

**IN THE COURT OF COMMON PLEAS
OF ALLEGHENY COUNTY, PENNSYLVANIA**

441 SMITHFIELD STREET, LLC

Plaintiff,

vs.

441 SMITHFIELD PITTSBURGH, LLC,

Defendant,

CIVIL DIVISION

No.

COMPLAINT IN CIVIL ACTION

Filed on behalf of:
PIETRAGALLO GORDON ALFANO
BOSICK & RASPANTI, LLP

Counsel of Record for
this Party:

Richard J. Parks, Esquire
Pa. I.D. No. 40477

PIETRAGALLO, GORDON, ALFANO
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441 SMITHFIELD PITTSBURGH, LLC,

Defendant,

NOTICE TO DEFEND

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by an attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the plaintiffs. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

Lawyers Referral Service
Allegheny County Bar Association
11th Floor Koppers Building
436 Seventh Avenue
Pittsburgh, PA 15219
(412) 261-5555

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441 SMITHFIELD PITTSBURGH, LLC,

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COMPLAINT

AND NOW comes the Plaintiff, 441 Smithfield Street, LLC, by and through its attorneys, Pietragallo Gordon Alfano Bosick & Raspanti, LLP and hereby makes this Complaint in Civil Action for declaratory relief and anticipatory breach of contract as a civil action in this Court, the following of which are statements:

1. 441 Smithfield Street, LLC is a Delaware Limited Liability Company with a registered address of c/o CT Corporation System, 116 Pine Street, #320, Harrisburg, PA 17101 and hereinafter referred to as ("Plaintiff").

2. 441 Smithfield Pittsburgh, LLC is believed to be a Pennsylvania Limited Liability Company, have a registered address c/o Corporation Service Company, 2595 Interstate Drive, 103, Harrisburg, PA 17110 and hereinafter referred to as ("Defendant").

3. On or about April 10, 2018, Plaintiff as landlord and Defendant as tenant entered into a written lease agreement setting forth the terms and conditions for the renovation and lease of real property known and numbered as 441 Smithfield Street, Pittsburgh, PA 15222. A true and correct copy of the lease entered between Plaintiff and Defendant dated April 10, 2018 is

attached hereto, incorporated herein as if fully set forth again at length and labeled as Exhibit “A”.

4. On or about October 11, 2018, Plaintiff and Defendant entered into a “First Amendment to Lease” under which the parties executed a written amendment to the aforesaid original lease agreement. A true and correct copy of the “First Amendment to Lease” entered into between the parties is attached hereto, incorporated herein as if fully set forth again at length and labeled as Exhibit “B”. The terms of Exhibits A and Exhibit B will hereinafter be referred collectively as the “lease”.

5. This Court has personal jurisdiction over Plaintiff and Defendant herein because both parties carry on a part of their business in the Commonwealth and are parties to the written lease agreement for real property situate in Allegheny County, Pennsylvania as evidenced by Exhibits A and B attached hereto as well as under the Pennsylvania Declaratory Judgments Act §§ 7531-7541.

COUNT I

DECLARATORY JUDGMENT

6. Plaintiff hereby incorporates paragraphs one (1) through five (5) of this complaint above as if fully set forth again here at length.

7. On or about March 19, 2020, in response to the COVID-19 pandemic, the Governor of Pennsylvania issued an emergency order forcing the temporary stoppage of virtually all construction activities within the Commonwealth of Pennsylvania and making it illegal to continue to perform prohibited construction work within Pennsylvania in violation of the emergency order.

8. As a result of the issuance of the above-referenced Order suspending construction work in the Commonwealth, on March 20, 2020, the Plaintiff advised Defendant in writing that it was forced by governmental restrictions to suspend construction on the buildout of the leased premises in conformity with the terms and conditions of the written lease between the parties.

9. Paragraph 42 of the lease agreement (Ex. A) specifically provides that:

if either the landlord or tenant is prevented or hindered from timely satisfying any provisions set forth herein because of a shortage or inability to obtain materials or equipment, strikes or other labor difficulties, **governmental restrictions**, fire, casualties, acts of God, **or any other cause beyond such parties' reasonable control**, said party shall be permitted an extension of time of performance by the number of days during which such performance was prevented or hindered; provided, however, that this paragraph shall not apply to the payment of rent or other monies by landlord or tenant, nor shall the provisions of this paragraph postpone the date that rent is payable pursuant to this lease”.

10. As evidenced by the governmental restrictions/order prohibiting construction activities within the Commonwealth of Pennsylvania from March 19, 2020 through and inclusive of May 1, 2020, Plaintiff, by the express terms of the lease, is entitled to an extension of time under the lease agreement for performance of its construction under the Lease as amended totaling 42 days.

11. On or about March 30, 2020, Plaintiff sent correspondence to Defendant confirming the notice of the delays as set forth within its prior letter dated March 20, 2020 and advised the Defendant that its silence and failure to respond was interpreted as acceptance of the landlord providing a new delivery date to be determined once the Governor's Order was reversed and construction business was allowed to resume in Pittsburgh.

12. On or about May 7, 2020, Paul Carter of the Carter Group, the Defendant's authorized broker and representative, contacted the Plaintiff by telephone and asserted an intent by the Defendant to: unilaterally renegotiate the rent terms of the Lease; refused to proceed to

confirm the adjusted delivery dates for the premises under the Agreement's Force Majeure provisions and indicated that Defendant had no intention to proceed under the existing terms and conditions of the written agreement unless the Defendant's unilateral demands were met.

13. Plaintiff, on or about May 8, 2020, sent a letter to the Defendant advising the Defendant of the ability to resume construction activities in the Commonwealth of Pennsylvania and that the Plaintiff, under the terms and conditions of the written lease agreement provisions and advised the Defendant that the revised delivery date as specified within the lease agreement would be February 15, 2021 and the adjusted opening date being April 16, 2021.

14. Plaintiff believes the communications of the Defendant's broker, Mr. Carter, to be an expression of the Defendant's intent and anticipatory breach of the written lease agreement.

15. On May 13, 2020, Plaintiff issued a written "Notice of Default" to the Defendant stating that Plaintiff considered the communications of Paul Carter of the Carter Group and indicating the Defendant's refusal to proceed in accordance with the terms of the lease agreement to be the statements of the Defendant's authorized agent notifying the Plaintiff of the Defendant's intention and refusal to comply with the terms and requirements of the Lease Agreement between Plaintiff and Defendant.

16. On May 21, 2020, Plaintiff had a phone conversation with Steve DiFillippo, the Principal of the Defendant, who again asserted that the Defendant had no intention of honoring its lease obligations and that he would not discuss proceeding with the lease in accordance with its terms.

17. To date Defendant has not taken any action to disavow the actions of its authorized representative or of its Principal of its express intention to breach the terms of the lease.

18. Despite numerous demands by Plaintiff to Defendant to comply with the terms and conditions of the Lease Agreement between the parties, Defendant has repeatedly failed and refused to communicate or affirm its intention not to breach the terms of the Lease.

19. As a result of the Defendant's express and stated intention to breach the terms of the Lease Agreement (Exhibits "A" and "B"), by refusing to set the adjusted delivery dates for the property by the Plaintiff as landlord to the Defendant as tenant unless the Rent terms were changed, Plaintiff seeks declaratory judgment as to the meaning and intent of the Force Majeure provisions set forth in paragraph 42 of the written lease agreement and the number of days during which the Plaintiff's construction work on the leased premises was prohibited by governmental restriction in order to determine the "Landlord's Delivery Date" under the terms of the subject lease agreement between the parties.

WHEREFORE, Plaintiff respectfully requests that this Court enter declaratory judgment extending the Landlord's Delivery date a period of forty-two (42) days in accordance with the terms of the written lease agreement between the parties under the Pennsylvania Declaratory Judgment Statute as a result of the suspension of construction in the Commonwealth of Pennsylvania under Order of the Governor dated March 19, 2020 and in consideration of the provisions of paragraph 42 of the Lease Agreement.

COUNT II

DECLARATORY JUDGMENT AS TO "SUBSTANTIAL COMPLETION"

20. Plaintiff hereby incorporates paragraphs one (1) through nineteen (19) of this complaint above as if fully set forth again here at length.

21. Under the express terms of the lease, specifically paragraph 10(b) of Ex “A”, Landlord is required to deliver possession of the lease premises to Defendant when the Tenant can commence the “Tenant’s Work” .

22. In accordance with the provisions of paragraph 10(b), the Landlord: “shall have the right to complete the Landlord’s Work while Tenant is constructing Tenant’s Work”.

23. Because of the Pandemic’s effect on timing of construction work and the supply chain of construction materials, Plaintiff seeks Declaratory Judgment from this Court that the terms of the lease do not require exclusive possession of the leased premises at the time of the Landlord’s Delivery of the premises to the Tenant under the terms of the lease, paragraph 10(b).

WHEREFORE, Plaintiff respectfully requests that this Court enter declaratory judgment interpreting the language of paragraph 10(b) of the written lease agreement between the parties under the Pennsylvania Declaratory Judgment Statute to not require exclusive turnover of the leased premises to the Tenant but rather only delivery when the Tenant can commence Tenant’s work, not to the exclusion of the Landlord also completing its work under the terms of the Lease Agreement.

COUNT III

BREACH OF CONTRACT

24. Plaintiff hereby incorporates paragraphs one (1) through twenty-three (23) of this complaint above as if fully set forth again here at length.

25. Defendant is in breach of its express duties under the terms and conditions of the lease between the parties.

26. The conduct of Paul Carter of the Carter Group as the Defendant's authorized agent as well as the Defendant's Principal in refusing to proceed to confirm the adjusted delivery dates for the premises under the Agreement's Force Majeure provisions and statements that Defendant had no intention to proceed under the existing terms and conditions of the written agreement is a repudiation and breach of the duty to act in good faith under the intent and express requirements of the Lease Agreement between the parties.

27. The failure and refusal of the Defendant to respond to the Notice and Declaration of Default issued by Plaintiff on May 13, 2020 as well as the lack of any repudiation of Mr. Carter's statement declaring the Defendant's refusal to set the Landlord's Delivery Date or intention to proceed in accordance with the Lease Agreement's terms is an express intention by Defendant to breach the Lease Agreement and to repudiate its duties under the Lease Agreement constituting an absolute and unequivocal refusal by the Defendant to perform under the Lease Agreement.

28. As a result of the Defendant's repudiation and breach of the Lease Agreement, Plaintiff has been and will be in the future damaged as a result of the requirements under the Lease Agreement to perform construction work in order to prepare the premises for the Defendant's occupancy as well as being deprived of all of the rents and payments due from the Defendant under the Lease terms had Defendant not breached its obligation to Plaintiff.

29. Despite numerous demands by the Plaintiff to the Defendant to conform with the terms of the written lease between the parties, Defendant has failed and refused to confirm its intention to honor its agreement and has instead, by both its Agent Mr. Paul Cater, and its Principal, Steve DiFillippo, expressly and repeatedly repudiated its intention to proceed in accordance with the Lease Agreement.

WHEREFORE, Plaintiff respectfully requests judgment in the amount in excess of the arbitration limits of this Court of \$35,000.00 together with costs of this action and interest at the legal rate from August 31, 2017, attorneys' fees as well as consequential and punitive damages as a result of Defendant's improper retention of Plaintiff's property and breach of its duty of good faith and fair dealing owed to Plaintiff.

