

LEASE EXTENSION AGREEMENT dated as of October 1, 2011 between HUGH L. CAREY BATTERY PARK CITY AUTHORITY. A public benefit corporation of the State of New York, having an office at One world Financial Center, 24th Floor, New York, NY 10281 (“Landlord”) and GIGINO AT WAGNER PARK LLC, a New York limited liability company having an office c/o Giraldi Suarez Productions, 270 Lafayette Street, New York, NY 10012 (“Tenant”)

WITNESSETH:

WHEREAS, Landlord and Tenant have heretofore entered into a certain lease (the “lease”) dated as of June 16, 1999 of the building and improvements having a street address of 20 Battery Place, New York, NY and located within Robert F. Wagner, Jr. park in Battery Park City; and

WHEREAS, Landlord and Tenant desire to modify the Lease and to extend the term thereof as hereinafter provided;

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained, the parties hereto agree as follows:

1. Capitalized terms in this Extension Agreement not otherwise defined shall have the same meaning as set forth in the Lease.
2. The Term of the Lease is hereby extended for an additional period of two years, from October 1, 2011 through September 30, 2013 (the “Extended Period”) and the Expiration Date shall be September 30, 2013.
3. The Minimum Annual Rent during the Extended Period shall be \$65,264.18.
4. Effective as of the date of this Extension Agreement, the following sentence is added to the end of **Section 1.01**, and shall constitute a part of, the Lease:

“Landlord shall make available for Tenant’s use, at no additional rent, a refuse storage area in the location shown on Exhibit A hereto. Tenant shall use such area only for temporary refuse storage pending removal thereof by Tenant’s private refuse removal service. All of the terms and conditions of the Lease, including the Operational Rules and Regulations, shall apply to tenant’s use of such storage area and Tenant shall cause its private refuse removal service to comply with such Operational Rules and Regulations.”

5. Effective as of the date of this Extension Agreement, the following new **Sections 3.04** and **3.05** are added to , and constitute a part of, the Lease:

Section 3.04. Percentage Rent.

- (A) During the Extended Period, Tenant shall pay to Landlord, in addition to Minimum Annual Rent, in the manner set forth below, annual sums of percentage rent ("Percentage Rent") an amount equal to the excess, if any, by which eight percent (8%) of the amount by which Gross Revenue (hereinafter defined), collected by Tenant during each such calendar year, or portion thereof, exceeds the Minimum Annual Rent for such calendar year. For the purposes of the Lease, "Gross Revenue" shall mean the amount of all sales made and all cash and credit revenue of Tenant and any persons, firms or other entities claiming through or under Tenant as subtenant, concessionaire, licensee or otherwise, at, in, or upon or from the restaurant operations at the Premises (including the Roof Area, and including sales orders which may originate at, or be accepted at, the Premises but as to which delivery is made from or at another location), less any of the following: (i) the amount of all sales taxes or any excise or other tax or levy of such nature levied on or with respect to the sale of any goods, merchandise or services by any governmental authority; (ii) any refunds or credits or returns of merchandise related to transactions resulting in Gross Revenue ; (iii) bad debts and other uncollected or uncollectible amounts whether charge or credit sales; (iv) complimentary meals or other promotional items provided at a discount or free-of-charge to customers and invitees and all meals to employees working in the Premises provided at cost to such employees and at no profit to Tenant, provided that such exclusion shall not exceed 1% of Gross Revenue; (v) sales of fixtures and equipment after Tenant's use thereof in the Premises; (vi) proceeds from pay phones or vending machines used exclusively by Tenant's employees; (vii) delivery, wrapping and check cashing charges which are separately charged by Tenant; (viii) tips and gratuities, whether or not included in the selling price if separately stated and paid by customers and payable to employees at the Premises; (ix) service charges and other fees paid to the issuers or servicers of credit or debit cards; (x) fees or penalties charged by Tenant for returned checks; (xi) sales at a discount to religious, educational or charitable groups or organizations, not to exceed 1% of Gross Revenue; (xii) the proceeds of any policies of insurance and all other sums and credits received by Tenant in settlement of claims for loss or damage to property or merchandise, or from litigation awards, damages or settlements for loss or damage to property or merchandise, but excluding proceeds of any policies of insurance for business interruption; and (xiii) the amount of any bona fide charges or expenses imposed on Tenant by a third party in connection with any catering service of Tenant to customers (such as, by way of example only, a fee imposed by a chair rental company for the provision of rental furniture) so long as such charges or expenses are separately charged by Tenant above the Tenant's selling price to the Tenant's customers, but only to the extent Tenant makes no profit on any such separately charged sums.
- (B) Tenant shall deliver to Landlord as soon as practicable after the end of each semi-annual calendar period but in no event later than thirty (30) days after the

end of each such calendar period, a statement (the “Semi-annual Percentage Rent Statement”) showing in reasonable detail Gross Revenue collected by Tenant during the prior semi-annual calendar period.

- (C) Tenant shall deliver to Landlord as soon as practicable after the end of each calendar year but in no event later than ninety (90) days after the end of each such calendar year, a separate statement (the “Annual Percentage Rent Statement”) showing in reasonable detail Gross Revenue collected by Tenant during the prior calendar year, and Tenant’s calculation of Percentage Rent due for such year.

