with all of the terms, covenants, provisions and conditions of this Lease, the Security Deposit (or any balance thereof) shall be returned to Tenant after the Expiration Date and after delivery of possession of the entire Premises to Landlord. Landlord may transfer the Security Deposit to the vendee or lessee of the Building and Landlord shall thereupon be released by Tenant from all liability for the return of the Security Deposit. The Security Deposit shall not be construed as liquidated damages, and if Landlord's claims hereunder exceed the Security Deposit, Tenant shall remain liable for the balance of such claims.

## ARTICLE 6

### Use

**Section 6.01. Trade Name and Operation.** Tenant hereby agrees from and after the Commencement Date to use the Premises for the Permitted Use and for no other purpose and under no other trade name other than the Trade Name. Tenant shall continuously and diligently operate Tenant's business in the Premises under its Trade Name. Tenant covenants and agrees that, in order to produce the maximum return to Tenant and Landlord, at all times (i) the kind and quality of service offered will be reputable in every respect, (ii) the marketing techniques employed will be dignified and (iii) the appearance of the Premises and deportment of all personnel employed therein, and the appearance of all pictures, paintings, displays and exhibits in or signs visible outside the Premises will be only such as meets Landlord's reasonable approval. If Landlord shall reasonably determine that Tenant's business operation is not consistent and in harmony with the standards established by Landlord for the Building, Tenant shall immediately comply with Landlord's requirements to remedy such deficiencies. Nothing herein shall diminish Landlord's right to terminate this Lease for failure of Tenant to carry on its business as herein provided except as may result from strikes, government restrictions, natural disasters or any other cause beyond Tenant's control except financial difficulty. Landlord and Tenant hereby acknowledge that the identity, skill, experience and reputation of Tenant, the specific character of Tenant's business and anticipated use of the Premises and the relationship between such use and other present and/or future planned uses within the Building have been a material consideration to Landlord's entry into this Lease.

**Section 6.02. Intentionally Omitted.**

**Section 6.03. Operation of Business and Restaurant Operating Requirements.**

(A) Tenant shall: (1) stock only such items within the Premises as Tenant intends to offer for sale in the course of its business and apply for, secure, maintain and comply with all licenses or permits (including without limitation, a certificate of occupancy for the Premises) which may be required for the conduct by Tenant of the Permitted Use and pay, if, as and when due all license and permit fees and charges of a similar nature in connection therewith and provide Landlord with copies thereof upon request; (2) use for office purposes only such space within the Premises as is reasonably required for Tenant's business; (3) not conduct or solicit business or distribute advertising matter outside the Premises or in Robert F. Wagner, Jr. Park (the "**Park**"), but shall be permitted to conduct take-out and delivery service during the Hours of Operation (defined below); (4) not place any weight upon the floor of the Premises exceeding the floor load per square foot area which such floor is designated to carry and which is allowed by law; (5) not erect any aerial satellite dish or other similar device on the roof or exterior walls of the Building; (6) keep all of its mechanical apparatus free of vibration and noise which may be transmitted beyond the Premises; (7) store and dispose of its garbage in clear garbage bags (which Tenant may purchase from the Conservancy) placed in containers provided by the Conservancy in those areas designated by Landlord; (8) recycle all bottles and cans; (9) not encumber or obstruct or permit the encumbrance or obstruction, whether by the placement of tables or chairs (or both), the parking of vehicles or otherwise, at the sidewalks or curbs adjacent or leading to the Premises or the Building; (10) not change the name or Trade Name of the business operated in the Premises without the written permission of Landlord; (11) not operate its business in the Premises in a manner which would violate any restrictive covenant or agreement contained in that certain Master Lease from Battery Park City Authority to Battery Park City Authority, dated as of June 10, 1980, as assigned and amended; (12) not permit the sale or display of any obscene, pornographic or "adult" materials or paraphernalia, including, without limitation, movies, videotapes, books, magazines or any related items, or make use of the same in any activities or advertising of Tenant or permit or conduct the operation of a "massage parlor" or any obscene, nude or semi-nude live performances at the Premises; (13) not permit the sale or display of any paraphernalia used in the preparation or consumption of controlled substances; and (14) not use or permit the use of any portion of the Premises for any unlawful, improper, immoral or objectionable purposes or for any activity of a type which is not generally considered appropriate for similar restaurant businesses conducted in accordance with generally accepted standards of operation. Landlord hereby represents that the Permitted Use hereunder does not violate any restrictive covenant or agreement contained in the Master Lease.

(B) Tenant acknowledges that the nature of the business to be conducted in the Premises could, in the absence of adequate preventive measures, create objectionable fumes, vapors or odors, vermin, damage and injury, unreasonable noise and other conditions which would cause a nuisance. As an express inducement to Landlord to enter into this Lease, Tenant agrees that it shall conduct its restaurant operation in the Premises so as to minimize such annoyance or interference. Tenant specifically agrees that in furtherance of this covenant it shall, at its own cost and expense, furnish and install in the Premises a ventilating, exhaust, and drainage system satisfactory to Landlord and in accordance with the provisions of Article 9 hereof and Tenant shall: (i) maintain, service and repair the ventilating and exhaust system servicing the Premises and make all necessary replacements thereto during the Term to Landlord's satisfaction, including installation of charcoal filters, and in furtherance and not in limitation of the foregoing, maintain such ventilating exhaust system, and any ducts connecting thereto to Landlord's satisfaction and, in such manner so as not to interfere with the ventilating system of the Building; (ii) provide, to Landlord's satisfaction, chemical treatment for the exhaust system for the elimination of all odors and fumes; (iii) keep the drain, waste and sewer pipes and connections with water mains servicing the Premises free from obstruction, and maintain, on a monthly basis, grease traps and filters in the main soil lines of the Premises; (iv) keep the Premises free of noxious chemicals or inflammable materials other than those customarily employed in connection with restaurant use; (v) provide such other exhaust, cleaning or similar systems which shall be necessary to prevent any smoke, fumes, vapors, odors or other offensive substances from emanating from the Premises; (vi) fireproof all window treatments in the Premises, including, without limitation, draperies and curtains, and submit to Landlord, upon Landlord's written request, current certificates evidencing such fireproofing; (vii) operate Tenant's business from the Premises in a clean and sanitary manner so as to prevent infestation by vermin, roaches or rodents and cause all portions of the Premises used for the storage, preparation, service or consumption of food or beverages to be thoroughly exterminated (utilizing only non-toxic substances) against infestation by vermin, roaches or rodents on a weekly basis, and, in addition, whenever there shall be evidence of any infestation, by contractors reasonably approved by Landlord and in accordance with the Rules and Regulations; and (viii) clean the entire Premises daily.

(C) Tenant shall: (i) be allowed to serve wine and beer on the Premises during the Hours of Operation; (ii) be allowed to serve wine, beer and hard liquor during any Special Event; (iii) serve all food to be consumed on the Premises on non-disposable plates with non-disposable flatware; (iv) serve all alcoholic and non-alcoholic beverages to be consumed on the Premises in non-disposable glasses; (v) use bio-degradable utensils, paper plates and cups to package food and beverages to be consumed off of the Premises; (vi) at all times have a special menu for children under twelve (12) years of age; (vii) obtain Landlord's prior written consent, which shall not be unreasonably withheld or delayed, to Tenant's proposed menus and prices; (viii) maintain the tables and chairs within the Premises in clean and good condition and repair; (ix) at its own expense, whenever necessary in Landlord's reasonable discretion, replace the tables and chairs within the Premises; (x) close the table umbrellas during strong winds and at the close of business each day; and (xi) remove all tables, chairs and table umbrellas from the terrace area of the Premises the evening before any day on which the Conservancy is to powerwash the terrace area of the Premises.

**Section 6.04. Hours of Operation and Special Events.**

(A) Tenant's hours of operation (the "Hours of Operation") shall be as follows:

(1) From May 1 through and including October 31 of each year during the Term (the "Season"):

Monday through Thursday: 8:00 am to 11:30 pm ("Mid-Week"); and  
Friday, Saturday and Sunday: 8:00 am to 12:30 am.

(2) From November 1 through and including April 30 of each year during the Term (the "Off-Season"):

Sunday through Saturday: 8:00 am to 5:00 pm.

During the Off-Season and Mid-Week, Tenant may remain open until 12:30 am, provided that Tenant pays to Landlord, as Additional Rent, for overtime staffing/maintenance of the restroom facilities, thirty dollars (\$30.00) per hour for each hour, or part thereof, that Tenant remains open subsequent to the Hours of Operation.

Tenant may serve its patrons up to one (1) hour prior to closing, and shall cause its patrons to leave the Premises at the time of closing.

(B) (1) Tenant may not close the Premises, or any part thereof that is normally used for patrons of Tenant's business, to the general public during the Hours of Operation. Notwithstanding the preceding sentence, during the Season Tenant may, up to two (2) times per calendar month, close the Premises, or any part thereof, to the general public during the Hours of Operation for a special event (a "Special Event"), provided that:

(i) Tenant shall provide the Conservancy with written notice containing the proposed date and duration of the proposed Special Event no more than one (1) year and no less than twenty-one (21) days prior to the proposed date of the Special Event;

(ii) Tenant shall have obtained the Conservancy's prior written consent, not to be unreasonably withheld or delayed, to schedule said Special Event. Failure by the Conservancy to respond to Tenant's notice of the proposed Special Event shall not be deemed consent to schedule the proposed Special Event, unless Tenant delivers a second notice to Landlord and the Conservancy setting forth the Conservancy's failure to respond and neither Landlord nor the Conservancy shall have responded to Tenant's second notice within ten (10) days after of receipt of such second notice;

(iii) In the event the proposed Special Event extends beyond 1:00 am or, in Landlord's sole discretion, requires additional security, Tenant shall to pay to Landlord, as Additional Rent, thirty-five dollars (\$35.00) per hour for each hour, or part thereof, for which the services of Landlord's security force were utilized;

(iv) In the event the proposed Special Event extends beyond the Hours of Operation or, in Landlord's sole discretion, requires additional Conservancy maintenance staff, Tenant shall pay to Landlord, as Additional Rent, thirty dollars (\$30.00) per hour, or part thereof, for which the services of the Conservancy maintenance staff were utilized;

(v) No public event has been scheduled by Landlord or the Conservancy for the same date, provided that neither Landlord nor the Conservancy shall schedule a public event that would require Tenant to cancel an approved Special Event; and

(vi) Tenant only uses the Premises and the portion of the roof directly above the Premises and more particularly shown on **Exhibit B** for the proposed Special Event.

(2) In the event that Tenant shall have to cancel a Special Event due to inclement weather, such Special Event may be rescheduled by Tenant to take place within thirty (30) days after the date such Special Event was to take place; provided, that (i) Tenant shall have provided the Conservancy with written notice of the same fourteen (14) days prior to the proposed date of such Special Event ("**Rescheduled Special Event**") and (ii) no public event shall have been scheduled by Landlord or the Conservancy for the same date. In the event Tenant shall have to cancel a Rescheduled Special Event due to inclement weather, such Rescheduled Special Event may be rescheduled as if it were a Special Event. A Rescheduled Special Event shall not figure in the calculation of the monthly number of Tenant's permitted Special Events.

## **ARTICLE 7**

### **Utilities and Services**

**Section 7.01. HVAC and Services.** Landlord shall have no obligation to provide the Premises with heat, air conditioning, ventilation, water or any other services. Tenant shall install its own heating, air conditioning and ventilation equipment to serve the Premises provided that Landlord shall have previously approved such system. All such equipment shall be maintained, repaired and replaced, as necessary, by Tenant at its sole expense in compliance with all present and future laws and regulations relating thereto, and shall be surrendered by Tenant to Landlord at the end of the Term together with the Premises.

**Section 7.02. Utilities.** Tenant shall obtain all utilities directly from the appropriate public utility company and shall install all meters at Tenant's sole cost. Tenant shall pay all utility deposits and fees, and all monthly service charges for any utility services furnished to the Premises during the Term.

**Section 7.03. Water.** Landlord shall either install a water meter to measure Tenant's water consumption for all purposes or permit Tenant to use Landlord's water supply, subject to the provisions herein. Landlord may elect to install a water meter to measure Tenant's consumption. Tenant may elect to have Landlord install such water meter subject to Landlord's reasonable determination that such measurement is feasible. In either event, Tenant shall (a) pay Landlord for the cost of the meter and the cost of the installation thereof and through the duration of Tenant's occupancy Tenant shall keep said meter and installation equipment in good working order and repair at Tenant's own expense; (b) pay for water consumed, as shown on said meter as and when bills are rendered; and (c) pay the sewer rent, charge or any other tax or charge which now or hereafter is assessed, or shall become a lien upon the Premises or the Building pursuant to any law made or issued in connection with any such metered supply of water or sewage system. The bill rendered by Landlord for the above shall be based upon Tenant's consumption and shall be payable by Tenant as Additional Rent within twenty (20) days after rendition. Any such costs incurred or payments made by Landlord for any of the reasons or purposes hereinabove stated shall be deemed to be Additional Rent payable by Tenant and collectible by Landlord as such. In the event Landlord shall permit Tenant to use its water supply, then until such time, if any, as such services are separately metered, Tenant shall pay Landlord its pro rata share of the cost of such water consumption, as reasonably determined by Landlord, or Landlord may allocate water consumption expenses based upon studies which allocate such consumption by determining the estimated use by Landlord, the Conservancy and Tenant. The cost of any such studies shall be paid by Tenant.