Respectfully submitted,



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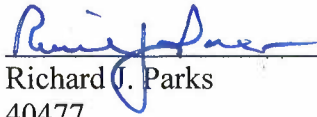
Attorneys for Plaintiff

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellant and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Richard J. Parks

Signature:



Name:

Richard J. Parks

Attorney ID #:

40477

LEASE

THIS LEASE (this "Lease") dated as of 4/6 April 10, 2018 (the "Effective Date"), by and between **441 Smithfield Street, LLC**, a Delaware limited liability company ("Landlord"), and **441 Smithfield Pittsburgh LLC**, a Pennsylvania limited liability company ("Tenant").

For good and valuable consideration, the parties agree as follows:

1. **EXHIBITS TO LEASE AND DEFINITIONS.**

(a) The following listed exhibits are attached to and made a part of this Lease:

EXHIBIT A. The description of the lands upon which the Property (defined below) is or will be constructed (the "Property Site").

EXHIBIT B. The initial Site Plan which Landlord may change from time to time showing, in general, the location of the Property, parking areas, driveways, Common Areas and features of the Property.

EXHIBIT B-1. Lease Outline Drawings.

EXHIBIT C. The Rules and Regulations governing the Property in effect at the time of execution of this Lease.

EXHIBIT C-1. Tenant Contractor's Rules and Regulations.

EXHIBIT D. Landlord's Work.

EXHIBIT E. Tenant's Architectural Design Guidelines and Criteria.

EXHIBIT E-1. Tenant's Technical Criteria; Sign Criteria.

EXHIBIT F. Use Restrictions.

EXHIBIT G. Guaranty.

EXHIBIT H. Insurance Specifications.

(b) The following definitions are applicable to the provisions of this Lease:

"Anchor Stores" means premises containing more than 5,000 square feet designated from time to time as Anchor Stores by Landlord.

"Approvals" means all applicable consents, approvals, permits and other items reasonably necessary for Tenant's Work (as hereinafter defined) and for the use of the Premises in accordance with Section 11(a) herein.

“Common Areas” means (i) those areas within the Property consisting of driveways; landscaped areas; aisles and sidewalks; canopies; common and Common Area utility lines, pipes, wires, appurtenances, improvements and facilities (collectively, “Utility Facilities”); public lavatories; management offices and maintenance and utility rooms; common loading docks; benches, and planters, and (ii) other adornments within or for the benefit of the Property; and other areas and facilities within the Property Site which are designated as Common Areas by Landlord from time to time, with the improvements therein, whether or not shown on Exhibit B, as all of the foregoing may be changed by Landlord from time to time. “Retail Common Areas” shall mean those Common Areas within the Property which Landlord, in Landlord’s sole discretion, makes available for the use of retail tenants within the Property.

“Commencement Date” means the date which is two hundred ten (210) days after the earlier to occur of (i) the date on which all Approvals necessary for Tenant’s Work are available, or (ii) the date on which Tenant shall have waived receipt of the Approvals as set forth in Section 50(b) below.

“Gross Rent” means the fixed rent payable by Tenant to Landlord under Section 4 below.

“Legal Requirements” means all laws, ordinances, codes, rules and regulations of all applicable public authorities; the rules, regulations and requirements of any fire rating organizations or rating bureaus; and any rules, orders or directives issued by Landlord’s insurance companies or agents.

“Premises” means the specific area leased to the Tenant.

“Property” means the Property Site located at 441 Smithfield Street, Pittsburgh, Pennsylvania 15222, together with all buildings, Common Areas and improvements now or hereafter located upon the Property Site, as said Property Site is expanded, contracted or changed by Landlord from time to time, which may contain from time to time each of (i) offices; (ii) retail and retail/amenities; (iii) residential and/or temporary lodging uses (such as hotels); and (iv) other lawful uses.

“Tenant’s Permittees” shall mean the employees, agents, contractors, assignees, subtenants, licensees, concessionaires, and invitees of Tenant; provided, however, that with respect to the exercise of any rights provided to Tenant herein, “Tenant’s Permittees” shall mean only those contractors, assignees, subtenants, licensees, and concessionaires permitted under the term of this Lease.

2. PREMISES; RELOCATION.

(a) (i) For the rent and upon the agreements contained in this Lease, Landlord leases to Tenant and Tenant rents from Landlord the Premises described as follows:

Situated in Pittsburgh, Allegheny County, Pennsylvania, and consisting of a storeroom containing approximately 9,483 square feet of floor area (all measurements being to the center of common walls and to the exterior of the base

building line and all exterior walls). The Premises do not include the use of the exterior faces of the exterior walls of the building, the roof of the building, or any area above the unfinished ceiling of the Premises (except for the repair or replacement of heating, air conditioning or other equipment, if any, which are Tenant's obligations under this Lease; Tenant's use of such areas, however, to be limited in accordance with the conditions and limitations hereafter set forth or any rules which Landlord might hereinafter promulgate with respect thereto), or extend beyond the exterior faces of the storefront or the exterior walls of the building of which the Premises are a part.

Notwithstanding the foregoing, the anticipated floor area of the Premises may be subject to increase in accordance with the terms and conditions of Section 10(a) below.

(ii) Within thirty (30) days after the date Landlord delivers possession of the Premises to Tenant, either party shall have the right to request that the floor area of the Premises be measured. In such event, the respective representatives of Landlord and Tenant shall jointly measure the Premises. If such representatives cannot agree upon the floor area of the Premises, then the Premises shall be measured by an architect jointly selected by Landlord and Tenant, whose fees shall be paid equally by Landlord and Tenant, and the measurement of the floor area by such architect shall be binding upon Landlord and Tenant herein and all payments in this Lease based upon the floor area of the Premises shall be adjusted accordingly.

(b) The Premises is depicted on Exhibit B for the purpose of more specifically locating the space leased to Tenant, and is depicted on the lease outline drawings attached hereto as Exhibit B-1.

(c) Landlord expressly reserves the use of the exterior surfaces of the exterior walls, the areas within those exterior walls which do not comprise Tenant's storefront (provided that Landlord shall not penetrate the interior surface of any such wall), the exterior surface of the unfinished ceiling (or finished ceiling if there is no unfinished ceiling) and the entire area above the Premises, including the roof, in connection with the construction and operation of other elements of the Property, the right to construct and operate facilities, businesses, offices and residences above and below the Premises, and the right to install, maintain, use, repair and replace Utility Facilities through the Premises in locations which will serve other parts of the Property and/or Property, together with access thereto through the Premises. Landlord reserves the right to enlarge, expand, contract or relocate the physical space designated for other portions of the Property and/or for the tenants in the Property; provided, however, that, except as set forth in Section 2(d) and (e) or elsewhere in this Lease, the Premises shall not be adjusted, enlarged, expanded, contracted or relocated without Tenant's consent.

(d) (i) Landlord may require that Tenant relocate the Premises to other space within the Property to a leasable area acceptable to the Tenant (the "Relocation Space"). In such event Landlord shall notify Tenant specifying the Relocation Space (the "Relocation Notice"). The ability of the Landlord to relocate the Tenant shall not be applicable for the option periods in Section 45 herein. The area of the Relocation Space shall not be more than five percent (5%) larger or smaller than the area of the Premises. Tenant shall have the right to terminate this Lease by giving notice to Landlord (the "Termination Notice") within twenty-one (21) days

after the giving of the Relocation Notice, whereupon this Lease shall terminate on the sixtieth (60th) day after the giving of the Termination Notice; provided, however, that Landlord shall have the right to nullify the Termination Notice by giving notice to Tenant within fifteen (15) days after Landlord's receipt of the Termination Notice that Landlord rescinds the Relocation Notice, in which event this Lease shall remain in full force and effect.

If this Lease is terminated pursuant to this Section 2(d)(i), then provided that Tenant is not in default under this Lease, within thirty (30) days after the date on which this Lease shall have terminated and Tenant shall have delivered possession of the Premises to Landlord in the condition required under this Lease, Landlord shall pay to Tenant a sum equal to the then-remaining unamortized balance of the out-of-pocket "hard costs" incurred by Tenant in installing leasehold improvements in the Premises as part of Tenant's Work (excluding any portion thereof otherwise already paid by Landlord to Tenant under this Lease, including pursuant to Section 10 below), which cost shall be amortized on a straight-line basis over the initial term of this Lease, with such unamortized balance being calculated as of the effective date of termination of this Lease. Tenant shall deliver reasonably satisfactory evidence to Landlord of such costs, and Landlord shall have the right to review Tenant's books and records to verify such costs. The respective rights and obligations of Landlord and Tenant as set forth herein shall survive the termination of this Lease.

(ii) If the Premises are relocated pursuant to this Section 2(d), Landlord shall pay all costs and expenses reasonably incurred by Tenant in connection with such relocation, including architectural costs, printing costs, and similar items; provided Landlord shall have approved each such expenditure in writing in advance which consent shall not be unreasonably withheld. Landlord and Tenant shall execute an amendment of this Lease substituting the new Premises for the original Premises and, if necessary, amending the rents and other provisions based on the square footage of the new Premises.

(e) Landlord shall have the right to submit the Property to condominium ownership pursuant to the provisions of the Pennsylvania Uniform Condominium Act. At Landlord's request, Landlord and Tenant will execute an amendment of this Lease evidencing such conversion to condominium ownership. The Condominium Declaration shall include such provisions as are customary for similar projects and do not materially and adversely affect Tenant's rights hereunder or result in the imposition of additional fees to be paid by Tenant. This Lease, and the rights of Tenant hereunder, shall be subject to the terms and provisions of the Condominium Declaration and any amendments thereto provided that they do not materially and adversely affect Tenant's rights or obligations hereunder.

If Landlord elects to submit the Property to condominium ownership as permitted herein, then at such time as "Landlord" herein does not own the entire Property, with respect to any obligations or liabilities of Landlord under this Lease which are applicable to any portions of the Property which are not then owned by Landlord, Landlord shall enforce Landlord's rights and remedies under the Condominium Declaration, and/or under any other agreement between Landlord and the other owners of such other portions of the Property, to cause the applicable terms and conditions of this Lease to be enforced with respect to such other portions of the Property, provided that in no event shall Landlord be obligated to appeal any adverse ruling of a

court of competent jurisdiction. Provided that Landlord pursues the enforcement of such rights as required herein, Landlord shall have no obligation or liability to Tenant as a result of any failure of performance of any other owner in the Property with respect to those terms and conditions of this Lease which are applicable to such other portions of the Property.

3. TERM; LEASE YEAR.

(a) The term of this Lease shall be for a period of ten (10) lease years beginning with the "Commencement Date" and ending on the last day of the tenth (10th) lease year thereafter.

(b) If for any reason Landlord shall not deliver possession of the Premises to Tenant by December 1, 2019 (as such date may be extended if, as set forth in Section 10 below, Tenant elects to have Landlord perform portions of Tenant's Work together with Landlord's Work), then Tenant shall have the right to terminate this Lease upon thirty (30) days prior written notice to Landlord, and if Landlord does not deliver possession of the Premises to Tenant within such thirty (30) day period, this Lease shall automatically be null and void and neither Landlord nor Tenant shall have any claim against the other in damages or otherwise.