Section 3.05. Records for Percentage Rent. In connection with the payment by Tenant of Percentage Rent, the following provisions shall apply:

- (A) Tenant shall at all times keep and maintain at an office located in New York City and records prepared on the basis required under Section 3.05(B), showing in reasonable detail the amount of Gross Revenue. Unless consented to by Landlord, such books and records relating to any calendar year shall not be destroyed or disposed of for a period of four (4) years after the end of such year. Landlord or its representatives shall have the right on reasonable notice during regular business hours to examine, audit and/or photocopy all such books and records. For the purposes of this Section 3.05(A), reasonable notice shall mean notice given not less than ten (10) business days prior to the examination date designated in Landlord’s notice. If an audit by Landlord with respect to any year is not commenced within the aforesaid four (4) year period, the computation of the Percentage Rent paid by Tenant for such year shall not thereafter be subject to Landlord’s audit and shall conclusively be deemed correct.
- (B) Each Annual Percentage Rent Statement required under this Lease shall be (i) prepared on a cash basis consistently applied and (ii) verified by the chief financial officer or managing partner of Tenant as being true and correct to the best of his knowledge.
- (C) If Landlord shall elect to conduct an audit of Tenant’s books and records and such audit discloses an underpayment of Percentage Rent, then, subject to Section 3.05(D), Tenant shall pay to Landlord within thirty (30) days after demand the amount of such deficiency, plus interest thereon at the prime rate percent (2%) per annum (the “Involuntary Rate”) from the date upon which such sum was due to the date of actual payment. In addition, if such deficiency shall be in excess of three and one-half percent (3.5%) of the amount alleged by Tenant to be payable, Tenant shall pay to Landlord within thirty (30) days after demand all reasonable costs incurred by Landlord in connection with such audit.
- (D) If at any time and for any reason there shall be a dispute as to the determination of Gross Revenue such dispute shall be determined by

arbitration pursuant to Section 3.05 (E) hereof. Pending resolution of the dispute, Tenant's determination of Gross Revenue shall prevail and Tenant shall pay Percentage Rent based upon such determination. Without limitation of the foregoing, any deficiency, interest and expenses which may be payable by Tenant to Landlord pursuant to Section 3.05(C) shall not be payable if disputed by Tenant unless and until determined by such arbitration. If such arbitration determines an underpayment by Tenant, Tenant shall pay the amount of such underpayment, plus interest thereon at the Involuntary Rate, within ten (10) days after demand.

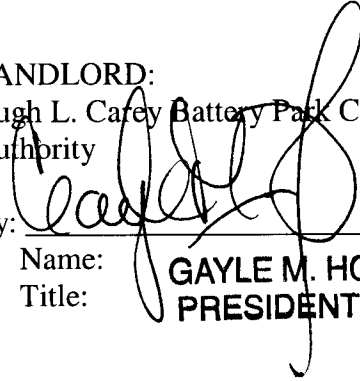
(E) The party desiring arbitration with respect to the determination of Gross Revenue shall appoint a disinterested person as arbitrator on its behalf and give notice thereof to the other party, who shall, within fifteen (15) days thereafter, appoint a second disinterested person as arbitrator on its behalf and give notice thereof to the first party. The two (2) arbitrators thus appointed shall together appoint a third disinterested person within fifteen (15) days after the appointment of the second arbitrator, and said three (3) arbitrators shall, as promptly as possible, determine the amount of Gross Revenue in question and the decision of the majority of them shall be conclusive and binding on all parties and judgment upon the award may be entered in any court having jurisdiction. If a party who shall have the right pursuant to the foregoing to appoint an arbitrator fails or neglects to do so, then and in such event, the other party (or if the two (2) arbitrators appointed by the parties shall fail to appoint a third arbitrator when required hereunder, then either party) may apply to the American Arbitration Association (or any organization successor thereto), to appoint such arbitrator and if the American Arbitration Association fails, refuses, or is unable to appoint an arbitrator, such party may apply for a court appointment of such arbitrator. The arbitration shall be conducted in the City and County of New York and, to the extent applicable and consistent with this Section 3.05 (E) shall be in accordance with the Commercial Arbitration Rules then obtaining of the American Arbitration Association or any successor body of similar function. The expenses of arbitration shall be shared equally by Landlord and Tenant but each party shall be responsible for the fees and disbursements of its own attorneys and the expenses of its own proof. Landlord and Tenant shall sign all documents and to do all other things necessary to submit any such matter to arbitration and further shall, and hereby do, waive any and all rights they or either of them may at any time have to revoke their agreement hereunder to submit to arbitration and to abide by the decision rendered thereunder. The arbitrators shall have no power to vary or modify any of the provisions of this Lease and their jurisdiction is limited accordingly.

6. Except as extended and modified by this Extension Agreement, the Lease and all the covenants, terms, conditions and provisions thereof are hereby in all respects ratified and confirmed.

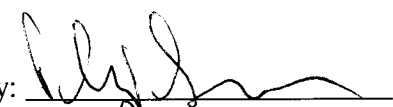
7. Tenant represents to landlord that this Extension Agreement was not brought about or procured through any real estate broker, and Tenant agrees that should any claim be made by any broker, licensed or otherwise, for a brokerage commission or other compensation in connection with this Extension agreement, through or on account of any acts of Tenant or its representatives, tenant will indemnify and hold harmless Landlord from any and all liabilities and expenses in connection therewith.
8. The covenants, agreement, terms, provisions and conditions contained in this Extension agreement shall bind and inure to the benefit of the parties thereto and their respective successors, except as may be provided in the Lease, as modified hereby, their respective assigns.
9. This Extension Agreement shall not be binding upon Landlord unless and until it is signed by Landlord.

IN WITNESS WHEREOF, the parties hereto have executed this Extension Agreement as of the date first written above.

LANDLORD:
Hugh L. Carey Battery Park City
Authority

By: 
Name: **GAYLE M. HORWITZ**
Title: **PRESIDENT & CEO**

TENANT:
GIGINO AT WAGNER PARK LLC

By: 
Name: **PHIL SUAREZ**
Title: **MEMBER**