**Section 7.04. Interruption of Access, Use or Services.**

(A) Landlord shall not be liable for any failure (to the extent required of it by this Lease) to provide access to the Premises, to assure the beneficial use of the Premises or to furnish any services or utilities to the common and public areas of the Building when such failure is caused by natural occurrences, riots, civil disturbances, insurrection, war, court order, public enemy, accidents, breakage, repairs, strikes, lockouts, other labor disputes, the making of repairs, alterations or improvements to the Premises or the Building, the inability to obtain utilities, labor or other supplies or by any other condition beyond Landlord's reasonable control, and Tenant shall not be entitled to any damages resulting from such failure, nor shall such failure relieve Tenant of the obligation to pay all sums due hereunder or constitute or be construed as a constructive or other eviction of Tenant. If any governmental entity promulgates or revises any statute, ordinance or building code, or imposes mandatory or voluntary controls or guidelines on Landlord or the Building, relating to the use of the Premises or the Building or the conservation of any utility or service provided with respect to this Lease, or if Landlord is required or elects to make alterations to the Building in order to comply with such controls or guidelines, Landlord may comply with such controls or guidelines, or make such alterations to the Building. Neither such compliance nor the making of such alterations shall entitle Tenant to any damages, relieve Tenant of the obligation to pay any of the sums due hereunder, or constitute a constructive or other eviction of Tenant.

(B) Unless and until Sites 12 and 13, as shown on **Exhibit C**, are occupied, Battery Place shall be closed to non-emergency vehicular traffic. Notwithstanding the preceding sentence, service, supplier and garbage trucks shall be permitted to enter Battery Place and come to the curb in front of the Premises along Battery Place in order to access the Premises.

**Section 7.05. Cleaning.** Tenant shall, at its sole cost and expense, (i) keep the Premises clean, in good order and free of all debris to the reasonable satisfaction of Landlord and (ii) promptly bag and store all garbage inside the Building so as to avoid any obnoxious or offensive odors therefrom. Tenant shall, at its expense, engage a carting company, approved by Landlord (provided such carting company shall provide such service at competitive rates) for the removal and disposal of Tenant's garbage during such hours as may be designated by Landlord. Tenant shall, at Tenant's sole expense, keep the roof and terrace portions of the Premises free from snow, ice, dirt, rubbish and damage from the elements. Tenant shall not clean, nor require, permit, suffer or allow any window in the Premises to be cleaned, from the outside in violation of any applicable law, or the rules of any governmental or quasi-governmental authority asserting jurisdiction.

**Section 7.06. Landlord's Services.**

(A) Notwithstanding anything to the contrary stated herein, the Conservancy shall: (i) furnish Tenant with six (6) umbrellas and thirty-seven (37) tables; (ii) maintain, and replace when necessary, the umbrellas; (iii) each week, powerwash the brick on the terrace portion of the Premises; and (iv) maintain the rest rooms located on the north side of the reflecting pool during the Hours of Operation and such additional hours as may be necessary during Special Events, subject to Tenant's payment of the required charges hereunder.

(B) Landlord does not assume any responsibility for the security of persons or property in, upon or about the Premises and Tenant expressly waives any such claims against Landlord. Landlord shall maintain and repair the foundations, structure and roof of the Building and the sidewalks and curbs adjacent to the Premises, if any; provided, that: (a) Landlord shall use reasonable diligence in carrying out its obligations under this Section 7.06 but shall not be liable under any circumstances for any damages (including consequential damages) for any failure to do so; (b) no reduction or discontinuance of the services described in this Section 7.06 shall be construed as an eviction of Tenant or release Tenant from any of its obligations under this Lease; (c) Landlord shall have no liability to Tenant, its employees, agents, invitees or licensees for damages; and (d) Tenant shall reimburse Landlord for the cost of any repairs or maintenance necessitated by the acts, omissions or negligence or criminal or willful misconduct of Tenant or any assignees, sublessees or occupants of the Premises or any of its or their servants, employees, contractors, agents, invitees, visitors or licensees, or by the use or occupancy or manner of use or occupancy of the Premises by Tenant or any such person.

**Section 7.07. Alterations and Entry by Landlord.**

(A) Landlord and/or its representatives may enter the Premises at any time in case of an emergency without notice, and at all reasonable times upon reasonable prior notice for any purpose permitted hereunder, including, but not limited to, showing the Premises to prospective purchasers or lenders, and within six (6) months prior to the Expiration Date, prospective tenants. Landlord shall have at all times a key with which to unlock the main entrance doors to the Premises.

(B) In performing its covenants under this Article 7, Landlord shall use reasonable efforts to minimize interference with the conduct of Tenant's business in connection with the performance by Landlord of any work or the provision of any services required or permitted hereunder, but Landlord shall not be required to use overtime or premium time labor.

(C) The Conservancy shall have uninterrupted access to the mechanical pool equipment located within the Building at all times.

**ARTICLE 8**

**Signage**

**Section 8.01. General.** Tenant shall not install or erect any sign on the Premises, without the prior written approval of Landlord, in each instance, of the plans and specifications for any such sign. Landlord's prior written approval shall be required with regard to all aspects of the installation and erection of any sign(s). Tenant shall maintain all sign(s) in good working order, condition and repair. Tenant shall maintain adequate night-lights and lighting for the signages during the Hours of Operation. All signs shall be installed, maintained, repaired and operated (i) at Tenant's expense and (ii) provided and so long as all applicable laws shall permit and in accordance therewith. Tenant shall promptly pay and be solely

responsible for the payment of all license, permit or other fees and expenses in connection with any sign installed by Tenant. Tenant or anyone claiming by, through or under Tenant shall not alter the facade of the exterior of the Building without Landlord's prior written consent. Tenant shall not place or install or maintain on the exterior of the Building any awning, canopy, banner, flag, advertisements or projections of any kind without Landlord's prior written consent. In no event shall any sign(s), advertising or promotional material be painted, written or otherwise created or affixed directly on any window, glass or door. Tenant may not install or erect any flashing or blinking illuminated signs, neon signs or signs constructed from paper or any other non-durable material. Upon request of Landlord, Tenant shall immediately remove any sign, advertising material or lettering (i) if required in connection with any cleaning, maintenance or repairs to the Premises, (ii) if erected or installed without Landlord's prior consent or (iii) which, in Landlord's reasonable opinion, is in need of replacement due to the elements. If Tenant fails to comply with any of the provisions set forth in this Section 8.01, Landlord may, without liability, enter upon the Premises and remove the same at Tenant's expense.

## ARTICLE 9

### Alterations by Tenant

**Section 9.01. General.** Tenant shall neither make nor cause to be made any alterations, additions or improvements (collectively "Alterations") in, on or to the Premises or any part thereof without the prior written consent of Landlord. Subject to the prior written consent of Landlord which shall not be unreasonably withheld, Tenant, at Tenant's sole cost and expense, may make Alterations in or to the Building or any part thereof which are interior and nonstructural, so long as such interior and nonstructural Alterations do not affect the mechanical, plumbing, electrical or life safety systems or services serving the Premises. When applying for consent, Tenant shall furnish Landlord with detailed architectural, mechanical and engineering plans and specifications for the desired Alterations, if the desired Alterations (i) will affect the mechanical, plumbing, electrical or life safety systems and services serving the Premises or the Building, or (ii) will require the filing of plans and specifications with any governmental authority or (iii) will cost in excess of Five Thousand Dollars (\$5,000). Subsequent to obtaining Landlord's consent and prior to commencement of construction of the Alterations, Tenant shall deliver to Landlord any building permit required by applicable law and a copy of the executed construction contract(s) and written acknowledgments from all materialmen, contractors, artisans, mechanics, laborers and any other persons furnishing any labor, services, materials, supplies or equipment to Tenant with respect to the Premises that they will look exclusively to Tenant for payment of any sums in connection therewith and that Landlord shall have no liability for such costs. Tenant shall pay to Landlord within ten (10) days after the rendition of any bill(s) therefor the reasonable out-of-pocket costs incurred by Landlord for the review of Tenant's plans and specifications and for monitoring the construction of Tenant's Alterations. If Landlord consents to the making of any Alterations, the same shall be made by Tenant at Tenant's expense by a contractor licensed in the State of New York and approved in writing by Landlord and, to the extent applicable, in conformity with the provisions of **Exhibit D** annexed hereto. If the estimated cost of the proposed Alterations are greater than twenty-five thousand dollars (\$25,000.00), Tenant shall provide, at Tenant's sole cost, a payment and performance and/or completion bond in an amount equal to one and one-half (1½) times the estimated cost of any alterations to be made by Tenant. Tenant shall also require its contractor to maintain insurance in such amounts and in such form as Landlord may require. **NOTICE IS HEREBY GIVEN THAT LANDLORD IS NOT AND SHALL NOT BE LIABLE FOR ANY LABOR, SERVICES OR MATERIALS FURNISHED TO TENANT OR ANYONE HOLDING THE PREMISES, AND THAT NO MECHANICS' OR OTHER LIENS FOR ANY SUCH LABOR, SERVICES OR MATERIALS SHALL ATTACH TO OR AFFECT LANDLORD'S INTEREST IN THE PREMISES.** Any construction, alteration, maintenance, repair, replacement, installation, removal or decoration undertaken by Tenant shall be completed in accordance with any plans and specifications which must be approved by Landlord, shall be carried out in a good, workerlike and prompt manner, shall comply with all applicable statutes, laws and requirements of the authorities having jurisdiction thereof, and shall be subject to supervision by Landlord. Without Landlord's prior written consent, Tenant shall not use any portion of the Building in connection with the making of any Alterations. If the Alterations which Tenant causes to be constructed result in Landlord being required to make any alterations and/or improvements to other portions of the Building in order to comply with any applicable statutes, laws or requirements, then Tenant shall reimburse Landlord upon demand for all costs and expenses incurred by Landlord in making such alterations and/or improvements. Any Alterations made by Tenant shall become the property of Landlord upon installation and shall remain on and be surrendered with the Premises upon the expiration or sooner termination of the Term, except Tenant shall, upon demand by Landlord and at Tenant's expense, forthwith and with all due diligence remove any Alterations made by Tenant which are designated by Landlord in writing made at the time such Alterations are approved by Landlord, to be removed, and repair any damage to the Premises caused by such removal in a good and workerlike manner and otherwise in accordance with the provisions of this Lease.



## **Section 9.02. Tenant's Initial Alterations.**

(A) Subject to the provisions of Section 9.01 hereof, Tenant shall perform or cause the performance of Alterations in and to the Premises to prepare same for Tenant's initial occupancy thereof including, but not limited to, all interior plumbing, heating, air conditioning, electrical installations, floor and wall coverings ("**Tenant's Initial Alterations**") and all furniture, fixtures and equipment to adapt the Premises for the Permitted Use. All materials used in connection with Tenant's Initial Alterations shall be new and first quality. Certified, Inc. (Michael Bonico) is hereby approved by Landlord as the general contractor for the performance of Tenant's Initial Alterations.

(B) Tenant shall, at its expense, submit to Landlord:

(1) a complete schedule of schematics showing Tenant's Initial Alterations (the "**Schematics**") on or before thirty (30) days after the Commencement Date; and

(2) a complete set of construction documents (including, without limitation, plans and specifications relating to Tenant's Initial Alterations) (collectively, the "**Construction Documents**") on or before one hundred twenty (120) days after the Commencement Date.

With respect to each of the above submissions, Landlord shall, within ten (10) days after the receipt of such submission, (i) present objections to said submission; (ii) request additional materials reasonably related to the same; or (iii) approve said submission. In the event Landlord requests additional materials, Tenant shall submit said materials within fifteen (15) days after receipt of such request. Within ten (10) days after receipt of the requested materials, Landlord shall (i) present objections to such submission; or (ii) approve such submission. Failure by Landlord to respond within ten (10) days after receipt of a submission shall constitute Landlord's approval to that submission only.

(C) In the event that Landlord presents objections to the Schematics or the Construction Documents, Tenant shall promptly revise and resubmit same for Landlord's approval.

(D) Failure by Tenant to (i) submit the Schematics or the Construction Documents within the dates prescribed by Section 9.02(B)(1)-(2); (ii) comply with any request for additional materials in connection with a submission; or (iii) promptly revise and resubmit any document objected to by Landlord, shall constitute a material default under this Lease.

(E) Tenant shall pay the reasonable out-of-pocket costs incurred by Landlord in connection with the review of the Schematics and the Construction Documents (and all re-submissions thereof).

(F) The Schematics and the Construction Documents, as approved by Landlord, are hereinafter referred to as the "**Final Plans**", and shall be deemed an authorization by Landlord for Tenant to proceed after the Commencement Date or such earlier date as Landlord may permit Tenant to have access to the Premises for Tenant's Initial Alterations. Any violation of the provisions of **Exhibit D** hereof shall be deemed to be a default hereunder. The approval of the Final Plans by Landlord shall not be deemed to create any liability on the part of Landlord with respect to the design or specifications set forth in the Final Plans or an acknowledgment on the part of the Landlord that the Final Plans are in compliance with all applicable governmental laws, rules and regulations.

(G) Following Landlord's approval of the Final Plans, Tenant shall, at its cost, promptly apply for a building permit from the appropriate governmental agency. Tenant shall not commence work at the Premises unless and until Landlord shall have approved the Final Plans and a building permit has been delivered to Landlord indicating all governmental approvals for the proposed work along with a set of working drawings stamped or signed by the local authority to indicate its approval of same.

(H) Tenant agrees to commence the performance of Tenant's Initial Alterations in accordance with the Final Plans upon receipt of a building permit and all other necessary permits, if any, for construction and to complete Tenant's Initial Alterations.