(c) The first lease year shall begin on the Commencement Date and shall end on the last day of the twelfth (12th) full month thereafter. Subsequent lease years shall begin on the first day following the end of the preceding lease year. When the Commencement Date shall have been determined, Landlord and Tenant shall execute an appropriate writing memorializing such date.

4. GROSS RENT.

(a) Tenant's obligations to pay Gross Rent and Additional Charges (as hereinafter defined) shall begin on the Commencement Date of this Lease.

Gross Rent and Additional Charges due for each day prior to the first day of a calendar month shall be computed on the basis of Tenant's monthly installments of Gross Rent and Additional Charges hereinafter set forth and Tenant shall pay the Gross Rent and Additional Charges for all such days to Landlord on the Commencement Date.

(b) Tenant agrees without demand and without any deduction, set-off, counterclaim, or abatement, to pay to Landlord, at Landlord's office or such place as Landlord may from time to time designate, as the Gross Rent, the following sums for the following lease years:

Lease Year	Annual Gross Rent	Monthly Installment	Rent Per Square Foot
1-5	\$474,150.00	\$39,512.50	\$50.00
6-10	\$521,565.00	\$43,463.75	\$55.00

Monthly installments of Gross Rent shall be paid in advance on the first day of each and every calendar month.

5. OVERAGE RENT.

(a) Tenant agrees to pay to Landlord without deduction, set-off, counterclaim, or abatement "Overage Rent" for each of the following lease years an amount equal to the product of (i) six percent (6%), times (ii) the Gross Sales in excess of the Gross Sales Base corresponding to such lease year:

Lease Year	Gross Sales Base
1-10	\$7,000,000.00

(b) If there shall be a partial lease year, or if the Gross Rent shall abate or be reduced, or if Tenant shall not operate for a full lease year, then the applicable Gross Sales Base shall be reduced proportionately.

6. GROSS SALES DEFINED. The term "Gross Sales" means the aggregate dollar amount of all business done in, on or resulting from the Premises, including all sales of food, beverages and merchandise and all charges for services performed in, upon or resulting from the Premises by Tenant or any subtenant, licensee, concessionaire or other occupant selling food, beverages or merchandise or performing services in, upon or from any part of the Premises, wholesale or retail, including internet and mail, telephone or e-commerce orders received or filled at the Premises, whether consisting of cash, check, credit, credit cards, electronic or e-commerce transaction, charge account, exchange, trade-in or otherwise, including any technical evolution of any of the foregoing; and regardless of collection. Gross sales shall not include or shall exclude (a) amounts received for the sale of gift certificates until redeemed or forfeited (meaning the right to redeem is validly and permanently revoked by Tenant and the amount thereof is then booked by Tenant as part of Gross Sales) at the Premises, (b) refunds or credits from manufacturers or shippers received in settlement of claims for loss or damage to merchandise, (c) sales where the proceeds are given to, or used for charitable or non-profit organizations, or for promotional purposes, with such proceeds for non-charitable purposes, (d) separately stated tips and gratuities which are or may be included on customer's bills (and therefore may be included in Gross Sales) and which are passed directly to Tenant's service employees without diminution or deduction by Tenant (e) credit card commissions or service charges that are deducted from credit card sales by credit card or merchant services companies not to exceed, in the aggregate, four percent (4%) of annual Gross Sales, calculated on a non-cumulative basis, (f) discounted sales to employees for which a discounted payment or no payment is received, not to exceed, in the aggregate, four percent (4%) of annual Gross Sales, calculated on a non-cumulative basis, (g) bad debts and uncollectible accounts not to exceed, in the aggregate, three percent (3%) of annual Gross Sales, calculated on a non-cumulative basis provided, however, if such amounts are collected in a later Lease Year, the amount shall be included in Gross Sales for such later Lease Year, (h) refunds on food and beverage sales but only to the extent that such sales were previously included in Gross Sales not to exceed, in the aggregate, four percent (4%) of annual Gross Sales; and (i) sales, excise or similar tax imposed by governmental authority and collected from customers and paid out by Tenant. No other taxes shall be deducted from Gross Sales. Landlord acknowledges that Tenant's sale of gift cards or certificates are not booked as part of Gross Sales until redeemed at the Premises.

7. **REPORTING OF GROSS SALES AND PAYMENT.** Tenant, on or before the twentieth (20th) day following the end of each month, shall furnish to Landlord a written statement certified by an officer of Tenant to be correct of Gross Sales from the commencement of the current lease year to the end of the month for which the report is due. Concurrently with the delivery to Landlord of the monthly statement at the end of each three-month period, Tenant shall pay to Landlord Overage Rent, if any, due to Landlord from the beginning of the lease year to the last day of the month covered by the report. The computation of Overage Rent for such period shall take into account any Overage Rent previously paid during the said lease year. Tenant, on or before the thirtieth (30th) day following the end of each lease year, shall furnish to Landlord a written statement showing in reasonably accurate detail, satisfactory in form, scope and style to Landlord, Gross Sales for the preceding lease year duly certified by an officer of Tenant to be correct and at such time Tenant shall pay to Landlord any Overage Rent due Landlord. If any excess Overage Rent has been paid by Tenant to Landlord during or for the preceding lease year, Tenant shall receive a credit equivalent to such excess which may be deducted by Tenant from the next accruing payment of Overage Rent. Landlord shall have the right to charge Tenant Twenty-Five Dollars (\$25.00) per day as additional rent for Tenant's failure to deliver to Landlord statements of Gross Sales on the dates required in this Lease. In addition, Landlord shall have the right to terminate this Lease or Tenant's right of possession and/or to exercise all other rights and remedies set forth in Section 26 of this Lease, subject to any notice and cure periods set forth in Section 26.

8. **BOOKS AND RECORDS.**

(a) Tenant agrees to keep at Tenant's principal offices, accurate and complete books and records of all business conducted and all Gross Sales, which shall be open for examination at all reasonable times to Landlord or Landlord's representatives to be accompanied by Tenant and its representative. The books and records shall include all cash register tapes; duplicate copies of serially numbered sales slips (or data from cash registers or other equipment which provide equivalent information); and all other primary data, detailed records of all exclusions from Gross Sales, all federal, state and local tax returns, and all other books and records of any person or entity doing business in the Premises which would normally be examined by an independent accountant in auditing Gross Sales. All records shall be retained by Tenant for a period of at least three (3) years following the end of the lease year to which said records apply for examination by Landlord.

(b) If an examination of Tenant's records discloses a deficiency in reporting Gross Sales of three percent (3%) or more, Tenant agrees in addition to Landlord's other remedies which shall include, but not be limited to Tenant's obligation to pay to Landlord the reasonable cost and expense of any such examination. Any additional rent found due and owing as a result of Landlord's examination shall be paid by Tenant to Landlord immediately upon demand.

9. **ADDITIONAL CHARGES.**

(a) In addition to all other rents and sums payable hereunder, Tenant agrees to pay to Landlord, at the times hereinafter set forth, without deduction, set-off, counterclaim, or abatement, beginning on the Commencement Date (prorated for a partial month), the following "Additional Charges," deemed to be rent for all purposes of this Lease:

(i) Taxes on Rent. Tenant shall pay to Landlord the amount of any tax or excise on rent (except net income, real estate or estate taxes) which is assessed or imposed by any governmental authority upon Landlord or upon Tenant and which is so assessed, imposed or paid as a result of Landlord's ownership of the Premises or of this Lease or the rentals accruing under this Lease; any tax which may be in lieu of, as a substitute for or in addition to real property taxes and assessments; and any tax or surcharge of any kind or nature imposed upon Landlord which is otherwise measured by or based in whole or in part upon the Property or any portion thereof; it being the intention of the parties hereto that the rentals to be paid hereunder shall be paid to Landlord absolutely without deduction or set-off of any nature whatsoever.

(ii) Compactor Charges. If Landlord has furnished compactors and/or dumpsters for the disposition of rubbish, garbage and refuse from the Premises as distinguished from the Common Areas and/or has arranged for the collection of rubbish and garbage, Tenant agrees to pay monthly to Landlord the amount established by Landlord as Tenant's charge for such service(s) as additional rent as set forth in Section 11(e) below.

(b) Payment. Unless otherwise stated, the foregoing amounts if separately invoiced by Landlord shall be paid by Tenant within thirty (30) days after the date of such invoice; or said amounts may be estimated by the Landlord in which event Landlord shall notify Tenant of Landlord's estimate. Tenant shall pay said estimate in advance, on the first day of each and every calendar month. When Landlord has calculated the exact amount actually payable by Tenant, Landlord shall deliver to Tenant an annual statement for such calendar year. Any deficiency in payment by Tenant for any item shall be paid by Tenant to Landlord upon receipt of ten (10) days written notice. Any surplus in respect thereto shall be credited against the next ensuing installments of Landlord's estimates for the next year. The amounts payable by Tenant for the first year and last year of this Lease shall be prorated for the parts of such first and last years that Tenant is obligated to pay Additional Charges under this Lease including any fraction of a month.

(c) Audit. Tenant and its accountants shall have the option to examine and audit Landlord's books and records relating to Landlord's charges under Section 9(a) above for the calendar year covered by the annual statement, at Landlord's office or other place designated by Landlord, during normal business hours, with at least fifteen (15) days prior written notice; which notice must be given (if Tenant elects to exercise such option) by Tenant to Landlord within ninety (90) days after Landlord sends such annual statement for such calendar year to Tenant. As a condition to Tenant's examination and/or audit, Tenant agrees (a) to send to Landlord promptly after receipt a copy of any audit or report generated with respect to an examination of Landlord's records; (b) not to pay for any such audit or examination using a contingency fee arrangement or any other fee arrangement other than a fixed, hourly or daily rate, and (c) to keep any information obtained by Tenant or its agents strictly confidential, except that Tenant and its accountants may divulge such information to Tenant's employees, accountants, and attorneys, or as may be required by a court of competent jurisdiction. Any failure by Tenant to comply with the provisions of the preceding sentence shall constitute a material default under this Lease.

(d) Interest - Late Payment Charge. Any payment due from Tenant to Landlord, whether for rents, other charges, utilities or otherwise, not paid within either (i) five (5) business days after receipt of written notice thereof, with respect to the first failure within any calendar year of Tenant to pay any sums when due, or (ii) five (5) business days after the original due date thereof, with respect to the second and all subsequent failures within any calendar year of Tenant to pay any sum when due (the date set forth in (i) and (ii) herein shall be referred to as a "Late Date"), shall bear interest from the Late Date to the date of actual payment at a rate of twelve percent (12%) per annum or the highest lawful rate of interest permitted in Pennsylvania, whichever rate of interest is lower (the "Default Rate"). In addition, Tenant shall pay to Landlord a late payment charge equal to five percent (5%) of any amount due if not received by Landlord by the Late Date. Notwithstanding the interest charge and/or late payment charge set forth herein, nothing contained herein shall be deemed to permit Tenant to pay Gross Rent or Additional Charges beyond the due date therefor under this Lease.

10. CONSTRUCTION OF PREMISES.

(a) Tenant acknowledges that Landlord and Landlord's agents and employees have made no representations or warranties with respect to the Premises or the physical condition thereof and none shall be implied in law, except for such express warranties which are stated in this Lease. Notwithstanding the foregoing, Landlord agrees to construct the shell of the Premises as is set forth on Exhibit D of this Lease ("Landlord's Work"). Within forty-five (45) days after the Effective Date, Tenant shall have plans and specifications (collectively, "Tenant's Plans") delivered to Landlord for Landlord's approval, in sufficient detail to obtain a building permit, prepared by Tenant's architect licensed in Pennsylvania, for all work and improvements to be constructed by Tenant in the Premises in order to initially open for the Davio's Restaurant Use, including the work set forth in Exhibit E ("Tenant's Work"). Tenant's Plans and the Premises shall comply with all Legal Requirements (provided that Landlord shall comply, at Landlord's expense, with any historic or landmark review board requirements, if any are applicable to Tenant's Work), Exhibit E and Exhibit E-1. Tenant shall revise Tenant's Plans (and re-revise them) in accordance with Landlord's comments within ten (10) days after receipt of such comments. Without limiting Landlord's remedies, if Tenant fails to furnish Tenant's Plans within said forty-five (45) day period, or fails to revise or re-revise them within said ten (10) day period, then the number of days set forth in Section 1 Clause (ii) of the definition of "Commencement Date" shall be reduced by one (1) day for each day of such delay. The submission to Landlord of Tenant's Plans shall constitute a warranty by Tenant that the work and the division thereof between Landlord and Tenant provided for in Tenant's Plans is in conformity with Legal Requirements, Exhibit D, Exhibit E and Exhibit E-1. No approval by Landlord of Tenant's Plans shall constitute in any manner a waiver by Landlord of Landlord's rights under these warranties. Landlord's approval under this Section 10(a) shall not be unreasonably withheld, provided however, that Tenant acknowledges that the Building is a historic structure and that Landlord's approval rights shall include the right to require Tenant's Plans to conform with the general historic nature of the Building.

Notwithstanding the foregoing, Landlord and Tenant acknowledge that the intended floor area and the configuration of the Premises has been determined by Landlord in coordination with the anticipated configuration and location of certain other premises for other anticipated tenants of the Property to be contained within the same floor which contains the Premises. If Landlord

shall determine that such other premises may be reconfigured in a manner which would permit Landlord to relocate and/or reconfigure the presently anticipated demising wall separating the Premises from such other premises to permit the floor area of the Premises to be increased by an amount equal to or less than five percent (5%) of the anticipated floor area set forth in Section 2(a)(i) above, then Landlord shall have the right to reconfigure the Premises as permitted herein. Notwithstanding the foregoing, in no event shall the floor area of the Premises be reduced, nor shall the floor area of the Premises be increased by an amount in excess of five percent (5%) of the anticipated floor area of the Premises as set forth in Section 2(a)(i) above, without the prior written consent of Tenant in either event. If Landlord, as permitted herein, shall reconfigure the Premises and increase the floor area thereof, Landlord shall deliver written notice thereof to Tenant, together with a floor plan setting forth such reconfigured Premises and the resulting floor area therein, and in such event the "Premises" shall be deemed for all purposes under this Lease to be the Premises as so reconfigured, and Tenant's obligations for Gross Rent and Additional Charges shall be increased accordingly, and Landlord's obligations with respect to the Construction Allowance shall be increased accordingly.

(b) When Landlord has substantially completed Landlord's Work to the extent Tenant can commence Tenant's Work, Landlord shall deliver possession of the Premises to Tenant, but Landlord shall have the right to complete Landlord's Work while Tenant is constructing Tenant's Work. All of Landlord's Work shall be deemed to be approved by Tenant in all respects, except for such matters of Landlord's Work as to which Tenant shall give written notice to Landlord within thirty (30) days following the date that Landlord shall have delivered possession of the Premises to Tenant. Landlord shall pay for any work required by local authorities relating to driveways, alley, sewer, and landscaping, tap or other utility hookup fees, meter and submeter installation (per Exhibit D) and any system development fees that are not required solely due to Tenant's Work of the Permitted Use (as defined herein).

(c) Tenant's Work shall be done in conformance with Tenant's Plans approved by Landlord in a good and workmanlike manner and in accordance with all Legal Requirements and Exhibit C-1. Upon completion of Tenant's Work, Tenant shall deliver to Landlord a complete set of "as-built" plans.

Landlord shall have the right to reasonably approve Tenant's general contractor and major subcontractors. Tenant shall perform or cause Tenant's contractors and subcontractors to perform all work, repairs, alterations or improvements at any time following the delivery of the Premises to Tenant and continuing during the term of this Lease in accordance with Exhibit C-1 and in a manner so as to avoid any labor dispute which causes or is likely to cause stoppage or impairment of work, delivery or any other services or any operations in the Property. In the event there shall be any such stoppage or impairment as the result of any such labor dispute or potential labor dispute, Tenant shall immediately undertake such action as may be necessary to eliminate such dispute or potential dispute, including, but not limited to (i) removing all disputants from the job site until such time as the labor dispute no longer exists, (ii) seeking an injunction in the event of a breach of contract by Tenant and Tenant's contractors or subcontractor, and (iii) filing appropriate unfair labor practice charges in the event of a union jurisdictional dispute.

(d) Notwithstanding anything to the contrary set forth herein, Tenant shall have the right, upon written notice received by Landlord not later than the date which is one hundred twenty (120) days prior to the date on which Landlord anticipates delivering possession of the Premises to Tenant pursuant to Section 10(b) above (and for such purposes Landlord, upon request from Tenant, shall periodically advise Tenant of the anticipated date of delivery of the Premises by Landlord to Tenant under Section 10(b) above), to require that Landlord perform, all or any portion of Tenant's Work (which portion shall be referred to herein as the "Additional Landlord's Work") concurrently with the performance by Landlord of Landlord's Work. Upon such election by Tenant, (i) Landlord and Tenant shall execute an amendment to this Lease and/or a separate agreement providing for the performance by Landlord of the Additional Landlord's Work, (ii) Landlord shall perform the Additional Landlord's Work upon the same terms and conditions as are set forth in this Section 10 with respect to Landlord's Work, and (iii) Tenant shall pay to Landlord, on a monthly basis, an amount equal to all costs incurred by Landlord in performing the Additional Landlord's Work, together with a fee to Landlord in an amount equal to five percent (5%) of all such costs.

(e) Provided Tenant is not then in default, Landlord shall pay to Tenant as an inducement for Tenant to enter into this Lease a sum (the "Construction Allowance") equal to the lesser of the cost of Tenant's Work (exclusive of (i) the cost of any furniture, fixtures and equipment, (ii) any soft costs such as architectural, engineering and permit fees, and (iii) the cost of the Additional Landlord's Work (if any), required to be paid by Tenant to Landlord under Section 10(d) above), or One Million Eight Hundred Ninety-Six Thousand Six Hundred Dollars (\$1,896,600.00) (\$200.00 per square foot), which sum shall be paid as follows:

- (i) twenty-five percent (25%) of the Construction Allowance shall be paid within thirty (30) days after written request therefor by Tenant, provided that Tenant shall have (A) completed twenty-five percent (25%) of the Tenant's Work, which completion shall be certified in writing by Tenant's architect, and (B) furnished to Landlord a partial waiver of lien and affidavits from Tenant's general contractor in respect of the work performed by it to date; and
- (ii) twenty-five percent (25%) of the Construction Allowance shall be paid within thirty (30) days after written request therefor by Tenant, provided that Tenant shall have (A) completed fifty percent (50%) of the Tenant's Work, which completion shall be certified in writing by Tenant's architect, and (B) furnished to Landlord a partial waiver of lien and affidavits from Tenant's general contractor in respect of the work performed by it to date; and
- (iii) twenty-five percent (25%) of the Construction Allowance shall be paid within thirty (30) days after written request therefor by Tenant, provided that Tenant shall have (A) completed seventy-five percent (75%) of the Tenant's Work, which completion shall be certified in writing by Tenant's architect, and (B) furnished to Landlord a partial waiver of lien and

affidavits from Tenant's general contractor in respect of the work performed by it to date; and

- (iv) the remaining twenty five percent (25%) of the Construction Allowance shall be paid within thirty (30) days after written request therefor by Tenant, provided that Tenant shall have (A) completed construction of Tenant's Work in the Premises in accordance with the approved Tenant's Plans and all applicable Legal Requirements; (B) furnished to Landlord evidence reasonably satisfactory to Landlord (including copies of invoices) detailing the cost of Tenant's Work; (C) furnished to Landlord copies of all required certificates of occupancy which may be permanent or temporary; (D) furnished to Landlord all waivers of lien, affidavits, and other evidence that all such work has been paid for in full and that no mechanics' or materialmen's liens exist or are legally possible and (E) opened for business.

11. USE; OPERATION.

(a) Tenant covenants that the Premises shall be initially opened for business for the operation of a "Davio's" high-end and fine-dining steakhouse operating in a manner and feature normally associated with the operation by Tenant (or its affiliates) of other "Davio's" restaurants (the "Davio's Restaurant Use"). After initially opening for purposes of the Davio's Restaurant Use, Tenant shall continuously operate in the Premises during the term of this Lease either for the Davio's Restaurant Use or for purposes of a high-end, fine dining steakhouse or other high-end, fine dining restaurant, provided that at such time as Tenant changes the use of the Premises from the Davio's Restaurant Use as permitted herein, such change in use does not violate any then-existing use restrictions applicable to the Premises. The Davio's Restaurant Use, together with such other permitted restaurant uses, shall be referred to herein together as the "Permitted Use", provided that whether the Premises is used for the Davio's Restaurant Use or any other permitted restaurant use herein, in no event shall Tenant use the Premises in violation of the restrictions set forth on Exhibit F. Landlord represents that the Premises may be lawfully used for the Permitted Use and that the use of the Premises for the Permitted Use does not violate the exclusive rights of any other tenant of the Property. Tenant agrees that Tenant will not use or permit or suffer the Premises or any part thereof to be used for any other business or purpose than that specifically defined and permitted by this Section or for the sale of any merchandise or the performance of any services other than the merchandise or services expressly described in this Section. Tenant acknowledges that the covenant to use the Premises as set forth in this Section is a material inducement for Landlord to enter into this Lease and without such covenant, Landlord would not have entered into this Lease. Therefore, Landlord shall have the right, in Landlord's sole discretion, to withhold consent to any requested change in use of the Premises. The use of the Premises for purposes of either the Davio's Restaurant Use or any other use permitted herein shall be referred to in this Lease as the "Permitted Use".

(b) Tenant and any assignee or sublessee or any other occupant of the Premises shall conduct business in the Premises solely and exclusively under the name of "Davio's" without change unless consented to in writing by Landlord, provided that if Landlord shall consent to a

change in use of the Premises from the Davio's Restaurant Use pursuant to Section 11(a) above, then Landlord shall not unreasonably withhold Landlord's consent to the trade name to be used in connection with such change in use of the Premises.

(c) Tenant, at Tenant's sole cost and expense, shall obtain all building permits, use and occupancy permits and licenses required by applicable governmental authorities for any construction or remodeling Tenant shall do in the Premises and for the use of the Premises and the conduct of Tenant's business; and Tenant shall operate its business in accordance with all Legal Requirements. Tenant agrees to comply with all Legal Requirements applicable to the Premises. Tenant, at Tenant's cost and expense, shall make all installations, replacements, alterations and any and all repairs to the Premises required to comply with such Legal Requirements including, without limitation, replacements, alterations and repairs which relate to fire prevention, detection, control or extinguishment, or which are structural in nature. Tenant shall obtain Landlord's written approval before commencing structural work.