(I) Within thirty (30) days of completion of Tenant's Initial Alterations, Tenant shall submit to Landlord, (i) final lien waivers from all contractors, subcontractors and materialmen who have furnished work, labor or materials in connection with Tenant's Initial Work; and, as applicable, (ii) a certificate of occupancy or amended certificate of occupancy, as the case may be, necessary to conduct its business in the Premises for the Permitted Use. Tenant hereby acknowledges that there is currently no certificate of occupancy (temporary or otherwise) for the Premises and obtaining a certificate of occupancy (both temporary and permanent) shall be Tenant's responsibility, at its sole cost and expense.



**Section 9.03. Reimbursement by Landlord for Certain Work.** Subject to compliance by Tenant with the provisions of Sections 9.01 and 9.02, Landlord shall be responsible for the reasonable cost of furnishing and replacing the doors on the eastern facade of the south pavilion as shown on **Exhibit A** (the "**Landlord Work**"), which cost shall be agreed to by Landlord and Tenant prior to the commencement by Tenant of the Landlord Work and reimbursed to Tenant within thirty (30) days of the completion of Tenant's Initial Alterations. The Landlord Work shall be performed by Tenant's contractor in conjunction with Tenant's Initial Alterations.

**Section 9.04. Security Gate.** Tenant shall not install any security gate within the Premises without Landlord's prior written consent. If Landlord shall consent to the installation of a security gate, such security gate shall be installed, at Tenant's expense, within the Premises in such manner as to be behind any display window decoration, and to permit an unobstructed view of all display window decoration.

**Section 9.05. Tenting of the Terrace Area of the Premises.** For Special Events only, Tenant may, at its own expense, erect a tent over the terrace area of the Premises; provided, that: (i) an engineer licensed in the State of New York shall have certified that the proposed tent meets applicable standards for wind load, and (ii) the tent supports are not spiked into the Premises or any area outside the Premises. Tenant shall support the tent with sandbags or, in the alternative, it may, at its own expense, install permanent sleeves to support the tent, provided that such installation is performed in accordance with Section 9.01.

## ARTICLE 10

### Repairs

**Section 10.01. General.** No representations, except as contained herein, have been made to Tenant respecting the condition of the Premises. Subject to the provisions of Article 13 and Section 7.06(B) hereof, Tenant shall, at its expense, take good care of the Premises and shall make all non-structural repairs and replacements to the Premises, as and when Landlord deems necessary in order to preserve the Premises in good working order and condition. Tenant agrees to maintain in good working order and condition the fire alarm and monitoring systems, fire protection sprinkler system, and all plumbing, air-conditioning, electrical and heating systems and equipment in and/or exclusively servicing the Premises and keep in force a standard maintenance agreement with contractors selected by Tenant and reasonably approved by Landlord on all such equipment and systems, and to furnish a copy thereof to Landlord. Landlord shall not be liable for, and there shall be no abatement of Rent with respect to, any injury to or interference with Tenant's business arising from any repairs, maintenance, alteration or improvement to the Premises or the Building or to the fixtures, appurtenances or equipment therein. All damages or injury to the Premises by Tenant or by any person who may be in or upon the Premises with Tenant's consent or at Tenant's invitation, shall be paid for by Tenant. Tenant agrees to give Landlord or its managing agent prior written notice of the necessity for any repairs in or to the Premises and shall not proceed to perform the same until Landlord or its managing agent has consented thereto.

**Section 10.02. Glass and Sprinklers.**

(A) Tenant shall replace at its expense, any and all plate and other glass and exterior window treatments damaged or broken by any cause whatsoever, other than the negligence or willful misconduct of Landlord, its employees or agents, in and about the Premises to the building standard condition for the Building adopted by Landlord. In the event Tenant shall fail to replace or repair, as applicable, such glass or frames in a manner satisfactory to Landlord, then Landlord may replace the glass and repair or replace such frames on Tenant's behalf and Tenant shall, within five (5) days after Landlord's demand therefor, pay to Landlord as Additional Rent the costs incurred by Landlord in so doing.

(B) If there now is or shall be installed in the Building a "sprinkler system," or other life safety system or any of its appliances shall be damaged or injured or not in proper working order by reason of any act or omission of Tenant, Tenant's agents, servants, employees, licensees or visitors, Tenant shall forthwith restore the same to good working condition at its own expense. If the New York Board of Fire Underwriters or the New York Fire Insurance Rating Organization of any governmental agency shall require or recommend that any modifications or alterations be made or supplied by reason of Tenant's business, or the location of the partitions, trade fixtures, or other contents of the Premises, Tenant shall, at its expense, promptly make and supply such modifications or alterations.

## ARTICLE 11

### Assignment and Subletting

**Section 11.01. General.** Tenant shall not, without the prior written consent of Landlord: (a) assign, mortgage, pledge, encumber or otherwise transfer this Lease, the term or estate hereby granted, or any interest hereunder; (b) permit the Premises or any part thereof to be utilized by anyone other than Tenant (whether as concessionaire, franchisee, licensee, permittee or otherwise); or (c) except as hereinafter provided, sublet or offer or advertise for subletting the Premises or any portion thereof. Any assignment, mortgage, pledge, encumbrance, transfer or sublease without Landlord's consent shall be voidable at Landlord's election. Landlord has entered into this Lease with Tenant in order to obtain the unique attraction to Tenant's Trade Name and the unique culinary reputation associated with Tenant's business, and Landlord has specifically relied on the identity and special skill of Tenant in its ability to conduct the specific business identified in Section 6.01 hereof, and the foregoing prohibition against assignment or subletting or the like is expressly agreed to by Tenant as an inducement to Landlord to lease the Premises to Tenant. For the purposes of this Section 11.01, (i) subject to the provisions of Sections 11.04 and 11.05 below, any transfer or issuance of stock ultimately resulting in ownership of a majority of the issued and outstanding capital stock of Tenant (if Tenant is a corporation) or of Tenant's corporate parent, and any transfer of partnership or membership interests ultimately resulting in ownership of majority of the partnership or membership interest in Tenant (if Tenant is, respectively, a partnership or a limited liability company) or of any holder of such partnership or membership interest in Tenant, whether in a single transaction or in a series of related or unrelated transactions, shall be deemed an assignment of this Lease, or of such sublease, as the case may be, (ii) a takeover agreement or similar agreement whereby the obligations of Tenant under this Lease are assumed by another party shall be deemed a transfer of this Lease, (iii) any person or legal representative of Tenant, to whom Tenant's interest under this Lease passes by operation of law, or otherwise, shall be bound by the provisions of this Section 11.01, and (iv) if Tenant consists of more than one person, a purported assignment, voluntary, involuntary, or by operation of law by any of the persons executing this Lease shall be deemed a voluntary assignment of this Lease by Tenant.

**Section 11.02. Notice and Procedure.** If at any time or from time to time during the Term, Tenant desires to assign this Lease or sublet the entire Premises, then at least thirty (30) days, but not more than one hundred twenty (120) days, prior to the date when Tenant desires the assignment or subletting, to be effective (the "Transfer Date"), Tenant shall give Landlord a notice ("Tenant's Notice") which shall set forth the name, address and business of the proposed assignee or sublessee, information (including financial statements and references) concerning the character of the proposed assignee or sublessee, any rights of the proposed assignee or sublessee to use Tenant's improvements and the like, the Transfer Date, and the fixed rent and/or other consideration and all other material terms and conditions of the proposed assignment or subletting, all in such detail as Landlord may reasonably require. If Landlord requests additional detail, Tenant's Notice shall not be deemed to have been received until Landlord receives such additional detail. Tenant shall pay Landlord's reasonable attorneys' fees and disbursements and processing fees (not to exceed fifteen hundred dollars (\$1,500.00)) incurred in connection with any request to assign this Lease or sublet the Premises. In addition, Tenant shall pay to Landlord as Additional Rent, all charges incurred by Tenant or any assignee or subtenant in connection with the move into or out of the Premises including, without limitation, janitorial services and rubbish removal. Except in connection with an assignment or subletting to a Related Company or Successor Entity as set forth in Sections 11.04 and 11.05 respectively, Landlord shall have the option, exercisable by giving notice to Tenant at any time within thirty (30) days after Landlord's receipt of Tenant's Notice in the case of an assignment or sublease, to terminate this Lease as of the Transfer Date, in which event Tenant and the Guarantor shall be relieved of all further obligations hereunder as to the Premises. No failure of Landlord to exercise its option shall be deemed to be Landlord's consent to the assignment or subletting of the Premises. If Landlord does not exercise its option, it may either grant or withhold its consent to the proposed assignment or subletting set forth in Tenant's Notice in its sole discretion. If Landlord shall grant its consent, Tenant may assign this Lease or sublet the Premises to the proposed assignee or sublessee, as the case may be, set forth in Tenant's Notice, subject to the following conditions:

- (1) Tenant shall not be in default of any of Tenant's obligations under this Lease as of the time of Landlord's consent and as of the effective date of the proposed assignment or the commencement date of the proposed sublease;
- (2) The proposed assignee or sublessee (i) shall continue to use the Premises for the Permitted Use and for no other purpose and (ii) shall not violate any restrictive covenant or agreement contained in any other contract or agreement affecting Landlord or the Building;

(3) The proposed assignee or sublessee shall be, in Landlord's sole discretion, a reputable entity of good character and with substantial experience in the business to be conducted at the Premises;

(4) The assignment or subletting shall be for the entire Premises;

(5) The proposed assignee or sublessee shall have sufficient financial worth;

(6) The assignment or sublease shall be on the same terms set forth in Tenant's Notice given to Landlord;

(7) No assignment or sublease shall be valid and no assignee or sublessee shall take possession of the Premises unless at least fifteen (15) days prior to the effective date thereof, Tenant shall deliver to Landlord, in form reasonably satisfactory to Landlord, a fully executed counterpart of the sublease or assignment and assumption pursuant to which assignee assumes all of the obligations and liabilities of Tenant under this Lease and agrees to be bound by all of the terms, covenants and conditions of this Lease;

(8) No assignee or sublessee shall have a right further to assign or sublet; and

(9) Fifty percent (50%) of all sums or other economic consideration received by Tenant as a result of such assignment or subletting, whether denominated Rent or otherwise, less reasonable leasing commissions, which exceed, in the aggregate, the total sums which Tenant is obligated to pay Landlord under this Lease shall be payable to Landlord as Additional Rent under this Lease, as and when received by Tenant, without affecting or reducing any other obligation of Tenant hereunder. Economic consideration received by Tenant as a result of an assignment or subletting shall include, without limitation, all sums paid for the sale or rental of any of Tenant's fixtures, leasehold improvements, equipment, furniture, furnishings or other personal property, less the fair market value thereof to the extent such items were paid for by Tenant. Tenant shall deliver to Landlord a statement within thirty (30) days after the end of each Lease Year during the Term, and within thirty (30) days after the expiration or earlier termination of the Term (as the same may be extended), specifying with respect to the Lease Year or the elapsed portion thereof, as the case may be, each sublease and assignment in effect during the period covered by such statement and, (A) the date of its execution and delivery, and the term thereof; and (B) a computation in reasonable detail showing: (1) the amounts (if any) paid and payable by Tenant to Landlord pursuant to this subsection with respect to such sublease or assignment for the period covered by such statement and (2) the amounts (if any) paid and payable by Tenant to Landlord pursuant to this subsection with respect to any payments received from a sublessee or assignee during such period but which relate to an earlier period.

**Section 11.03. Continuing Liability of Tenant.** Regardless of Landlord's consent, no subletting or assignment shall release Tenant's obligation or alter the primary liability of Tenant to pay the Rent and to perform all other obligations to be performed by Tenant hereunder. The acceptance of Rent by Landlord from any other person shall not be deemed to be a waiver of its right to consent, and consent to any assignment or subletting shall not be deemed consent to any subsequent assignment or subletting. If any assignee or Tenant or any successor of Tenant defaults in the performance of any of the terms hereof, Landlord may proceed directly against Tenant or any Guarantor of this Lease without the necessity of exhausting remedies against such assignee or successor and Tenant named herein and any assignee of such Tenant who assumes the obligations of the named Tenant under this Lease shall be jointly and severally liable for performance of all obligations of Tenant under this Lease. Landlord may consent to subsequent assignments or subletting of this Lease or amendments or modifications to this Lease with assignees of Tenant, without notifying Tenant, or any successor of Tenant, and without obtaining its or their consent thereto, and such action shall not relieve Tenant or any Guarantor of its liability under this Lease.

**Section 11.04. Subletting to a Related Company.** Notwithstanding the provisions of Section 11.01, Tenant may, without Landlord's prior written consent, but upon not less than thirty (30) days prior written notice to Landlord, permit any corporations, limited liability corporations or other business entities which control, are controlled by, or are under common control with Tenant (herein referred to as a "**Related Company**") to sublet or use all or part of the Premises for any of the purposes permitted to Tenant, subject however to compliance with Tenant obligations under this Lease, provided that (i) no Event or Events of Default shall have occurred and be continuing; and (ii) prior to such subletting or use Tenant furnishes Landlord with the name of any such Related Company, together with a certification of Tenant, and such other proof as Landlord may reasonably request, that such subtenant is a Related Company of Tenant and shall continue to remain such during the balance of the Term. In connection with the information to be provided to Landlord pursuant to this Section 11.04, Landlord shall have the right, at any reasonable time and from time to time, to examine such books and records of Tenant as may be necessary to establish that such subtenant remains a Related Company of Tenant. Such subletting shall not be deemed to vest in any such Related Company any right or interest in this Lease or the Premises nor shall it relieve, release, impair or discharge any of Tenant's or

Guarantor's obligations hereunder. For the purposes hereof, "control" shall be deemed to mean ownership of not less than fifty one (51%) percent of all of the voting stock of any such corporation or not less than fifty one (51%) percent of all of the legal and equitable interest in any other business entities.