(d) Daily, except for Sunday, the Premises shall be open for business to the public not later than 11:00 A.M., and on Sunday the Premises shall be open for business no later than Noon. The Premises shall remain open for the conduct of business to the public until at least 9:00 P.M. on Monday through Wednesday, 10:00 P.M. Thursday through Saturday, and 6:00 P.M. on Sunday. In addition, the Premises shall be open for business on such legal holidays and for such hours as may become the standard as established by Landlord with the exception of Christmas. The Premises may be closed, however, during the period of strikes, lockouts, or other causes beyond Tenant's control (the "Permitted Closing Periods"), so long as Tenant shall make all reasonable efforts to shorten such periods. Landlord reserves the right (i) to permit certain tenants to observe different hours of business operation, (ii) to establish the time that the Property shall close (so long as it shall be open at least during the hours specified above), and (iii) to extend the hours set forth above by giving written notice to Tenant. Notwithstanding anything herein to the contrary herein, Tenant may also close for business at the Premises for the purpose of remodeling the Premises, in accordance with the terms and conditions of this Lease (including without limitation Section 16 below), not more than once each five (5) years, for a period not to exceed thirty (30) days, provided Tenant provides at least thirty (30) days advance notice of the date of the start of the remodel and the scope thereof. Tenant shall not be closed for remodeling from October 15th through December 31st in any calendar year. Tenant shall continue to pay the Gross Rent and Additional Charges during the period Tenant is closed for remodel.

(e) Tenant acknowledges that as a member of the Property community, Tenant and all other occupants of the Property are dependent on each other to draw people to the Property and to create an atmosphere within each store and facility conducive to the fulfillment of the needs and demands of the customers of the Property. Tenant agrees to maintain at all times an adequate number of fully trained employees and to maintain sufficient merchandise and/or to provide the service required pursuant to this Lease to satisfy the demands of Tenant's customers and patrons. Tenant recognizes that the Property, other occupants and Landlord will suffer severe harm if Tenant is not open for business when required under this Lease. Therefore, Tenant agrees to continuously operate its business during the days and hours set forth above except during the Permitted Closing Periods. Each failure of Tenant to keep the Premises open for business as herein required shall be deemed a breach of this Lease. In recognition of the

serious consequences of Tenant's failure to be open for business, in addition to remedies Landlord may have for Tenant's default and equitable rights and equitable remedies Landlord may have for such breach by Tenant, Tenant agrees to pay to Landlord (in addition to the Gross Rent, Additional Charges and any other rents and sums due hereunder) for each day that Tenant shall not be open for business as required under this Lease, a sum equal to thirty-three and one-third percent (33.3%) of the monthly Gross Rent payable by Tenant pursuant to this Lease, divided by thirty (30); it being acknowledged by Landlord and Tenant that Landlord will suffer damages for Tenant's failure to open and operate Tenant's business, that the actual damages would be difficult to calculate, and that the liquidated damages set forth above represents a fair and reasonable approximation of Landlord's actual damages.

(f) Tenant shall not install in the Premises any video, pinball, or similar arcade-type games.

(g) Tenant shall, at its expense: purchase or rent a dumpster or compactor unless Landlord furnishes same for Tenant; keep all rubbish, garbage, trash and refuse only within the Premises and only in rat-proof containers which shall be delivered daily to and emptied by Tenant in the dumpster or compactor designated by Landlord (and Tenant shall clean all areas adjacent to the dumpster or compactor which contain rubbish, garbage, trash and refuse emanating from the Premises); cause said dumpster or compactor to be emptied and all garbage, rubbish and trash disposed of when reasonably required by a reputable waste hauler (unless Landlord elects to furnish such service and charge Tenant as provided in this Lease); not permit any rubbish, garbage, trash and litter emanating from the Premises to accumulate outside of the Premises; keep any vestibules or entries to the Premises and the sidewalks and other Common Areas adjacent to the Premises free of all trash, refuse and snow and ice; not use any objectionable advertising medium such as loudspeakers, phonographs, sound amplifiers, or the reception of radios or television broadcasts within the Property; not place a load upon any floor which exceeds the floor load which the floor was designed to carry; not cause or permit objectionable odors (except odors normally produced by the preparation of food and operation of a restaurant which cannot be eliminated or alleviated by commercially reasonable means), to emanate or to be dispelled from the Premises; keep all mechanical apparatus free of vibration and noise which may be transmitted beyond the Premises; not operate in or solicit or conduct business in the parking or other Common Areas; and comply with the provisions of Exhibit E which impose any obligation on Tenant with respect to the Premises, any areas adjacent thereto and/or any appurtenances (including, without limitation, any permitted awnings, exterior fixtures, benches, flowerpots, shrubbery boxes or other furnishings) or amenities thereof.

Notwithstanding the foregoing, with respect to the exhaust system serving the Premises (including ductwork and fans), (i) Tenant shall maintain and clean the portion of such exhaust system which is contained within the Premises and (ii) Landlord shall maintain all portions of such exhaust system (including ductwork and roof-mounted fans) which is located outside of the Premises, and in no event shall Tenant have any obligation or liability to Landlord for any odors resulting from the failure of Landlord to maintain such portions of the exhaust system.

If Landlord has furnished compactors and/or dumpsters for the disposition of rubbish, garbage and refuse from the Premises as distinguished from the Common Areas and/or has arranged for the collection of rubbish and garbage, Tenant agrees to pay monthly to Landlord

"Tenant's Share" of the cost of such service(s) as additional rent, which amount shall be paid without deduction, set-off, counterclaim or abatement beginning on the Commencement Date (prorated for a partial month). Tenant's Share shall be computed as a fraction, the numerator of which is the amount of floor area of the Premises, and the denominator of which is the aggregate amount of floor area of all tenants utilizing the compactor or dumpster; provided, however, due to the disproportionate use of the compactor or dumpster by restaurant users (as opposed to non-restaurant users), the floor area of any restaurant user (including Tenant) which utilizes the dumpster or compactor shall be doubled for purposes of computing Tenant's Share. The foregoing amounts if separately invoiced by Landlord shall be paid by Tenant within thirty (30) days after the date of such invoice; or said amounts may be estimated by the Landlord in which event Landlord shall notify Tenant of Landlord's estimate. Tenant shall pay said estimate in advance, on the first day of each and every calendar month. When Landlord has calculated the exact amount actually payable by Tenant, Landlord shall deliver to Tenant an annual statement for such calendar year. Any deficiency in payment by Tenant for any item shall be paid by Tenant to Landlord upon ten (10) days of receipt of notice. Any surplus in respect thereto shall be credited against the next ensuing installments of Landlord's estimates for the next year. The amounts payable by Tenant for the first year and last year of this Lease shall be prorated for the parts of such first and last years, including any fraction of a month.

Tenant and its accountants shall have the option to examine and audit Landlord's books and records relating to Landlord's charges under this Section 11(g) with respect to compactors and/or dumpsters for the calendar year covered by the annual statement, at Landlord's office or other place designated by Landlord, during normal business hours, with at least fifteen (15) days prior written notice; which notice must be given (if Tenant elects to exercise such option) by Tenant to Landlord within one (1) year after Landlord sends such annual statement for such calendar year to Tenant. As a condition to Tenant's examination and/or audit, Tenant agrees (a) to send to Landlord promptly after receipt a copy of any audit or report generated with respect to an examination of Landlord's records; (b) not to pay for any such audit or examination using a contingency fee arrangement or any other fee arrangement other than a fixed, hourly or daily rate, and (c) to keep any information obtained by Tenant or its agents strictly confidential, except that Tenant and its accountants may divulge such information to Tenant's employees, accountants, and attorneys, or as may be required by a court of competent jurisdiction.

(h) Tenant shall not (either with or without negligence) cause or permit within the Premises the escape, disposal or release of any biologically- or chemically-active or other hazardous or toxic substances, materials or wastes (collectively, "Hazardous Substances"). Tenant shall not allow the generation, storage or use of any Hazardous Substances within the Premises in any manner unless in accordance with Legal Requirements and approved in advance in writing by Landlord. Any use of Hazardous Substances shall only be in the ordinary course of Tenant's business and in accordance with the highest standards prevailing in the industry for the generation, storage and use of such Hazardous Substances. Without limitation, Hazardous Substances shall include those described in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 et seq., any applicable state or local laws and the regulations adopted under these acts. If Tenant uses Hazardous Substances within the Premises and Landlord or any lender or governmental agency

shall ever require testing to ascertain whether or not there has been any release of Hazardous Substances, then the reasonable costs thereof shall be reimbursed by Tenant to Landlord upon demand as additional rent. In addition, Tenant shall execute affidavits, representations and the like from time to time at Landlord's request concerning Tenant's best knowledge and belief regarding the presence of Hazardous Substances in the Premises. Further, Tenant shall indemnify and save Landlord harmless from and against any and all clean-up costs, remedial or restoration work, claims, judgments, damages, penalties, fines, costs, liabilities or losses, including, without limitation, diminution in value of the Premises, damages for the loss of restriction on use of space in the Property, damages due to adverse impact on marketing of space in the Property, and reasonable attorneys', consultants' and expert fees, which arise during or after the term of this Lease as a result of any Hazardous Substances being generated, released, used or disposed of in or on, or brought to, the Property by Tenant or by Tenant's Permittees. Landlord represents to Tenant, that the Premises does not contain any hazardous wastes or hazardous or toxic substances which require removal and/or remediation in their present condition in the Premises pursuant to any existing Legal Requirements; and if any such hazardous wastes or hazardous or toxic substances shall exist on the Premises on the date hereof, Landlord shall be responsible for prompt removal of the same at its sole cost and expense. The respective rights and obligations of Landlord and Tenant herein shall survive the expiration or earlier termination of this Lease.

(j) Tenant shall, at Tenant's sole cost and expense, install, (i) a hood system to prevent grease from exhaust systems serving the Premises from dripping onto the roof of the Property if required by any applicable governmental authorities, as well as (ii) its own individual grease interceptor system, including all requisite plumbing associated therewith, to prevent fats, oils and grease generated from Tenant's business operations at the Premises from entering and clogging the sanitary sewer system of the Property (the foregoing in (ii) herein is defined hereinafter as the "Grease Trap"). Tenant's installation of the Grease Trap shall be in strict accordance with criteria dictated by Landlord in its reasonable judgment and all applicable laws, codes, regulations and ordinances of governmental authorities, and shall be subject to all provisions of the Lease relating to construction of, and alterations to, the Premises, including but not limited to the requirement to obtain Landlord's approval of plans and specifications before proceeding with installation.

Landlord, at Landlord's expense, shall clean those portions of the exhaust system serving the Premises, but located outside of the Premises, on a periodic basis to prevent such exhaust systems from dripping onto the roof of the Property, if required by any applicable governmental authorities, and in accordance with the requirements of Section 11(g) above.

The Grease Trap shall be properly maintained, operated, and cleaned, repaired and (if reasonably necessary) replaced periodically by Tenant at its sole cost and expense, in accordance with criteria dictated by Landlord in its reasonable judgment and all applicable laws, building codes, regulations and ordinances of governmental authorities and any replacement of the Grease Trap shall be in accordance with the requirements herein for the installation thereof. Tenant shall dispose of all cooking grease, oils, fats and filters generated from its business operations at the Premises, which shall be disposed of in strict compliance with the maintenance and disposal standards and procedures established from time to time by Landlord in its reasonable judgment

and all applicable Federal, State and local laws, building codes, regulations and ordinances in their sole judgment.

In the event Tenant fails to install, maintain, clean, repair or replace the Grease Trap as required herein, Landlord shall, after providing written notice to Tenant and thirty (30) days to cure, have the right, but not the obligation, to install, maintain, clean, repair or replace such Grease Trap, as applicable in or upon the Premises and Tenant shall, within ten (10) days of written notice, reimburse Landlord all costs and expenses incurred by Landlord in connection with the installation, maintenance, cleaning, repair or replacement of such item, plus an additional five percent (5%) of such costs and expenses to reimburse Landlord its administrative overhead excluding executive salaries. Notwithstanding the foregoing, the Tenant shall have the right to cure beyond thirty (30) days if such cure cannot reasonably be completed within thirty (30) days and it is diligently pursuing such cure.

In addition to the foregoing, Tenant shall at its expense properly ventilate the Premises in accordance with the approved plans so that adjoining tenants shall not be disturbed or disrupted by odors emanating from the Premises, but subject to the obligations of Landlord with respect to the cleaning and maintenance of portions of the exhaust system serving the Premises as set forth in this Section 11(j) and Section 11(g) above. Provided that Landlord performs such obligations, then if Tenant fails to properly ventilate the Premises as required herein, Landlord shall, after providing written notice to Tenant and thirty (30) days to cure, have the right, but not the obligation, to cause the Premises to be properly ventilated and Tenant shall immediately upon demand reimburse Landlord all costs and expenses incurred by Landlord to ventilate the Premises, plus an additional sum equal to five percent (5%) of such costs to reimburse Landlord its administrative overhead excluding executive salaries. Notwithstanding the foregoing, the Tenant shall have the right to cure beyond thirty (30) days if such cure cannot reasonably be completed within thirty (30) days and it is diligently pursuing the same.

(k) Provided that Tenant is not in default under this Lease beyond applicable notice and cure periods and is open and operating in the Premises for the Davio's Restaurant Use, Landlord shall not enter into a lease for any space in the Property with any tenant which will be permitted to operate primarily for purposes of a high-end, fine dining sit-down restaurant serving primarily steaks (the "Restricted Use"). Notwithstanding the foregoing, the Restricted Use shall not be applicable to any existing leases or other agreements in effect at the Property (as the same may be amended, modified, or extended) and/or to any assignees, subtenants, licensees, concessionaires, or other parties permitted to operate in the premises subject to such existing leases.

12. COMMON AREAS.

(a) Tenant and Tenant's customers, employees and visitors shall have the right, in common with all others granted similar rights by Landlord, to the nonexclusive use of all Retail Common Areas provided by Landlord from time to time for the Property.

(b) Landlord shall have the right to operate, manage, equip, light, repair and maintain the Property in such manner as Landlord shall in Landlord's sole discretion determine so long that it does not materially and adversely interfere with the Tenant's business. Landlord reserves

the right in its sole discretion to modify, alter, remove, reduce, close and redesign the Property including, without limitation, any buildings or other improvements therein; to make changes, additions, alterations and improvements to the Property and/or any buildings or other improvements therein; to construct install, remove, reconfigure, or otherwise alter or change the Common Areas (or any portion thereof) and/or any buildings or other installations in the Property, including the parking areas, if any; and to use the Common Areas for promotional or sales activities. Landlord shall have the right to operate or to permit tenants to operate a valet parking service, notwithstanding anything which might be to the contrary in this Lease and Tenant shall have the right to operate a valet parking service at Tenant's cost.

13. UTILITIES.

(a) Tenant shall promptly pay for utilities rendered or furnished to the Premises from the date Landlord delivers possession of the Premises to Tenant and continuing throughout the term of this Lease, including water, electricity, sewer charges, telephone and gas. In the event that water is not metered and charged directly against the Premises, Tenant will pay to the Landlord within thirty (30) days after receipt of an invoice, water and sewer charges at city rates for the amount of water registered during the term of this Lease by the re-registering meter connected with the water pipes supplying the Premises, all water charges resulting from any overhead sprinkling system and any costs incurred by Landlord to read said meters.

(b) To the extent permitted by applicable Legal Requirements, Landlord shall have the right from time to time (i) to contract for utility services for the Premises and Property from any company providing such service, or from any agent, supplier or contractor selected by Landlord; and/or (ii) to provide and furnish any such utility to the Premises (in which event the cost of such utilities shall be reasonably competitive); and Tenant shall accept the same therefrom to the exclusion of all others. Tenant shall have no right to contract independently for any utility service to the Premises. Landlord shall not be liable for any permanent or temporary interruption or termination of utility services nor shall any of Tenant's obligations under this Lease be affected by any such interruption or termination of utility services. Tenant shall maintain sufficient heat within the Premises at all times to prevent the freezing of pipes and other damage to the Premises.

14. COMPETITION. Tenant agrees, so long as this Lease shall remain in effect, that Tenant (or any member of Tenant's family or any parent, subsidiary, affiliate, officer, director or shareholder of Tenant if Tenant is a corporation, or any partner, member, beneficiary or other owner, if Tenant be another type of entity) will not within a radius of ten (10) miles of the perimeter of the Property either directly or indirectly own, operate or be financially interested in, with or without others, a business-like or similar to the business permitted to be conducted pursuant to this Lease. Without limiting Landlord's remedies (which will include, without limitation, injunction), in the event Tenant should violate this covenant, Landlord may at its option include the Gross Sales of such other store in the Gross Sales transacted in the Premises for the purpose of computing Overage Rent due hereunder. The provisions of this Section shall survive the termination of this Lease or the reentry into the Premises by Landlord resulting from a breach of this Lease by Tenant; provided, however, that Tenant's obligations under this Section shall terminate on the later of the date Tenant shall vacate the Premises or the expiration of the original term and any option periods duly exercised by Tenant.

15. RULES AND REGULATIONS. Landlord reserves the right to and Tenant agrees that Landlord may at any time and from time to time for the general welfare of the Property, the avoidance of nuisance, or the maintenance of a good reputation, safety, order and cleanliness in the Premises and at the Property, impose reasonable rules and regulations of general application governing the conduct of tenants in the Property and the use of the Premises or Common Areas. Tenant agrees to comply with and perform any and all such rules and regulations imposed by Landlord as if they had existed and been attached hereto at the time of execution of this Lease. The rules and regulations in force and effect at the time of the execution of this Lease and which may be supplemented or amended by Landlord at any time and from time to time are attached hereto as Exhibit C, marked "Rules and Regulations," and made a part of this Lease as if expressly written herein.

16. ALTERATIONS; REMOVAL OF IMPROVEMENTS BY TENANT; MECHANIC'S LIENS AND ROOF.

(a) Tenant shall not make any alterations, changes or improvements to the Premises, interior or exterior, or structural without first obtaining Landlord's prior written consent which consent (i) shall not be unreasonably withheld with respect to interior, nonstructural alterations, which do not adversely affect any utility system serving any other portion of the Property and which comply with all Legal Requirements, and (ii) may be withheld by Landlord in its sole discretion, if such consent is not subject to item (i) herein. Tenant upon request of Landlord shall submit to Landlord plans and specifications prepared by a licensed architect showing all of the alterations, changes or improvements Tenant desires to make. Tenant shall revise (and re-revise if necessary) said plans and specifications in accordance with Landlord's comments. Tenant shall pay all costs and expenses in connection with any alterations, changes and improvements made by or through Tenant, and Tenant shall make such alterations, changes and improvements in a good and workmanlike manner, in accordance with all Legal Requirements, Exhibit E and Exhibit E-1. Tenant shall perform all such work in accordance with the terms and conditions of Section 10(c) above. Prior to the making of such alterations, changes and improvements, Tenant shall procure all necessary permits and builder's risk insurance covering such alterations during the period of construction.

Tenant shall have the right, upon written notice delivered by Tenant to Landlord prior to the commencement by Tenant of any alterations permitted herein, to require that Landlord perform all or any portion of such alterations (which portion shall be referred to herein as the "Landlord Alterations Work"). Upon such election by Tenant, (i) Landlord and Tenant shall execute an amendment to this Lease and/or a separate agreement providing for the performance by Landlord of the Landlord Alterations Work, (ii) Landlord shall perform the Landlord Alterations Work upon the same terms and conditions as Tenant is required to perform such work pursuant to this Section 16, and (iii) Tenant shall pay to Landlord, on a monthly basis, an amount equal to all costs incurred by Landlord in performing the Landlord Alterations Work, together with a fee to Landlord in an amount equal to five percent (5%) of all such costs.

(b) Except as otherwise provided, all signs, furnishings, trade fixtures and equipment installed in or on the Premises by Tenant and paid for by Tenant shall remain the property of Tenant and shall be removed by Tenant upon the expiration of the term or earlier termination of this Lease. Tenant shall repair any damage caused by such removal and shall restore the

Premises to its condition prior to installation. If Tenant shall not have removed all of such property upon the expiration of the term or termination of this Lease, Landlord shall have the right to treat such remaining property as abandoned and keep all or any portion thereof for Landlord's account or dispose of all or any portion of such property in any way determined by Landlord at Tenant's expense; and Tenant shall reimburse Landlord for the cost of such disposal. Notwithstanding the foregoing, all floor and wall coverings, sinks, vanities, light fixtures, and the complete electrical, plumbing, air conditioning and heating systems, including ducts, diffusers, grills, controls and all other equipment and parts related to such systems, shall be and remain in the Premises at all times for the benefit of Landlord.

(c) Tenant shall not do or suffer anything to be done whereby the Premises and/or the Property may be encumbered by any mechanics' liens or any other liens. Tenant shall, whenever and as often as any such liens are filed against the Premises and/or the Property purporting to be for labor or material furnished or to be furnished to Tenant, discharge the same of record within thirty (30) days after the date of such filing by payment, bonding or otherwise as provided by law. Tenant, upon reasonable notice and request in writing from Landlord, shall also defend Landlord, at Tenant's sole cost and expense with counsel reasonably approved by Landlord, any action, suit or proceeding which may be brought on or for the enforcement of any such lien and will pay any damages and satisfy and discharge any judgments entered in such action, suit or proceeding and save harmless Landlord from any liability, claim, damages, costs and expenses, including reasonable attorneys' fees resulting therefrom. In the event Tenant fails to procure the discharge, as aforesaid, of any such lien, Landlord may, without further notice, procure the discharge thereof by bonding, payment or otherwise, and all costs and expenses to which Landlord may be put in obtaining such discharge shall be paid by Tenant as additional rent within thirty (30) days after notice from Landlord of the amount due.