**Section 11.05. Transfer to a Successor Entity.** Notwithstanding the provisions of Section 11.01, Tenant may, without Landlord's prior written consent, but upon not less than thirty (30) days prior written notice to Landlord, assign or transfer its entire interest in this Lease to a Successor Entity (as hereinafter defined); provided, however, that (i) no Event or Events of Default shall have occurred and be continuing; (ii) the proposed occupancy shall not, in Landlord's sole discretion, impose an extra burden upon the Building's equipment; and (iii) the proposed assignee shall not be entitled, directly or indirectly, to diplomatic or sovereign immunity and shall be subject to the service of process in, and the jurisdiction of the courts of the New York State. A "Successor Entity" as used in this Section 11.05 shall mean (a) an entity into which or with which Tenant, its successors or assigns, is merged or consolidated, in accordance with applicable statutory provisions for the merger or consolidation, provided that by operation of law or by effective provisions contained in the instruments of merger or consolidation, the liabilities of the entities participating in such merger or consolidation are assumed by the entity surviving such merger or consolidation, or (b) an entity acquiring this Lease and the Term hereof, the goodwill and all or substantially all of the other property and assets of Tenant, its successors or assigns, and assuming all or substantially all of the liabilities of Tenant, its successors or assigns, or (c) any successor to a Successor Entity becoming such by either of the methods described in subdivisions (a) and (b) above; provided, that, (1) such merger or consolidation, or such acquisition and assumption, as the case may be, is for a good business purpose and not principally for the purpose of transferring this Lease; (2) immediately after giving effect to any such merger or consolidation, or such acquisition and assumption, as the case may be, the entity surviving such merger or created by such consolidation, or acquiring such assets and assuming such liabilities, as the case may be, shall have assets, capitalization and a demonstrable tangible net worth (excluding good will), as determined in accordance with generally accepted accounting principles, consistently applied, and certified to Landlord by an independent certified public accountant, at least equal to the assets, capitalization and net worth, similarly determined of Tenant as of the date of this Lease, or of Tenant, its successors or assigns, immediately prior to such merger or consolidation or such acquisition and assumption, whichever is greater; and (3) Mr. Robert Giraldi or Mr. Philip Suarez individually, or when their respective interests are combined, shall own at least a controlling interest (including voting rights) in such Successor Entity. The acquisition by Tenant, its successors or assigns, of all or substantially all of the assets, together with the assumption of all or substantially all of the obligations and liabilities of any corporation, shall be deemed to be a merger for the purposes of this Article.

Tenant represents to Landlord that Mr. Robert Giraldi and Mr. Philip Suarez collectively own a controlling interest (including voting rights) in Tenant. In addition to other defaults specified in this Lease, it shall be a default under this Lease if, at any time during the term hereof, (i) Mr. Robert Giraldi or Mr. Philip Suarez individually, or when their respective interests are combined, shall not own at least a controlling interest (including voting rights) in Tenant (including any Successor Entity or Related Company, as applicable) or (ii) either Mr. Robert Giraldi and/or Mr. Philip Suarez shall not be primarily responsible for the day-to-day operation of Tenant's (including any Successor Entity or Related Company, as applicable) business at the Premises.

## ARTICLE 12

### Indemnification

**Section 12.01. Waiver of Liability.** Landlord or its agents shall not be liable for any claims with respect to or arising out of (a) any death or injury that may be suffered or sustained by Tenant or any employee, licensee, invitee, guest, agent or customer of Tenant or any other person, from any causes whatsoever, other than as a result of Landlord's gross negligence or willful misconduct or (b) any loss or damage or injury to any property outside or within the Premises belonging to Tenant or its employees, agents, customers, licensees, invitees, guests or any other person. Without limiting the generality of the foregoing, Landlord or its agents shall not be liable for any damage to persons or property caused by explosion, fire, theft or breakage, by sprinkler, drainage or plumbing systems, by failure for any cause to supply adequate drainage, by the interruption of any public utility or service, by steam, gas, water, rain or other substances leaking, issuing or flowing into any part of the Premises, by natural occurrence, acts of the public enemy, riot, strike, insurrection, war, court order, requisition or order of governmental body or authority, or for any damage or inconvenience which may arise through repair, maintenance or alteration of any part of the Building, or by anything done or omitted to be done by any tenant, occupant or person in the Building. In addition, Landlord or its agents shall not be liable for any loss or damage for which Tenant is required to insure, or for any loss or damage resulting from any construction, alterations or repair required or permitted to be performed by Tenant under this Lease.

**Section 12.02. Indemnity.** Tenant shall indemnify, defend and hold harmless Landlord and the Conservancy and their respective officers, members, directors, employees, attorneys and agents (collectively, the "Indemnitees") from and against any and all claims, demands, causes of action, judgments, costs, expenses (including reasonable attorneys' fees), and all losses and damages (including consequential and punitive damages), claims, or liability for any damage to any property or injury, illness or death of any person (a) occurring in, on, or about the Premises, or any part thereof, arising at any time and from any cause whatsoever; (b) occurring in, on or about the reflecting pool adjacent to the Premises, if such damage, injury, illness or death shall be caused in whole or in part by any act or omission or negligence or willful or criminal misconduct of Tenant, its agents, servants, employees, invitees or licensees (including, without limitation, when such damage, injury, illness or death shall have been caused in part by Landlord, its employees or agents); (c) arising out of or in any way related to claims for work or labor performed or materials or supplies furnished to, or at the request of, Tenant or in connection with the performance of any work done by or for the account of Tenant, whether or not Tenant obtained Landlord's permission to have such work done, labor performed or materials or supplies furnished; or (d) arising out of or in any way related to any breach of a covenant or condition in this Lease to be performed by Tenant. The provisions of this Section shall survive the expiration or sooner termination of this Lease.

**Section 12.03. Compliance with Laws and Requirements.**

(A) Tenant, at its expense, shall comply with all laws, orders and regulations of any governmental authorities and with any directive of any public officer, and with all rules, orders, regulations or requirements of the New York Board of Fire Underwriters, or any other similar body which shall impose any violation, order or duty upon Landlord or Tenant with respect to Tenant's use of the Premises or occupation thereof including, without limitation, any governmental law or statute, rule, regulation, ordinance, code, policy or rule of common law now or hereafter in effect relating to the environment, health, safety or any substances, materials or wastes regulated by any governmental authority or deemed or defined as a "hazardous substance", "hazardous material", "toxic substance", "toxic pollutant", "contaminant", "pollutant", "solid waste", "hazardous waste" or words of similar import under applicable laws and regulations of the United States, New York State and the political subdivisions thereof having jurisdiction over the Building, including, without limitation, oil and petroleum products, natural or synthetic gas, asbestos in any form, urea formaldehyde and radon gas (collectively, "Hazardous Materials"). In addition, Tenant shall comply with, and shall cause compliance with the rules and regulations set forth in Exhibit E annexed hereto, as amended from time to time (the "Rules and Regulations"), which have been adopted by Landlord for the Building. Tenant shall maintain the Premises in compliance with Title III of the Americans with Disabilities Act of 1990 and all regulations promulgated thereunder (the "ADA") at Tenant's sole cost and expense. Except with respect to the installation of a sprinkler system or any changes, modifications or alterations thereto necessary to prevent penalties or fines against the Premises or the Building, nothing herein shall require Tenant to make structural repairs or alterations unless Tenant has by its and manner of use of the Premises or the Building, or method of operation therein, violated any such laws, ordinances, orders, rules regulations or requirements with respect thereto.

(B) Tenant shall provide Landlord with copies of all communications and related materials regarding the Premises with any (i) governmental agency relating to any law, statute, rule, regulation, article, code, policy or rule of common law and any judicial interpretation thereof relating to Hazardous Materials (collectively, "Environmental Laws") or (ii) person with respect to any claim relating in any way to any Environmental Law (each, an "Environmental Claim"). Landlord or its agents may perform an environmental inspection of the Premises at Tenant's expense at any time during the Term.

(C) Tenant agrees to defend, indemnify and hold harmless the Indemnitees (as defined in Section 12.02 hereof) from and against all obligations (including removal and remedial actions), losses, claims, suits, judgments, liabilities, penalties, damages (including consequential and punitive damages), costs and expenses (including attorneys' and consultants' fees and expenses) of any kind or nature whatsoever that may at any time be incurred by, imposed on or asserted against such Indemnitees directly or indirectly based on, or arising or resulting from (a) the actual or alleged presence of Hazardous Materials on the Premises or in the Building which is caused or permitted by Tenant and (b) any Environmental Claim relating in any way to Tenant's operation or Permitted Use of the Premises or the Building. The provisions of this Subsection (C) shall survive the expiration or sooner termination of this Lease.

(D) Tenant shall pay or cause to be paid before delinquency, any and all taxes levied or assessed and payable during the Term upon all of Tenant's leasehold improvements, equipment, furniture, fixtures, and other personal property located in the Premises. In addition, Tenant shall not do or permit to be done any act or thing in, on or about the Premises or store anything therein, except as now or hereafter permitted by the New York City Fire Department, the New York Board of Fire Underwriters, the New York Fire Insurance Rating Organization or other authority having jurisdiction and then only in such quantity and manner of storage as not to increase the existing rate of, or adversely affect, or cause a cancellation of, any

fire or other insurance policies covering the Building or any of its contents and shall reimburse Landlord for all increases of Landlord's fire insurance premiums caused by Tenant's acts or omissions.

## ARTICLE 13

### Casualty and Eminent Domain

**Section 13.01. Casualty.** If the Premises shall be partially damaged by fire or any other casualty and the cause of such fire or casualty is not attributable to the gross negligence or willful misconduct of Tenant, its agents, contractors or invitees, Landlord shall repair the Premises to the condition existing as of the date the Premises were originally delivered by Landlord to Tenant, but only to the extent of the net insurance award actually paid to Landlord. Notwithstanding the foregoing, (i) if the Premises (a) are rendered wholly untenable by reason of such fire or casualty, or (b) are damaged as a result of a risk which is not covered by Landlord's insurance, or (c) are damaged in whole or in part during the last year of the Term, or (d) all or any portion of the proceeds of any insurance policy are retained by the lessor under any Superior Lease or the holder of any Mortgage, or (ii) if Landlord, in its sole judgment, shall decide not to repair the Building, or shall decide to demolish the Building and not to rebuild it, then or in any of such events, Landlord may cancel this Lease by notice of cancellation given within ninety (90) days after such fire or other casualty, in which event this Lease shall expire as of the date of such notice, and Tenant shall immediately vacate and surrender the Premises to Landlord. Tenant's liability for Rent upon the termination of this Lease as hereinbefore set forth shall cease as of the day Tenant vacates the Premises as a result of the untenability of the Premises. Unless this Lease is terminated by Landlord, Tenant shall restore, at its sole cost, Tenant's improvements and shall refixture and refurnish the Premises in a manner and to at least a condition substantially equal to that existing prior to its destruction or casualty. The parties agree that this Section 13.01 constitutes an express agreement governing any case of damage or destruction of the Premises or the Building by fire or other casualty, and that Section 227 of the Real Property Law of the State of New York, which provides for such contingency in the absence of an express agreement, and any other law of like import now or hereafter in force shall have no application in any such case.

### **Section 13.02. Taking of Premises.**

(A) If all or any part of the Premises shall be taken by any public authority as a result of the exercise of the power of eminent domain, this Lease shall terminate as to the part so taken as of the date of taking, and, in the case of a partial taking, either Landlord or Tenant shall have the right to terminate this Lease as to the balance of the Premises by written notice to the other within thirty (30) days after the date of such taking, provided, however, that a condition to the exercise by Tenant of such right to terminate shall be that the portion of the Premises taken shall, in Landlord's judgment, reasonably exercised, be of such extent and nature as to substantially impair Tenant's use of the balance of the Premises. If, in Landlord's opinion, a material part of the Building is condemned or taken or if substantial alteration or reconstruction of the Building shall be necessary as a result of such taking, Landlord may terminate this Lease by written notice to Tenant within thirty (30) days after the date of taking. If all or any part of the Premises shall be condemned or taken for governmental occupancy for a period of less than one year, this Lease shall continue in full force and effect and Tenant shall continue to pay in full all Minimum Monthly Rent, and any Additional Rent herein reserved, without reduction or abatement. If all or any portion of the Premises shall be condemned or taken for governmental occupancy for a period of more than one year, this Lease shall terminate as of the date of taking and Landlord shall be entitled to any and all compensation, damages, income, rent and awards in connection therewith.

(B) In the event of any taking, Landlord shall be entitled to any and all compensation, damages, income, rent, awards, or any interest therein whatsoever which may be paid or made in connection therewith, and Tenant shall have no claim against Landlord for the value of any unexpired term of this Lease or otherwise. In the event of a partial taking of the Premises which does not result in a termination of this Lease, the Minimum Monthly Rent thereafter to be paid shall be equitably reduced by Landlord. In any event, Tenant may independently claim for the value of Tenant's Initial Alterations, if any, and its furniture, fixtures and equipment or moving expenses provided that no claim shall diminish the claim of Landlord. In the event of a partial taking of the Premises which does not result in a termination of this Lease, Landlord shall restore and redemise the Premises to the extent required to exclude from the Premises that portion so taken; provided, that Landlord's obligation to restore and redemise the remainder of the Premises shall be limited to the funds available to Landlord from the condemnation award or other consideration paid for the affected portion of the Premises. In connection with Landlord's obligation to restore and redemise the Premises, Landlord shall be required to reconnect the utilities to the Premises, but shall not be obligated to replace, repair or restore any improvements to the Premises or Alterations to the Premises made by or on behalf of Tenant, nor shall Landlord be obligated, in any event whatsoever, to replace, repair or restore Tenant's leasehold improvements, personal property, furniture, fixtures, equipment or the like.