(d) Prior to the commencement of any labor, work or furnishing of materials by Tenant and/or its contractor(s) in or to the Premises, Tenant shall file a notice of commencement as set forth in 49 P.S. § 1501.3. Tenant shall provide the identifying number for the project as assigned to Landlord. Within forty-five (45) days of the actual completion of the project, Tenant shall file a notice of completion as set forth in 49 P.S. § 1501.4. Notwithstanding anything to the contrary contained in Pennsylvania Code or in this Lease, Tenant shall not be deemed to be a partner, joint venturer or agent of Landlord; and in no event shall any lien resulting from Tenant's improvements to the Premises encumber Landlord's underlying estate. Tenant agrees that it shall not enter into any contract (and that its contractors will not enter into any subcontracts) for alterations, improvements or repairs to the Premises unless the following language is included in such contract:

"A subcontractor that fails to file a Notice of Furnishing on the Department of General Services publicly accessible Internet website as required by the act of August 24, 1963 (P.L. 1175, No. 497), known as the Mechanics' Lien Law of 1963, may forfeit the right to file a mechanics lien. It is unlawful for a searchable project owner, searchable project owner's agent, contractor or subcontractor to request, suggest, encourage or require that a subcontractor not file the required notice as required by the Mechanics' Lien Law of 1963."

(e) Tenant, its agents, employees or contractors shall not go upon the roof for any reason, including any repairs, maintenance or replacements of Tenant's heating, air conditioning, or other equipment on the roof without first obtaining Landlord's prior written approval, including approval of the contractor to perform such work, and subject to Landlord's right to require its roofing contractor to do any work affecting the roof. Tenant shall not make or permit any installations through, to or on the roof, ceiling, or any portions of the building above the Premises without first obtaining Landlord's prior written consent to the work to be done and the contractor to perform such work; and Landlord shall have the right to require Tenant to use Landlord's roofing contractor in connection with any work affecting the roof of the Premises. Tenant shall do nothing which will affect Landlord's roofing warranties, recognizing that Landlord's roofing warranty may be jeopardized by any use of the roof by Tenant, its employees, agents or contractors.

17. REPAIRS BY LANDLORD. Except as otherwise provided in this Lease, Landlord will, within a reasonable time after receipt of written notice from Tenant of the necessity of such repair, keep the parking areas, roof, structural portions and exterior of the Premises in good and tenantable condition and repair during the term of this Lease. Except as set forth herein, Landlord shall not be required to make any other improvements or repairs of any kind with respect to the Premises and appurtenance thereto. Notwithstanding the above, Tenant shall pay to Landlord the cost of any repairs and replacements to any portion of the Premises or the building in which the Premises are located necessitated by reason of: (a) the acts, neglect, fault or default of Tenant, or Tenant's agents, employees, invitees, contractors or customers, (b) the operations of Tenant or the storage of Tenant's merchandise within the Premises, (c) acts of trespassers, thieves or other unauthorized persons who enter or attempt to enter the Premises or the building in which the Premises are located, and (d) structural and exterior work done or installed by Tenant. Further, and notwithstanding anything in this Lease to the contrary, Tenant shall pay to Landlord the cost of all repairs, alterations and replacements to the property which Landlord is required to maintain which may be required as the result of repairs, alterations, other improvements or installations made by Tenant or the agent of Tenant.

Notwithstanding the foregoing, if both (A) during the last three (3) lease years of the term (and/or the last three (3) years of any Extended Term) Tenant shall be required to incur an expense in excess of Ten Thousand Dollars (\$10,000.00) with respect to any individual repair, maintenance, or replacement obligation herein and (B) the item to be repaired, maintained, and/or replaced by Tenant shall be the heating, ventilating and air conditioning system, hot water, electrical, plumbing, or other mechanical installations serving the Premises (each an "Extraordinary Expense"), then the cost of such Extraordinary Expense shall be paid as follows:

- (i) If the need for the Extraordinary Expense arises as a result of either (A) the negligence or willful misconduct of Tenant (and/or Tenant's Permittees), (B) the failure of Tenant to perform Tenant's maintenance, repair, and replacement obligations as required under Section 18 below, and/or (C) any defect in materials or workmanship as a result of any improvements constructed by Tenant as part of Tenant's Work and/or any alterations for the Premises thereafter, then Tenant, at Tenant's sole cost and expense, shall perform and pay for such Extraordinary Expense.

- (ii) If the Extraordinary Expense is not the obligation of Tenant under item (i) above, then Tenant shall deliver written notice to Landlord of the need for such Extraordinary Expense, together with a copy of the estimate (the "Extraordinary Expense Estimate") of the cost to perform the work subject to the Extraordinary Expense (the "Extraordinary Expense Work"). Within ten (10) business days after receipt of such notice and the Extraordinary Expense Estimate from Tenant, Landlord shall notify Tenant of Landlord's election either (A) to authorize Tenant perform the Extraordinary Expense Work, in accordance with the Extraordinary Expense Estimate or (B) to have Landlord's contractor perform the Extraordinary Expense Work. If Landlord does not deliver such written notice to Tenant within such ten (10) business day period, then Landlord shall be deemed to have elected alternative (A) above.

If Tenant performs the Extraordinary Expense Work as permitted herein, then on the date this Lease expires or terminates, provided that Tenant is not then in default under this Lease, Landlord shall pay to Tenant Landlord's Share (defined below) of an amount equal to the lesser of (i) the reasonable, out-of-pocket costs and expenses incurred by Tenant in performing the Extraordinary Expense Work, or (ii) Landlord's Share of the Extraordinary Expense Estimate.

If Landlord elects to perform the Extraordinary Expense Work, then Tenant shall pay to Landlord, within thirty (30) days after receipt of written demand therefor, the reasonable, out-of-pocket costs and expenses incurred by Landlord in performing the Extraordinary Expense Work (subject to the later payment by Landlord to Tenant, if applicable, of Landlord's Share of such cost upon the expiration or termination of this Lease as set forth above).

If Landlord elects to perform the Extraordinary Expense Work but fails to perform the Extraordinary Expense Work within thirty (30) days after the date of such election by Landlord, then if Landlord fails to commence the Extraordinary Expense Work within ten (10) days after receipt of written notice of such failure from Tenant, and/or to diligently pursue the Extraordinary Expense Work to completion thereafter, Tenant shall have the right to perform the Extraordinary Expense Work on Landlord's behalf, and in such event Landlord shall pay to Tenant Landlord's Share of the reasonable, out-of-pocket costs and expenses incurred by Tenant in performing the Extraordinary Expense Work on Landlord's behalf, notwithstanding the Extraordinary Expense Estimate, on the date this Lease expires or terminates in the same manner as though Landlord had originally elected to allow Tenant to perform the Extraordinary Expense Work as set forth above.

- (iii) For purposes of this Section 17, "Landlord's Share" shall mean a fraction, the numerator of which shall be the number of months then remaining in

the term of this Lease from and after the date on which the Extraordinary Expense Work is performed, and the denominator of which shall be the useful life of Extraordinary Expense Work, which shall be determined in accordance with generally accepted accounting principles.

18. REPAIRS BY TENANT. Except as provided in Section 17 above, Tenant, at Tenant's expense, shall make all other repairs and replacements to keep and maintain the Premises in good condition and repair, including, but not limited to, the heating, ventilating, and air-conditioning system and the hot water, electrical, and other mechanical installations within and/or exclusively serving the Premises, whether or not located within the Premises; the plumbing and sewer systems within and/or exclusively serving the Premises, whether or not located within the Premises; the exterior and interior portions of all doors including door checks and hardware; the store front of the Premises; all windows including hardware and other appurtenances, and all other glass, the floor slab and ceiling; and Tenant shall promptly replace all broken or cracked glass. All items that Tenant shall replace during the term of this Lease shall be new and be of equal or better quality, specifications, type and style than the item being replaced. Tenant will maintain and keep in good condition and repair the storefront and all work done or installed by Tenant, including but not limited to Tenant's Work and any alterations approved by Landlord pursuant to Section 16. Tenant shall not permit any waste, damage or injury to the Premises and the Common Areas wear and tear excepted. Tenant shall keep in full force and effect a contract with a reputable heating contractor approved in advance in writing by Landlord for not less than the semi-annual inspection, maintenance, and repair of the air-conditioning and heating systems serving the Premises, including oiling, filter changes, required compliance with any environmental laws, rules, regulations, ordinances with respect to such systems, and similar maintenance and minor repair procedures. Tenant shall furnish a current copy of said contract to Landlord during the entire term of this Lease. Tenant shall further keep the Premises clean, attractive and free of rubbish, rubble, debris, insects, rodents and other pests.

19. WAIVER OF LIABILITY BY TENANT. Landlord and Landlord's agents and employees shall not be liable for and Tenant waives and releases all claims for damage to person or property, loss of business, loss due to business interruption, loss of income, and any and all other losses or damages sustained by Tenant or any person claiming through Tenant resulting from any accident or occurrence in or upon the Premises or any other part of the Property.

Said waiver shall include but not be limited to claims resulting from the following whether or not Landlord may have any obligation under this Lease to repair or maintain any of the following: (a) any equipment or appurtenances becoming out of repair; (b) injury done or occasioned by wind; (c) any defect in or failure of plumbing, heating, cooling or air conditioning equipment, sprinkler system, electric wiring, gas, pipes and installations, stairs, rails or walks; (d) broken glass; (e) the backing up of any sewer pipe or downspout; (f) the bursting, leaking or running of any pipe, line, tank, water closet, waste pipe, or drain upon or about the Premises; (g) the escape of steam or hot water; (h) water, snow or ice coming through the roof, skylight, trap door, stairs, walks, foundation, exterior walls, or any other place upon or near the Premises; (i) the falling of any fixture, plaster or stucco; and (j) any act, omission or negligence of trespassers, thieves, or cotenants or of other persons or occupants of the building, or adjoining or contiguous buildings or of owners of adjacent or contiguous property.

20. WAIVER OF CLAIMS AND SUBROGATION. Notwithstanding anything in this Lease to the contrary, Landlord (on behalf of itself and all parties claiming through Landlord) and Tenant (on behalf of itself, Tenant's Permittees, and all parties claiming through Tenant) agree, that, in the event the Property, the Premises, or the fixtures, equipment, furnishings or merchandise or other personal property therein, are damaged or destroyed by fire or other casualty that is coverable under special form, difference in conditions, and business income insurance policies, or is covered by the insurance of Tenant or Landlord, or the sublessees, assignees or transferees of Tenant or other occupants of the Property (notwithstanding any deductible or self-insurance), regardless of cause or origin, including negligence, the rights, if any, of Landlord (or any party claiming through Landlord) or Tenant (on behalf of itself, Tenant's Permittees, and all parties claiming through Tenant) against the party causing such damage or destruction or against the employees, agents, sublessees or licensees of such party, with respect to such damage or destruction and with respect to any loss resulting therefrom, including the interruption of the business or the loss of income, are hereby waived.

Each insurance policy carried by Landlord or Tenant shall be written in a manner to provide that the insurance company waives all right of recovery by way of subrogation against Landlord or Tenant, as the case may be, in connection with any loss or damage to the Property or the Premises caused by any of the perils covered by such insurance. For purposes of this Section 20 any deductible portion, self-insurance (to the extent permitted under this Lease), and/or coinsurance maintained by other parties shall be deemed to be "insurance".

21. INDEMNIFICATION AND INSURANCE.

(a) Tenant will indemnify Landlord and save Landlord harmless from and against any and all claims, actions, damages, liability, cost and expense in connection with loss, damage or injury to persons or property occurring in, on or about, or arising out of the Premises or any loading platforms, or the use or occupancy thereof, or the conduct or operation of Tenant's business, or in connection with any construction or alterations, or due to water leakage, or occasioned wholly or in part by any act or omission of Tenant, or Tenant's Permittees.