## ARTICLE 14

### Insurance, Loss, Reimbursement, Liability

**Section 14.01. Liability and Property Insurance.** Tenant shall procure and maintain throughout the Term of this Lease, at its expense, (i) insurance in the amounts and coverages as set forth on **Exhibit F** hereto, and (ii) such other insurance (in such amounts) as Landlord may reasonably require from time to time; provided such insurance is consistent with the types and amounts of coverage customarily carried by prudent owners of similar properties or otherwise required by a lessor under any Superior Lease or the holder of any Mortgage. All of the foregoing insurance policies (with the exception of worker's compensation insurance to the extent not available under statutory law) shall name Landlord, any holder of a Mortgage, any lessor under a Superior Lease or any managing agent for the Building and such other parties as Landlord shall designate as an additional insured as their respective interests may appear, and, except for worker's compensation coverage, shall provide that any loss shall be payable to Landlord and any other additional insured parties as their respective interests may appear. All insurance required hereunder shall be placed with companies which are rated A:XI or better by Best's Insurance Guide and licensed to do business in the State of New York, and written as primary policies with annual deductibles not to exceed the amounts set forth on **Exhibit F** (or such other amounts as may be determined by Landlord), and with any other policies serving as excess coverage. Tenant shall deliver certificates of insurance and, if requested by Landlord, duplicate original copies of all such policies and all endorsements thereto, prior to the Commencement Date (or, in the case of renewals, within fifteen (15) days prior to the expiration of the then expiring insurance policy) together with evidence that such policies are fully paid for, and that no cancellation, material change or non-renewal thereof shall be effective except upon thirty (30) days prior written notice from the insurer to Landlord. If Tenant shall fail to procure and/or maintain the insurance required herein, Landlord may procure such insurance on Tenant's behalf and the cost thereof shall be payable as Additional Rent.

**Section 14.02. Waiver of Subrogation.** Landlord and Tenant shall each procure an appropriate clause in, or endorsement on, any fire or extended coverage insurance covering the Premises and the Building, as well as personal property, fixtures and equipment located thereon or therein, pursuant to which the parties' respective insurance companies waive subrogation or consent to a waiver of right of recovery against the other party, and each hereby agrees that it will not make any claim against or seek to recover from the other party for any loss or damage to its property or the property of others resulting from fire or other hazards covered by such fire and extended coverage insurance. It is expressly understood and agreed that Landlord will not carry insurance on Tenant's Initial Alterations or any other improvements installed within the Premises by Tenant or on behalf of Tenant or on Tenant's fixtures, furnishings, equipment or other property or effects or insurance against interruption of Tenant's business.

## ARTICLE 15

### Default

**Section 15.01. Events of Default.** In addition to any other event specified in this Lease as an event of default, the occurrence of any one or more of the following events during the Term (each, individually, an "Event of Default" and collectively, "Events of Default") shall constitute a breach of this Lease by Tenant and Landlord may exercise the rights set forth in Section 15.02 of this Lease or as otherwise provided at law or in equity: (1) Tenant shall fail to pay the Minimum Annual Rent payable hereunder within five (5) days after the same shall become due and payable or any other sum payable hereunder within five (5) days after written notice from Landlord; or (2) Tenant fails to take possession of and open the Premises for business to the public in the manner required under this Lease within thirty (30) days after the Rent Commencement Date; or (3) Tenant fails to continuously operate its business pursuant to and for the purpose specified in Section 6.01 hereof, or shall fail to operate under its Trade Name; or (4) Tenant shall fail to perform any of the other covenants, agreements, terms or conditions of this Lease to be performed by Tenant (other than any default curable by the payment of money) or fail to comply with the Rules and Regulations, and, unless expressly provided elsewhere in this Lease that no notice and/or opportunity to cure such default is to be afforded Tenant, such default shall continue for a period of fifteen (15) days after written notice thereof from Landlord to Tenant, or, in the case of a default which cannot with due diligence be cured within fifteen (15) days, Tenant fails to commence such cure promptly within such fifteen (15) day period and thereafter diligently prosecute such cure to completion within an additional thirty (30) days; or (5) Tenant or any guarantor of Tenant's obligations hereunder ("**Guarantor**") shall file a voluntary petition in bankruptcy or shall be adjudicated a bankrupt or become insolvent within the meaning of the United States Bankruptcy Code, as amended (the "**Code**"), or shall seek or consent to or acquiesce in the appointment of any trustee, receiver, liquidator or other custodian for any substantial part of Tenant's properties or any part of the Premises; or (6) any Guarantor of this Lease shall default beyond any applicable notice and/or grace period under such guaranty; or (7) the Premises shall be abandoned by Tenant for a period of thirty (30) days; or

(8) Tenant shall make a bulk sale of its goods, or moves, commences, attempts or threatens to move its goods, chattels and equipment out of the Premises (other than in the normal course of its business).

#### **Section 15.02. Landlord's Remedies.**

(A) Upon the occurrence of any Event of Default, Landlord shall have the option to pursue any one or more of the following remedies without notice or demand whatsoever, in addition to, or in lieu of, any and all remedies available to Landlord under the laws of the state in which the Building is located:

(1) Landlord may give Tenant written notice of its election to terminate this Lease, effective on the date specified therein, whereupon Tenant's right to possession of the Premises shall cease and this Lease, except as to Tenant's liability, shall be terminated.

(2) Landlord and its agents may immediately re-enter and take possession of the Premises, or any part thereof, either by summary proceedings, or by any other applicable action or proceeding, or by any other lawful means and may repossess same as Landlord's former estate and expel Tenant and those claiming through or under Tenant, and remove the effects of both or either, without being deemed guilty in any manner of trespass, and without prejudice to any remedies for arrears of rent or Tenant's breach of covenants or conditions.

(3) Should Landlord elect to re-enter as provided hereinabove, or should Landlord take possession pursuant to legal proceedings or pursuant to any notice provided by law, Landlord may, from time to time, without terminating this Lease, relet the Premises or any part thereof in Landlord's or Tenant's name, but for the account of Tenant (subject to the provisions of Section 15.02(B)), 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 terms and conditions as Landlord, in its sole discretion, may determine, and Landlord may collect and receive the rents therefor without affecting any liability of Tenant under this Lease. Landlord shall have no obligation to relet the Premises and shall in no event be liable for refusal or failure to relet the Premises or, in the event of any such reletting, for refusal or failure to collect any rent due upon such reletting, and no such refusal or failure shall affect any liability of Tenant under this Lease. No such re-entry or taking possession of the Premises by Landlord shall be construed as an election on Landlord's part to terminate this Lease unless a written notice of such intention be given to Tenant. No notice from Landlord hereunder or under a forcible entry and detainer statute or similar law shall constitute an election by Landlord to terminate this Lease unless such notice specifically so states. Landlord reserves the right following any such re-entry and/or reletting to exercise its right to terminate this Lease by giving Tenant written notice thereof.

(B) Tenant hereby waives the service of any notice of intention to re-enter or to institute legal proceedings to that end which may otherwise be required to be given under any law. Tenant, on its own behalf and on behalf of all persons claiming through or under Tenant, including all creditors, does further hereby waive any and all rights which Tenant and all such persons might otherwise have under any present or future law to redeem the Premises, or to re-enter or repossess the Premises, or to restore the operation of this Lease, after (i) Tenant shall have been dispossessed by a judgment or by warrant of any court or judge, or (ii) any re-entry by Landlord, or (iii) any expiration or termination of this Lease and the Term, whether such dispossession, re-entry, expiration or termination shall be by operation of law or pursuant to the provisions of this Lease. The words "re-enter", "re-entry" and "re-entered" as used in this Lease shall not be deemed to be restricted to their technical legal meanings. In the event of a breach or threatened breach by Tenant, or any persons claiming through or under Tenant, of any term, covenant or condition of this Lease on Tenant's part to be observed or performed, Landlord shall have the right to enjoin such breach and the right to invoke any other remedy allowed by law or in equity as if re-entry, summary proceedings and other special remedies were not provided in this Lease for such breach.

(C) Even though Tenant has breached this Lease and abandoned the Premises, this Lease shall continue in effect so long as Landlord does not terminate Tenant's right to possession, and Landlord may enforce all its rights and remedies under this Lease, including the right to recover Rent as it becomes due under this Lease.

#### **Section 15.03. Measure of Damages.**

(A) If this Lease and the Term shall expire and come to an end as provided in this Article 15, or by or under any summary proceeding or any other action or proceeding; or if Landlord shall re-enter the Premises as provided in Section 15.02(A)(2), or by or under any summary proceeding or any other action or proceeding, then, in any of said events:



(1) Tenant shall pay Landlord all Rent payable under this Lease by Tenant to Landlord to the date upon which this Lease and the Term shall have expired and come to an end or to the date of re-entry upon the Premises by Landlord, as the case may be;

(2) Tenant also shall be liable for and shall pay to Landlord, as damages, any deficiency (the "Deficiency") between the Rent for the period which otherwise would have constituted the unexpired portion of the Term and the net amount, if any, of rents collected in respect of any reletting effected pursuant to the provisions of Section 15.02(A)(3) for such period, together with all of Landlord's expenses in connection with the termination of this Lease, with Landlord's reentry upon the Premises and with such reletting including, but not limited to, all repossession costs, brokerage commissions, legal expenses, attorneys' fees and disbursements, alteration costs and other expenses of preparing the Premises for such reletting, as and when such expenses shall be incurred. Any such Deficiency shall be paid in monthly installments by Tenant on the days specified in this Lease for payment of installments of Rent. Landlord shall be entitled to recover from Tenant each monthly Deficiency as the same shall arise, and no suit to collect the amount of the Deficiency for any month shall prejudice Landlord's right to collect the Deficiency for any subsequent month by a similar proceeding; and

(3) Whether or not Landlord shall have collected any monthly Deficiencies as aforesaid, Landlord shall be entitled to recover from Tenant, and Tenant shall pay Landlord, on demand, in lieu of any further Deficiencies, as and for liquidated and agreed final damages, a sum equal to the amount by which the Rent for the period which otherwise would have constituted the unexpired portion of the Term exceeds the then fair and reasonable rental value of the Premises for the same period, less the aggregate amount of Deficiencies theretofore collected by Landlord pursuant to the provisions of the preceding paragraph (2) for the same period. If, before presentation of proof of such liquidated damages to any court, commission or tribunal, the Premises, or any part thereof, shall have been relet by Landlord for the period which otherwise would have constituted the unexpired portion of the Term, or any part thereof, the amount of rent reserved upon such reletting shall be deemed, prima facie, to be the fair and reasonable rental value for the part or the whole of the Premises so relet during the term of the reletting.

(B) If the Premises, or any part thereof, shall be relet together with other space in the Building, the rents collected or reserved under any such reletting and the expenses of any such reletting shall be equitably apportioned for the purposes of this Section 15.03. Tenant shall in no event be entitled to any rents collected or payable under any reletting, whether or not such rents shall exceed the Rent reserved in this Lease.

**Section 15.04. Rent Computation.** For purposes of computing unpaid Rent which would have accrued and become payable under this Lease, unpaid Rent shall consist of the total Minimum Monthly Rent for the balance of the Term.

**Section 15.05. Landlord's Right to Cure.** All agreements, covenants and conditions to be performed by Tenant under any of the terms of this Lease shall be at Tenant's expense and without any abatement of Rent. If Tenant fails to perform any act required hereunder or to pay any sum of money required hereunder (other than Minimum Monthly Rent), then Landlord may, without waiving or releasing Tenant from any of its obligations hereunder, make any such payment or perform any such act on behalf of Tenant. All sums so paid and all costs incurred by Landlord in taking such action shall be deemed Additional Rent and shall be paid to Landlord on demand.

## ARTICLE 16

### Quiet Enjoyment and Subordination

**Section 16.01. Quiet Enjoyment and Subordination.**

(A) Landlord covenants and agrees that, upon performance by Tenant of all of the terms, covenants, obligations, conditions and provisions hereof on Tenant's part to be kept and performed, Tenant shall have, hold and enjoy the Premises, subject and subordinate to the terms and conditions of this Lease. This Lease is subject and subordinate to any reciprocal easement agreements or any other easements (each, an "Easement"); all ground or underlying leases (each, a "Superior Lease"); any mortgage, deed of trust or deed to secure debt (each, a "Mortgage") and to any renewals, modifications, increases, extensions, replacements, and substitutions of any thereof now or hereafter affecting the Premises and/or the Building. This provision shall be self-operative and no further instrument of subordination shall be required; provided, however, that Tenant agrees to execute and deliver, upon request, such further instrument(s) in recordable form confirming this subordination as may be requested by Landlord, or the holder of any Mortgage or the lessor under any Superior Lease. Notwithstanding anything to the contrary contained herein, at the option

of the holder of any Mortgage, this Lease shall be made superior to such Mortgage by the insertion therein of a declaration that this Lease is superior.

(B) Tenant agrees that Landlord may assign the rents and its interest in this Lease to the holder of any Mortgage. In the event of such an assignment, Tenant shall give the holder of such Mortgage a copy of any request for performance by Landlord or any notice of default by Landlord and, in the event Landlord fails to cure such default, Tenant shall give such holder a reasonable period of time commencing on the last day on which Landlord could cure such default, in which to cure same.

## ARTICLE 17

### Miscellaneous Provisions

**Section 17.01. Administrative Service Charges.** Tenant acknowledges that any failure by it to timely pay any of its obligations hereunder will result in and cause monetary loss to Landlord, the exact amount of such costs being extremely difficult and impracticable to fix. Therefore, in addition to any other rights and remedies provided Landlord, any and all payments which remain unpaid for five (5) days after the respective due date, will be subject to an administrative service charge of five percent (5%) of the total overdue amount. The parties agree that this charge represents a fair and reasonable estimate of the costs Landlord will incur by reason of such late payment by Tenant.

**Section 17.02. Late Charges.** In addition to the administrative service charge described in Section 17.01, all amounts payable hereunder which remain unpaid for five (5) days after their respective due dates shall bear interest from the date that the same became due and payable to and including the date of payment, whether or not demand is made therefor, at the lesser of (i) the rate of eighteen percent (18%) per annum or (ii) the maximum legal rate of interest allowed under the laws of the State of New York.

**Section 17.03. Holding Over.** If Tenant remains in possession of the Premises after the expiration or other termination of the Term, then, at Landlord's option, Tenant shall be deemed to be occupying the Premises as a month-to-month tenant only, at a monthly rental equal to one and one-half (1½) times the Minimum Rent payable hereunder during the last month of the Term. Tenant shall also pay all Additional Rent payable under the terms of this Lease, prorated for each month during which the Tenant remains in possession. Tenant shall defend, indemnify and hold Landlord harmless from and against any and all claims, losses and liabilities for damages resulting from failure to surrender possession upon the Expiration Date or sooner termination of the Term, and such obligations shall survive the expiration or sooner termination of this Lease. Tenant expressly waives, for itself and for any person claiming through or under Tenant, any rights which Tenant or such person may have under applicable law (including, without limitation, any rights that Tenant or any such person may have under the provisions of Section 2201 of the New York Civil Practice Law and Rules and of any similar or successor law of like import then in effect) to obtain an equitable stay in connection with any holdover summary proceedings instituted by Landlord.

**Section 17.04. Notices.** Any and all notices required or which either party herein may desire to give to the other or to the Conservancy (each, a "Notice") shall be made in writing and shall be given by certified or registered mail, postage prepaid, return receipt requested, or by a nationally recognized overnight courier, and shall be deemed to be given on the third (3rd) business day after the date of posting in a United States Post Office or one day after delivery to the overnight courier, and shall be delivered to Landlord's Notice Address, the Conservancy or Tenant's Notice Address, as appropriate. The parties agree that copies of all Notices to be delivered to Landlord, the Conservancy and Tenant hereunder shall be simultaneously delivered to the specified addresses for copies set forth in Items No. 7 and 16, respectively, in the Basic Lease Information, if any. Either party or the Conservancy may designate a different address or addresses for communications intended for it. Anything contained herein to the contrary notwithstanding, any bills or invoices for Minimum Monthly Rent and any Additional Rent may be given by hand or by mail (which need not be registered or certified) and, if so given, shall be deemed given on the date of delivery or refusal, if by hand, or on the third (3rd) business day following the date of posting, if mailed. Landlord may act through its managing agent for the Building or through any other person who may from time to time be designated by Landlord in writing prior to the act in question.

**Section 17.05. Authority of Tenant.**

(A) If Tenant is a corporation, each individual executing this Lease on behalf of such corporation represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of such corporation and that this Lease is binding upon such corporation in accordance with its terms.

(B) Nothing contained in this Lease shall create any relationship between the parties hereto other than that of Landlord and Tenant, and Landlord shall not be deemed to be a partner of Tenant in the conduct of its business, or a joint venturer or a member of a joint or common enterprise with Tenant.

**Section 17.06. Reimbursements.** Tenant shall reimburse Landlord for all expenses, damages or fines incurred or suffered by Landlord (including attorneys' fees and disbursements), by reason of any breach, violation or nonperformance by Tenant, or its agents, servants or employees, of any covenant or provision of this Lease, or by reason of damage to persons or property caused by moving property of or for Tenant in or out of the Building, or by the installation or removal of furniture or other property of or for Tenant.

**Section 17.07. Brokers.** Tenant represents that it has dealt with no broker in connection with the negotiations and/or execution of this Lease other than Landlord's Broker. Tenant shall defend, indemnify and hold Landlord harmless from and against any and all liability, loss, damage, expense, claim, action, demand, suit or obligation arising out of or relating to a breach by Tenant of this representation, including, without limitation, all attorneys' fees and disbursements, and such obligations shall survive the expiration or sooner termination of this Lease. Landlord represents that it has dealt with no broker in connection with the negotiations and/or execution of this Lease other than Landlord's Broker. Landlord shall defend, indemnify and hold Tenant harmless from and against any and all liability, loss, damage, expense, claim, action, demand, suit or obligation arising out of or relating to a breach by Landlord of this representation, including, without limitation, all attorneys' fees and disbursements, and such obligations shall survive the expiration or sooner termination of this Lease. Landlord agrees to pay Landlord's Broker the commission due in connection with this Lease pursuant to a separate agreement.

**Section 17.08. Definition of Landlord.** The term "Landlord" as used in this Lease shall mean only the owner of the Building, or the tenant under a Superior Lease. In the event of any transfer of title to or lease of the Building and upon the written assumption of Landlord's obligation under this Lease by the transferee (i) the transferor shall be entirely freed and relieved of all covenants and obligations of Landlord hereunder without further agreement between the parties or their successors in interest and Tenant shall look solely to the successor in interest of the transferor as Landlord under this Lease; (ii) this Lease shall not be affected by such transfer or lease; and (iii) Tenant agrees to attorn to the transferee or assignee, such attornment to be effective and self-operative without the execution of any further instrument by the parties to this Lease.

**Section 17.09. Entire Agreement.**

(A) Tenant acknowledges and agrees that it has not relied upon any statements, representations, agreements or warranties except those expressed in this Lease, and that this Lease contains the entire agreement of the parties. No amendment or modification of this Lease shall be binding or valid unless expressed in writing and executed and delivered by Landlord and Tenant. Except as otherwise specifically provided herein, the terms, covenants and conditions contained in this Lease shall bind and inure to the benefit of the respective heirs, successors, executors, administrators and assigns of each of the parties hereto.

(B) The submission of this document for examination and review does not constitute an option, an offer to lease space, or an agreement to lease space. This document shall have no binding effect on the parties hereto unless and until executed and delivered by both Landlord and Tenant and will be effective only upon Landlord's execution and delivery of same. Except as expressly contained herein, (i) neither Landlord nor Landlord's agent or attorneys have made representations, warranties or promises with respect to the Premises, the Building or this Lease; and (ii) Landlord shall have no obligation to do any work in and to the Premises in order to prepare the Premises for occupancy and use by Tenant.

**Section 17.10. Force Majeure.** Any obligation of either party hereto which is delayed or not performed due to acts of God, strike, riot, shortages of labor or materials, war, governmental laws or action, or lack thereof, or any other causes of any kind whatsoever which are beyond Landlord's or Tenant's control, shall not constitute a default hereunder and shall be performed within a reasonable period of time after the end of such cause for delay or nonperformance. The foregoing, however, shall not operate to excuse Tenant from the payment of any monetary sums due under this Lease, including without limitation, Minimum Rent and Additional Rent.

**Section 17.11. No Setoff.** This Lease shall be construed as though the covenants herein between Landlord and Tenant are independent, and Tenant shall not be entitled to any setoff, offset, abatement or deduction of rent or other amounts due Landlord hereunder if Landlord fails to perform its obligations hereunder. In no event shall Landlord, any holder of a Mortgage and/or lessor under a Superior Lease be responsible for any consequential damages incurred by Tenant as a result of any default by Landlord.

**Section 17.12. Interpretation.**

(A) Any remedy or election given pursuant to any provision in this Lease shall be cumulative with all other remedies at law or in equity unless otherwise specifically provided herein.

(B) This Lease shall be construed in accordance with the laws of the State of New York. Unless herein waived, Landlord and Tenant acknowledge that all of the applicable statutes of such state are superimposed on the rights, duties and obligations of Landlord and Tenant hereunder.

(C) Landlord and Tenant each acknowledge and warrant that each has been represented by independent counsel and has executed this Lease after being fully advised by said counsel as to its effect and significance. This Lease is the result of negotiations between the parties and their respective attorneys and shall be construed in an even and fair manner, regardless of the party who drafted this Lease.

(D) In all instances where Tenant is required by the terms and provisions of this Lease to pay any sum of money or to do any act at a particular indicated time or within any indicated period, it is understood and agreed that time is of the essence, subject however to force majeure.

(E) If any term or provision of this Lease or the application thereof to any person or circumstances shall, to any extent, be illegal, invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and all other terms and provisions of this Lease shall be valid and enforced to the fullest extent permitted by law.

**Section 17.13. Limitation of Landlord Liability.** Notwithstanding anything to the contrary provided in this Lease, neither Landlord, nor any general or limited partner in or of Landlord, whether direct or indirect, nor any direct or indirect partners in such partners, nor any disclosed or undisclosed officers, shareholders, principals, directors, employees, partners, servants or agents of Landlord, nor any of the foregoing, nor any investment adviser or other holder of any equity interest in Landlord, their successors, assigns, agents, or any mortgagee in possession shall have any personal liability with respect to any provisions of this Lease and, if Landlord is in breach or default with respect to its obligations or otherwise, Tenant shall look solely to Landlord's interest in the Building (including the rents, profits therefrom and net proceeds of any sale, subject and subordinate to the rights of a lessor under any Superior Lease and/or the holder of any Mortgage) for the satisfaction of Tenant's remedies.

**Section 17.14. Short Form Lease.** Tenant shall not record this Lease or a memorandum hereof without the prior written consent of Landlord. Upon Landlord's request, Tenant agrees to execute and acknowledge a short form lease in recordable form which is satisfactory to Landlord.

**Section 17.15. Intentionally omitted.**

**Section 17.16. Mortgagee Requirements and Estoppel.**

(A) If any present or prospective holder of a Mortgage shall require a change or changes in this Lease as a condition of its approval of this Lease and if, within thirty (30) days after notice from Landlord, Tenant fails or refuses to execute the amendment or amendments of this Lease effecting such change or changes as are stated by Landlord to be necessary to secure the approval of such present or prospective holder of a Mortgage, Landlord shall have the right to cancel this Lease at any time prior to the commencement of Tenant's Initial Alterations.

(B) At any time and from time to time upon written request by Landlord, Tenant hereby agrees to deliver within ten (10) days after request, a certificate to Landlord or to any present or proposed mortgagee, lessor under a Superior Lease or purchaser, in the form supplied, certifying that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the same is in full force and effect as modified, and stating the modification), that there are no defenses or offsets thereto (or stating those claimed by Tenant), the Commencement Date, Rent Commencement Date and Expiration Date, the dates to which Minimum Monthly Rent and Additional Rent have been paid and as to any other information reasonably requested by the same.

**Section 17.17. No Waiver.** The failure of Landlord to exercise its rights in connection with this Lease or any breach or violation of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained.

**Section 17.18. No Merger.** The voluntary or other surrender of possession of the Premises by Tenant, or a mutual cancellation of this Lease, shall not result in a merger of Landlord's and Tenant's estates, and shall, at the option of Landlord, either terminate any or all existing subleases or subtenancies, or operate as an assignment to Landlord of any or all of such subleases or subtenancies.

**Section 17.19. Attorneys' Fees.** In the event of any action or proceeding brought by Landlord against Tenant or Tenant against Landlord in connection with this Lease, the successful party shall be entitled to recover court costs and the fees and disbursements of its attorneys in such action or proceeding (whether at the administrative, trial or appellate levels) in such amount as the court or administrative body may judge reasonable. Landlord shall also be entitled to recover attorney's fees and disbursements incurred in connection with a Tenant default hereunder which does not result in the commencement of any action or proceeding.

**Section 17.20. Easements.** Landlord shall have the right to grant any Easements on, over, under and above the Premises for such purposes as Landlord determines, provided that such Easements will not materially interfere with Tenant's use of the Premises for the Permitted Use.

**Section 17.21. Surrender of Premises.** At the end of the Term or upon the sooner termination of this Lease, Tenant shall peaceably deliver up to Landlord possession of the Premises, together with all improvements or additions to same, by whomsoever made, in substantially the same condition as existing upon the completion of the Alterations, reasonable wear and tear excepted, subject, however, to the removal of those Alterations which Landlord has notified Tenant in writing at the time such Alterations are approved, need to be removed (and the damage to the Premises caused by such removal repaired) at the expiration or sooner termination of the Term. Tenant may, upon the termination of this Lease, remove all movable partitions of less than full height from floor to ceiling, as well as counters and other trade fixtures installed by Tenant, repairing any damage caused by such removal in a good and workerlike manner. At Landlord's election, property not so removed shall be deemed abandoned by Tenant and title to same shall thereupon pass to Landlord. Upon request by Landlord, unless otherwise agreed to in writing by Landlord, Tenant, at its cost, shall remove all movable partitions, counters, signs, trade fixtures and such other Alterations as may be required to be removed by Tenant pursuant to Section 9.01 hereof, and repair any damage resulting from such removal in a good and workerlike manner.

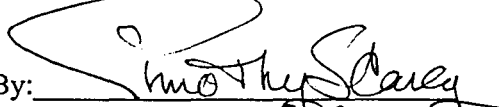
**Section 17.22. Zoning; Development Rights.** Tenant hereby irrevocably waives any and all rights it may have in connection with any zoning lot merger or transfer of development rights with respect to the Building, including, without limitation, any rights it may have to be a party to, to contest, or to execute, any Declaration of Restrictions (as such term is defined in Section 12-10 of the Zoning Resolution of The City of New York effective December 15, 1961, as amended) with respect to the Building, which would cause the Premises to be merged with or unmerged from any other zoning lot pursuant to such Zoning Resolution or to any document of a similar nature and purpose, and Tenant agrees that this Lease shall be subject and subordinate to any Declaration of Restrictions or any other documents of similar nature and purpose now or hereafter affecting the Building. In confirmation of such subordination and waiver, Tenant shall execute and deliver promptly any certificate or instrument that Landlord may reasonably request.

**Section 17.23. JURY TRIAL AND COUNTERCLAIM WAIVER.** LANDLORD AND TENANT HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER OR THEIR SUCCESSORS IN RESPECT OF ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT, TENANT'S USE OR OCCUPANCY OF THE PREMISES, AND/OR ANY CLAIM FOR INJURY OR DAMAGE, OR ANY EMERGENCY OR STATUTORY REMEDY. IN THE EVENT LANDLORD COMMENCES ANY SUMMARY PROCEEDINGS OR ACTION FOR NON-PAYMENT OF MINIMUM ANNUAL RENT OR ADDITIONAL RENT, TENANT SHALL NOT INTERPOSE ANY COUNTERCLAIM OF ANY NATURE OR DESCRIPTION (UNLESS SUCH COUNTERCLAIM SHALL BE MANDATORY) IN ANY SUCH PROCEEDING OR ACTION, BUT SHALL BE RELEGATED TO AN INDEPENDENT ACTION AT LAW.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease in duplicate on the dates set forth below and this Lease shall be effective as of the latter of such dates.

Date: June 24, 1999

BATTERY PARK CITY AUTHORITY, Landlord

By:   
Name: Timothy D. Carey  
Title: President & CEO

Date: 6-11, 1999

GIGINO AT WAGNER PARK LLC, Tenant

By:   
Name: PHILIP SUAREZ  
Title: MANAGING PARTNER

**SCHEDULE A**  
**ACCEPTANCE LETTER**

\_\_\_\_\_, 1999

Re: Lease (the "Lease") dated \_\_\_\_\_, 1999  
between Battery Park City Authority ("Landlord") and  
Gigino at Wagner Park LLC ("Tenant")

Premises: 20 Battery Place, New York, New York 10004

The undersigned, Landlord and Tenant, hereby confirm as of this \_\_\_\_ day of \_\_\_\_\_, 1999, the following:

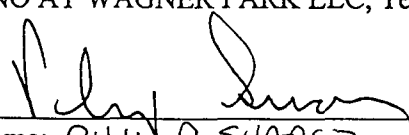
1. Tenant has accepted possession of the Premises on \_\_\_\_\_, 1999 and is currently occupying same.
2. The Commencement Date, the Rent Commencement Date and Expiration Date, as each is defined in the Lease, are as follows:  

|                         |                                     |
|-------------------------|-------------------------------------|
| Commencement Date:      | June __, 1999                       |
| Rent Commencement Date: | 120 days from the Commencement Date |
| Expiration Date:        | September 30, 2011                  |
3. As of the date hereof, Landlord and Tenant have fulfilled all of their respective obligations under the Lease.
4. The Lease is in full force and effect and has not been modified, altered, or amended, except pursuant to any instruments described above.
5. There are no offsets or credits against Minimum Annual Rent or Additional Rent, nor has any Annual Monthly Rent or Additional Rent been prepaid except as provided pursuant to the terms of the Lease.
6. Tenant has no notice of any prior assignment, hypothecation, or pledge of the Lease or any rents due under the Lease.

BATTERY PARK CITY AUTHORITY, Landlord

By: \_\_\_\_\_  
Name:  
Title:

GIGINO AT WAGNER PARK LLC, Tenant

By:  \_\_\_\_\_  
Name: PHILIP SUAREZ  
Title: MANAGING PARTNER

# EXHIBIT A

## FLOOR PLAN

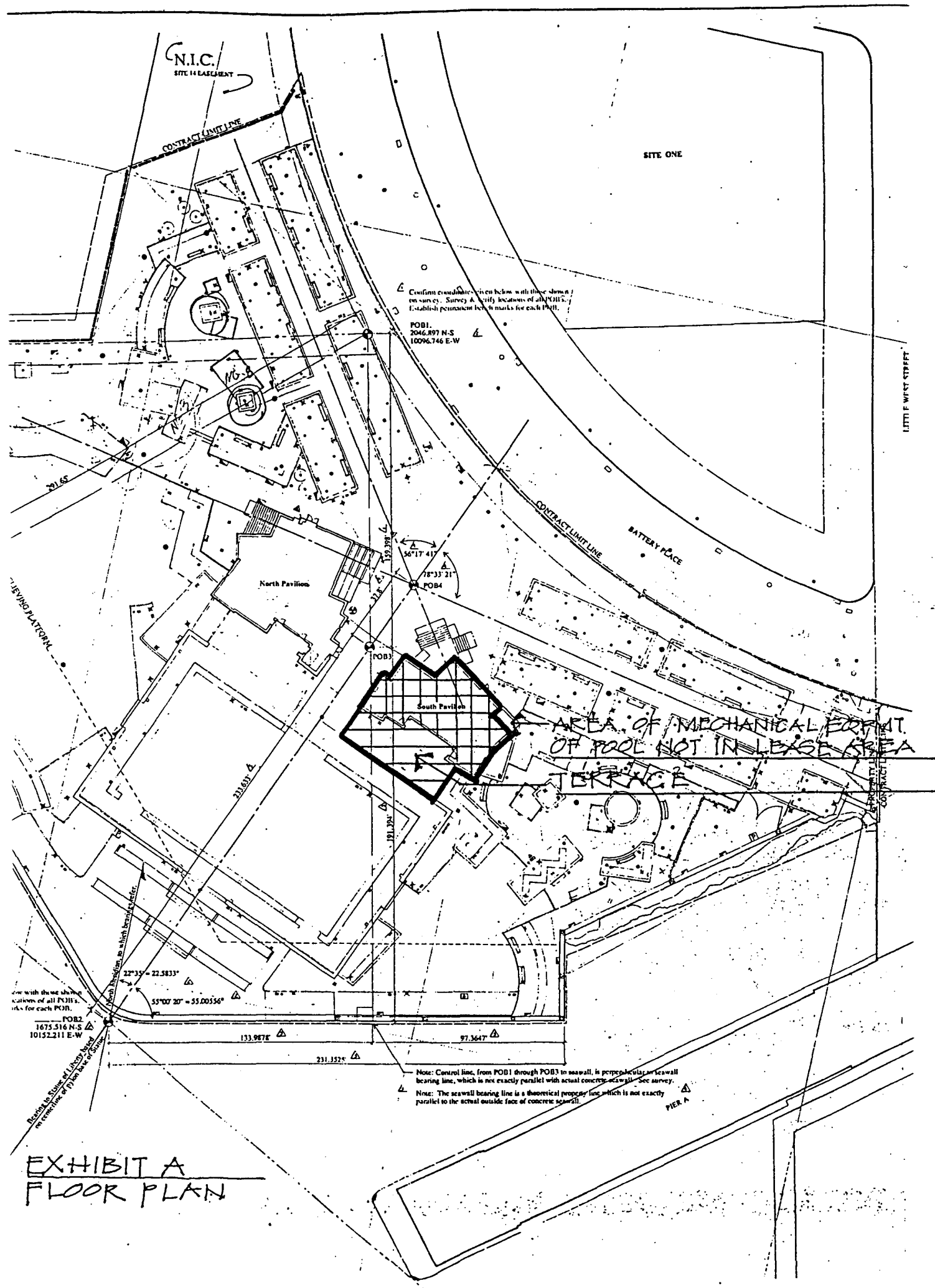
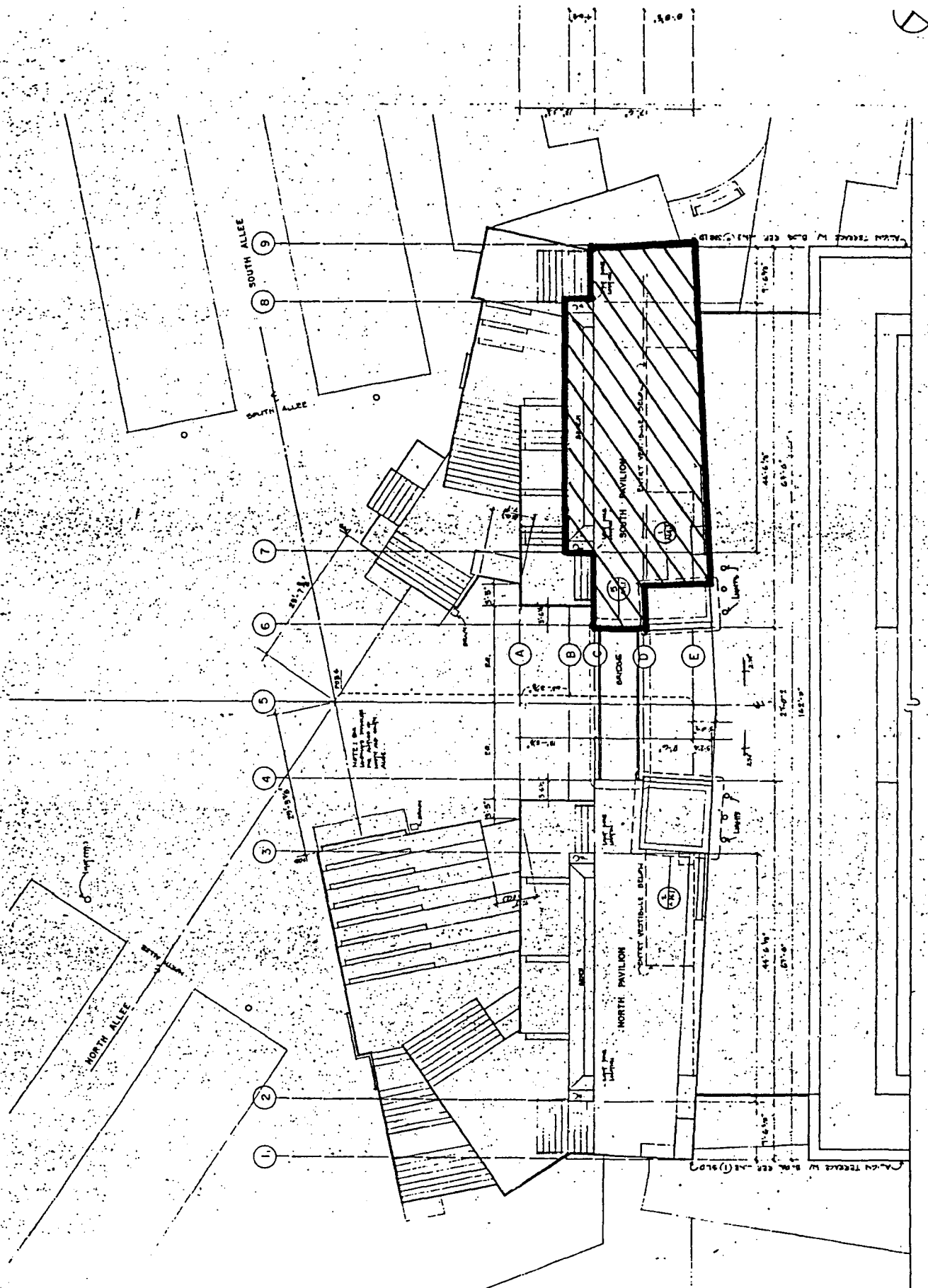


EXHIBIT A  
FLOOR PLAN



EXHIBIT B  
ROOF AREA



PLAN 1

ROBERT F. WAGNER, JR. PARK PAVILIONS  
ROOF PLAN

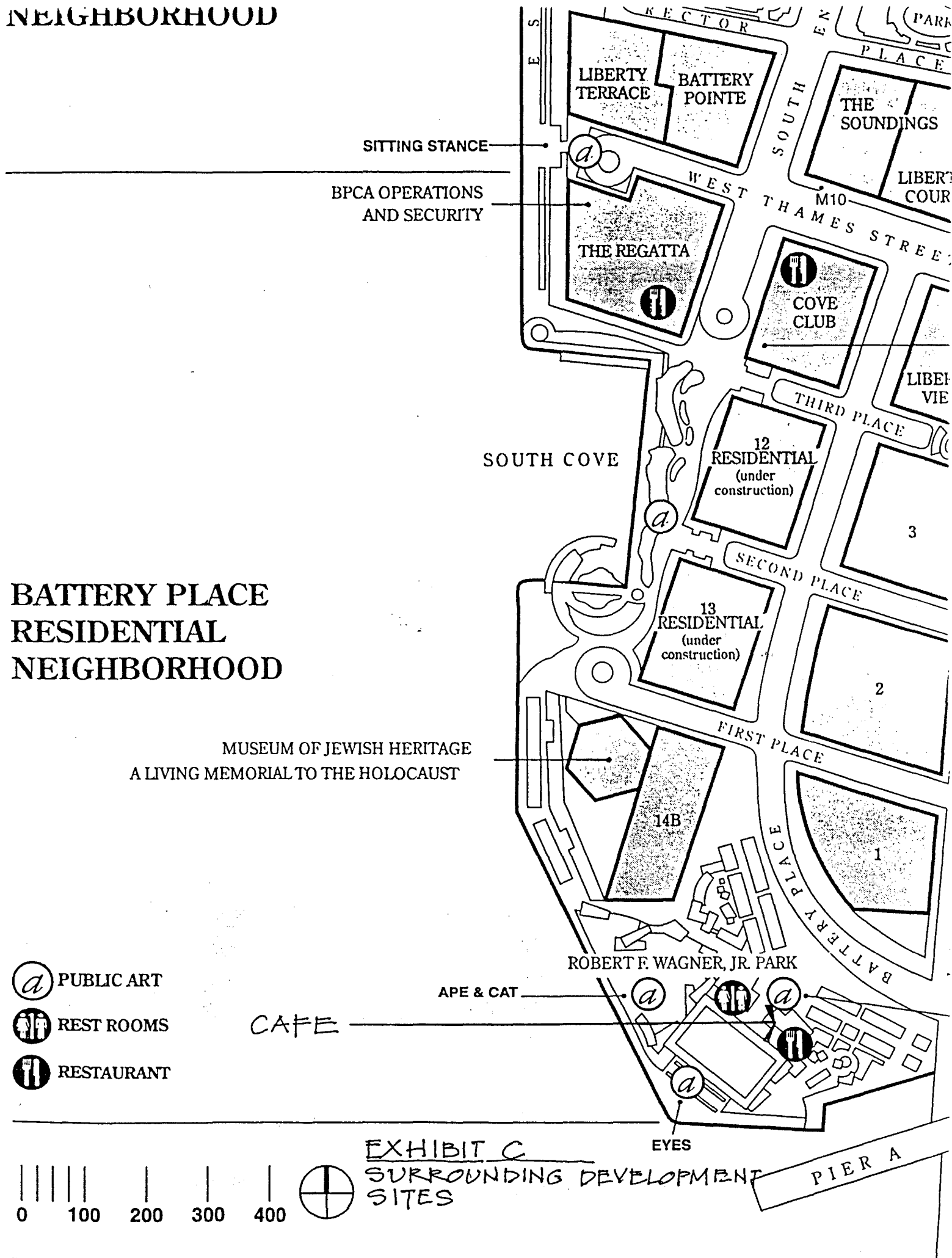
EXHIBIT B  
ROOF AREA ALLOWABLE FOR USE  
BY TENANT FOR SPECIAL EVENTS

EXHIBIT C

SURROUNDING DEVELOPMENT SITES

NEIGHBORHOOD

BATTERY PLACE  
RESIDENTIAL  
NEIGHBORHOOD



## EXHIBIT D

### CONSTRUCTION RULES AND REGULATIONS

1. All work to be performed shall be coordinated with the Landlord.
2. Any changes from drawings and specifications shall be made in writing and approved by Landlord before proceeding.
3. If a deadline is set for completion of work, it shall be completed within the time agreed upon between Tenant and Landlord. The starting date and completion date of any project shall be put in the specifications.
4. All construction work shall be confined to the Premises. This includes all equipment, tools, materials, etc. At no time shall Tenant unload its materials, tools, etc. into any other space without the written approval of Landlord.
5. The sidewalk and curbs in front of or adjacent to the Building shall not be used by Tenant or by Tenant's contractors without written approval of Landlord. No deliveries of bulk materials shall be made through the sidewalk in front of or adjacent to the Building during business hours.
6. Loading zones are for loading and unloading purposes only. No parking shall be permitted in these loading areas and any vehicles parked therein are subject to towing at Tenant's or vehicle owner's expense.
7. Nothing is to be stored in the loading docks for any reason, at any time, except vehicles that are loading or unloading. Others will be either ticketed and/or towed away at Tenant's expense. No tools, equipment boxes, etc., will be allowed in the loading docks. Anything left in the loading docks will be removed and labor backcharged to Tenant at a reasonable rate for labor and material charges.
8. All doors shall be made secure at the completion of each work day.
9. All temporary partitions and dust-proof barriers shall be furnished by Tenant and shall remain intact at all times. Should any panel be removed, torn or otherwise displaced or damaged, it will be reattached or repaired and Tenant will be backcharged at a reasonable labor and material charge.
10. Any construction done in the sidewalk in front of or adjacent to the Premises must be completed thirty (30) minutes prior to commencement of the Hours of Operation, including painting.
11. Tenant's space shall be kept clean and free of hazardous conditions. Tenant's contractor shall comply with all O.S.H.A. Safety Regulations.
12. Any dirt or debris caused by contractors outside of Tenant's Premises must be cleaned up thirty (30) minutes prior to commencement of normal business hours.
13. Tenant shall make arrangements to remove dirt and debris from work after the end of each workday. No individual trash or storage containers will be allowed in the Building. Any containers provided by Landlord to Tenant for construction debris shall be at Tenant's expense. Where Landlord does not provide containers for removal of debris, Tenant/Contractor shall arrange independently for trash removal service after obtaining Landlord's approval.
14. All construction activities such as jackhammering and "shot" type mechanical fasteners which create excessive or explosive type noises shall be completed at least thirty (30) minutes prior to normal business hours.
15. No one, other than Landlord's approved contractor shall do any type of work affecting the roof unless so specified in writing from the Landlord. The cost of such work shall be at Tenant's expense.
16. All contractor's vehicles and equipment shall be restricted to parking in spaces assigned by Landlord where such spaces are available at Tenant's expense. If no spaces are available, such vehicles shall be parked outside the Building in designated parking spaces in the parking facilities of the Building, if any.
17. Tenant shall not attach or cause to be attached to any wall or structural member any equipment that may, by virtue of its size or weight, cause structural damage. Tenant shall not exceed the load as set forth in the plans and specifications for the floor of the Building and shall not do anything that might in any way alter the structural strength of the Building.

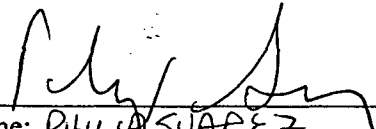
18. Should Tenant's interior partitioning cause changes or alterations in the fire protection sprinkler system or in the heating and air conditioning system, such changes and alterations shall be made by Tenant's contractors at Tenant's expense.

20. Expenses incurred by Landlord in respect of the work performed by or on behalf of Tenant shall be paid by Tenant immediately upon receipt of an invoice from Landlord and shall be delinquent if not paid within ten (10) days. Late charges, interest and collection expenses on delinquent payments shall be charged to Tenant in the manner set forth in the Lease for delinquent payment of rents.

21. Nothing herein shall change Tenant's obligation to conform with all terms set forth in the Lease and in the event of any conflict between the provisions hereof and the provisions of the Lease, the provisions of the Lease shall control.

Date: 6-11, 1999

GIGINO AT WAGNER PARK LLC, Tenant

By:   
Name: PHILIA SUAREZ  
Title: MANAGING PARTNER

## EXHIBIT E

### OPERATIONAL RULES AND REGULATIONS

The rules and regulations for the Building at the time of the execution of this Lease are as follows:

1. The sidewalks, entrances, driveways, passages, courts, vestibules or stairways shall not be obstructed or encumbered by Tenant or used for any purpose other than for ingress to and egress from the Premises and for delivery of merchandise and equipment in a prompt and efficient manner using the passageways designated for such delivery by Landlord. There shall not be used in any space in the Building or the Premises, either by Tenant, its suppliers, or others in the delivery or receipt of items, any hand trucks except those equipped with rubber tires and safeguards.
2. Tenant shall not use, keep or permit to be used or kept any foul or noxious gas or substance in the Premises, or permit or suffer the Premises to be occupied or used in a manner offensive or objectionable to Landlord. Tenant shall not bring or permit to be brought or kept in or on the Premises any inflammable, combustible or explosive fluid, material, chemical or substance, unless the same is necessary to conduct its business, and then Tenant shall only maintain a working supply.
3. No sign, advertisement, notice or other lettering shall be exhibited, inscribed, painted or affixed by Tenant on any part of the outside of the Premises or the inside of the Premises if the same is visible from the outside of the Premises without the prior written consent of Landlord, except that the name of Tenant may appear on the entrance door of the Premises. In the event of the violation of the foregoing by Tenant, Landlord may remove same without any liability and may charge the expense incurred by such removal to Tenant.
4. Tenant shall not mark, paint, drill into, or in any way deface any part of the Premises or the Building of which they form a part. No boring, cutting or stringing of wires shall be permitted, except with the prior written consent of Landlord and as Landlord may direct. Tenant shall not lay linoleum, or other similar floor covering, so that the same shall come in direct contact with the floor of the Premises, and, if linoleum or other similar floor covering is desired to be used, an interlining of builder's deadening felt shall be first affixed to the floor, by a paste or other material, soluble in water, the use of cement or other similar adhesive material being expressly prohibited.
5. Landlord reserves the right to inspect all materials to be brought into the Premises and to exclude from the Premises all materials that violate any of these Rules and Regulations or the Lease.
6. Landlord shall have the right to prohibit any advertising by Tenant which, in Landlord's opinion, tends to impair the reputation of Landlord, and upon written notice from Landlord, Tenant shall refrain from or discontinue such advertising.
7. Tenant shall not place a load on any floor of the Premises exceeding the floor load per square foot area which it was designed to carry and which is allowed by law. Landlord reserves the right to prescribe the weight and position of all safes, business machines and mechanical equipment. Such installations shall be placed and maintained by Tenant at Tenant's expense in setting sufficient in Landlord's judgment to absorb and prevent vibration, noise and annoyance.
8. The entrance doors to the Premises shall remain locked at all times when the Premises are not in use.
9. Use of the area outside the Premises for tables, sign standards, boxes, decorations or other purposes is expressly forbidden unless authorized in writing by Landlord. The sidewalk and curbs in front of or adjacent to the Premises shall be kept clean and free from dirt and rubbish by Tenant, and Tenant shall not place, suffer or permit any obstructions or merchandise in such areas. Loud speakers, televisions, phonographs, radios, flashing lights, or other similar devices shall not be used in a manner so as to be heard or seen outside the Premises. Canvassing, soliciting or peddling in the sidewalks and curbs in front of the Building is prohibited and Tenant shall cooperate to prevent same.
10. Seasonal decorations are not to be attached to the exterior of the Premises without Landlord's prior written consent.
11. Plumbing facilities shall not be used for any purpose other than that for which they are constructed. No foreign substance of any kind shall be deposited therein. The expense of any breakage, stoppage, or damages resulting from a violation of this rule shall be borne by Tenant if Tenant or its employees or invitees shall have caused the breakage, stoppage or damage. Tenant shall be responsible for the cost of regular maintenance in cleaning of the grease traps servicing their Premises.

12. Landlord reserves the right to amend, modify, delete or add new additional rules and regulations for the use and care of the Premises and the Building.

13. Tenant shall maintain control of, and be responsible for, all keys issued to Tenant for the Premises and Building, and shall return all such keys to Landlord upon termination of this Lease. No duplicate or copy keys shall be made or obtained by Tenant without the prior written consent of Landlord. The loss or theft of any key shall be reported to Landlord as soon as possible (but in any event within one business day) after Tenant becomes aware of same.

14. Tenant shall at all times maintain the heating and air-conditioning equipment within the Premises and shall keep the Premises at temperatures sufficiently high to prevent freezing of water pipes and fixtures.

15. Tenant shall not use, permit or suffer the use of any portion of the Premises as living, sleeping or lodging quarters.

16. Except for emergency repairs, Tenant shall perform Tenant's repair, maintenance, alterations and improvements in the Premises only during times agreed to in advance by Landlord.

17. No antenna or aerial shall be erected on the roof or exterior walls of the Building without the prior written consent of Landlord. Notwithstanding that Landlord consents, Landlord reserves the right to assess a reasonable charge for such use which shall be paid monthly as Additional Rent. Any antenna or aerial so installed without prior consent shall be subject to removal without notice at any time, and Tenant shall bear all costs of removal and any repairs necessitated by virtue of its attachment to the Building.


18. Tenant shall not bring any animals or birds into the Building other than as permitted pursuant to Section 6.01, and shall not permit bicycles or other vehicles inside or on the sidewalks outside the Premises.

19. Tenant shall place all refuse in proper receptacles provided by the Conservancy, and shall keep the stairwells, ducts and shafts of the Building free of all refuse. Tenant shall store soiled or dirty linen in approved fire rating organization containers.

20. In the event of any conflict between the provisions hereof and the provisions of the Lease, the provisions of the Lease shall control.

Date: 6-11, 1999

GIGINO AT WAGNER PARK LLC, Tenant

By:   
Name: PHILIP SUAREZ  
Title: MANAGING PARTNER

## EXHIBIT F

### INSURANCE REQUIREMENTS

1. Commercial General Liability coverage in the amount of \$1,000,000 combined single limit per occurrence with a \$2,000,000 general aggregate. The policy must include the following coverages and provide adequate notice of cancellation, non-renewal or material change in coverage:

All operations.

Personal injury including false arrest, libel, slander, defamation, wrongful eviction or entry, malicious prosecution and invasion of privacy.

Explosion, collapse and underground property damage.

Contractual liability covering Tenant's obligation under Section 12.02 of the Lease.

Completed operations and product liability.

Liquor law legal liability.

2. Automobile liability and Property Damage Coverage in the amount of \$1,000,000 combined single limit.

3. Workers Compensation (w/statutory limits as required by law).

4. New York State Disability.

5. Umbrella Liability coverage of at least \$5,000,000.

6. All Risk Property coverage on Contents and Loss of Income including the following:

A deductible of \$2,500 or less.

No coinsurance or agreed amount endorsement.

Replacement cost valuation.

Landlord and the Conservancy shall each be an additional named insured under the general liability, automobile liability, umbrella liability and all-risk property policies, and a loss payee under the all-risk property policy.