(b) Tenant shall meet the insurance requirements, at its own expense, and keep in full force and effect the insurance coverages more particularly described on Exhibit H attached hereto and made part hereof.

(c) Tenant agrees to pay to Landlord any increase in each of Landlord's insurance policies or in the insurance policies insuring any other tenant in the Property resulting from the particular use or occupancy of the Premises by Tenant (or by Tenant's Permittees).

22. SIGNS; ADVERTISING.

(a) Tenant agrees not later than the date upon which Tenant shall open for business to erect an appropriate sign advertising Tenant's business on the portion of the exterior of the Premises designated by Landlord for the placement of Tenant's sign in conformity with Exhibit E and Exhibit E-1 of this Lease. The size, type, design, wording, appearance and location of all signs shall require Landlord's written approval prior to installation. All signs shall comply with

Exhibit E and Exhibit E-1 and all requirements of appropriate governmental authority and all necessary permits or licenses shall be obtained by Tenant prior to erecting said sign. Tenant shall maintain all signs in good condition and repair, and shall save the Landlord harmless from injury to person or property arising from the erection, use, maintenance, or removal of said signs. Upon vacation of the Premises, Tenant shall remove all signs and repair any damage caused thereby.

(b) No sign, advertisement, notice or other lettering shall be exhibited, inscribed, painted or affixed on any part of the outside of the Premises, or on the building of which the Premises are a part, or on the exterior or interior side of any window, or inside the Premises if located within twelve (12) inches of the storefront glazing, nor shall any awning, antenna, satellite dish, or other projecting thing be attached to the roof or outside walls of the Premises or the building of which the Premises are a part, without first obtaining the Landlord's written approval in each instance.

(c) Display lights and lighting for Tenant's storefront and exterior sign shall be operated until at least 11:00 p.m. daily except on Sundays when they may be turned off at 6:00 p.m.

(d) All of Tenant's local advertising and promotional activities in any form of medium which includes the address of any of Tenant's or its affiliates' businesses shall include the name of the Property, initially, The Icon, and its address. Landlord reserves the right to change the name of the Property from time to time.

23. ASSIGNMENT AND SUBLETTING.

(a) This Lease shall not be assigned, mortgaged, pledged, encumbered or in any other manner transferred by the Tenant, voluntarily or involuntarily, by operation of law or otherwise, nor shall the Premises or any part thereof be sublet, licensed, granted to a concessionaire or used or occupied by anyone other than Tenant without first obtaining the written consent of Landlord. Notwithstanding anything contained in this Lease to the contrary, Tenant shall have the right, without the necessity of obtaining Landlord's consent, without payment of any assignment fee, and without triggering right of Landlord to terminate the lease and recapture possession of the Premises, to assign this Lease or sublet the Premises in the event of (a "Permitted Transfer") (1) a merger or consolidation of Tenant with another corporation or legal entity, or (2) a sale of all or substantially all of the stock, assets, or stores of Tenant in connection with its parent company's transfer of ownership of all of the Davio's Northern Italian Steakhouses (or all restaurants owned by a permitted successor or assignee at such time) upon the following conditions: (a) Tenant shall not be in default under the Lease beyond any applicable cure period on the effective date of the assignment or sublease; (b) such assignee or sublessee shall have a net worth and financial condition equal to or greater than the net worth and financial condition of Tenant (or of any then-existing guarantor of this Lease, if any guaranty is then in effect) as of the date of this Lease or as of the date of such assignment, whichever is greater; (c) Landlord shall have consented to any other matter with respect to such proposed assignment or sublease which is subject to Landlord's consent under this Lease (such as, but not limited to, proposed alterations to the Premises under Section 16 above); and (d) on or before the effective date of the assignment or

sublease Tenant shall (i) notify Landlord in writing of (A) the effective date of the assignment or sublease, (B) the facts placing such assignment or sublease within the provisions of this paragraph, and (C) any changes in the address for billings and legal notices sent to Tenant, the assignee or sublessee (ii) provide Landlord with a written assumption agreement wherein such assignee or sublessee agree to assume in writing for the benefit of Landlord all of the Tenant's obligations under the Lease, and (iii) provide evidence reasonably satisfactory to Landlord that such assignee or sublessee is a legal entity in good standing in the state of its origin and is authorized to do business in the state where the Leased Premises are located, which evidences the satisfaction of the requirements set forth above, and which includes the information required under Section 23(b) below.

(b) If at any time during the term of this Lease Tenant shall desire to assign this Lease or to sublet all or any portion of the Premises, Tenant shall deliver written notice thereof to Landlord, and if such proposed assignment or sublease is not a Permitted Transfer, then together with such written notice Tenant shall deliver to Landlord the name and business experience of the proposed assignee or sublessee, complete financial statements of said assignee or sublessee, and the rent and other terms of the proposed assignment or subletting.

(c) If Tenant shall at any time during the term of this Lease sublet all or any part of said Premises or assign this Lease, Tenant shall nevertheless remain fully liable under all of the terms, covenants, and conditions of this Lease; provided, however, that with respect to an assignment of this Lease, if the assignee (or a guarantor of such assignee who provides a guaranty to Landlord in form and substance acceptable to Landlord in its sole discretion) has a net worth and financial condition which is equal to or greater than that of Tenant or any then-existing guarantor of this Lease (including Guarantor), if any then exist, whichever is greater, then Tenant shall be released from any liability for any obligations under this Lease which are first to be performed from and after the effective date of such assignment, provided that Tenant (and any previous guarantor of this Lease, if any then existed) shall remain liable and responsible for the performance of both (A) all obligations and/or liabilities which shall have accrued under this Lease (and/or under any applicable guaranty) as of the effective date of such assignment, and/or (B) all obligations and/or liabilities of this Lease which are applicable to periods prior to the effective date of such assignment (such as, but not limited to, reconciliations of Additional Charges and/or indemnity obligations). Upon any assignment of this Lease, the assignee shall execute and deliver to Landlord, in form and substance acceptable to Landlord, an agreement by which such assignee assumes all obligations of Tenant under this Lease. Each sublease shall provide that it is subject to the terms and conditions of this Lease. If this Lease is assigned, or if the Premises or any part thereof are subleased or occupied by anybody other than Tenant, Landlord may collect from the assignee, sublessee or occupant any rent or other charges payable by Tenant under this Lease and apply the amount collected to the rent and other charges herein reserved, but such collection by Landlord shall not be deemed an acceptance of the assignee, sublessee or occupant as a tenant nor a release of Tenant from the performance by Tenant under this Lease.

(d) Notwithstanding Landlord's consent to any assignment, subletting or other activity specified in this Section 23, any subsequent assignment, subletting or activity shall remain subject to the terms and conditions of this Section 23.

24. DAMAGE OR DESTRUCTION.

(a) If (i) either the Premises or buildings (taken in aggregate) on the Property Site shall be damaged to the extent of more than twenty-five percent (25%) of the cost of replacement thereof, respectively, or (ii) the proceeds of Landlord's insurance paid to Landlord as a result of the damage shall be insufficient to pay fully for the cost of replacement of the Premises and the buildings in which they are located, or (iii) the Premises or said buildings shall be damaged as a result of a risk which is not covered by Landlord's insurance, or (iv) the Premises shall be damaged in whole or in part during the last two (2) years of the Lease term or of any renewal term hereof, or (v) the building of which the Premises are a part shall be damaged to the extent of fifty percent (50%) or more of the cost of replacement thereof, whether or not the Premises shall be damaged, or (vi) Landlord's mortgagee elects to require Landlord to make advanced payments upon or full payment of the outstanding mortgage indebtedness for the Property from the proceeds recoverable under Landlord's insurance policies with respect to such damage; then in any such event Landlord may terminate this Lease by notice given within ninety (90) days after such event and upon the date specified in such notice, which shall not be less than thirty (30) days nor more than ninety (90) days after the giving of said notice, this Lease shall terminate and come to an end, and Tenant shall vacate and surrender the Premises to Landlord. If the casualty, repairing or rebuilding shall render the Premises untenable, in whole or in part, a proportionate abatement of the Gross Rent and all Additional Charges shall be allowed from the date when the damage occurred until completion of the repairs or rebuilding or, in the event Landlord elects to terminate this Lease, until said date of termination. Said proportion shall be computed on the basis of the ratio which the amount of floor space rendered untenable bears to the total floor space of the Premises.

(b) If this Lease shall not be terminated as provided in Section 24(a) above, Landlord, at Landlord's expense, shall, following the receipt of the insurance proceeds, proceed with the repair or restoration of the Premises (excluding any leasehold improvements and betterments) to place the damaged Premises (excluding leasehold improvements and betterments) in substantially the same condition they were in immediately preceding the damage or destruction. At the completion of Landlord's work, Tenant shall promptly replace Tenant's stock-in-trade, trade fixtures, leasehold improvements and betterments (including floor covering), equipment and furnishings, and, if Tenant is not open for business, reopen for business.

25. EMINENT DOMAIN.

(a) In the event that the Premises, the Property, or any part thereof shall at any time after the execution of this Lease be taken for public or quasi-public use or condemned under eminent domain or conveyed under threat of such a taking or condemnation, Tenant shall not be entitled to claim, or have paid to Tenant any compensation or damages whatsoever for or on account of any loss, injury, damage, taking or conveyance of any right, interest or estate of Tenant and the Tenant hereby relinquishes and hereby assigns to Landlord any rights to any such damages. Landlord shall be entitled to claim and have paid to it for the use and benefit of Landlord all compensation and damages for and on account of or arising out of such taking, condemnation or conveyance without deduction from the amount thereof for or on account of any right, title, interest or estate of Tenant in or to said property. Tenant upon request of

Landlord will execute any and all releases, transfers or other documents as shall be required by such public or quasi-public authority to effect and give further evidence and assurances of the foregoing.

(b) In case of any taking, condemnation or conveyance referred to in this Section, then if and when there is an actual permanent taking or conveyance of physical possession of any material portion of the Premises or more than twenty-five percent (25%) of the Property, other than in connection with a road widening, then Landlord may cancel and terminate this Lease by giving notice to Tenant within ninety (90) days after such an actual taking or conveyance of physical possession. If this Lease is not terminated following any of said actual takings or conveyances of any part of the Premises, then Landlord shall at Landlord's own expense, but only to the extent of an equitable proportion of the award (after payment of all of Landlord's costs and expenses (including reasonable attorney's fees) with respect to such taking, condemnation or conveyance) for the portion of the Premises taken (excluding any award of land), make such repairs to the Premises as are necessary to constitute a complete architectural and tenantable unit. In the event of a permanent partial taking or conveyance of the Premises a proportionate allowance shall be made in the Gross Rent based on the proportion of the Premises remaining as compared to the original Premises.

26. LANDLORD'S REMEDIES UPON DEFAULT.

(a) Events of Default. If either:

(i) Tenant shall fail to make any payment of rent or other sums of money under this Lease within ten (10) days when due or shall fail to furnish written statements of Gross Sales within ten (10) days when due, or

(ii) Tenant shall fail to perform or abide by any of the other terms, covenants or conditions of this Lease, or

(iii) An execution or attachment shall be issued against Tenant or any of Tenant's property (including the leasehold estate created by this Lease) and shall not be vacated or removed by court order, surety bond, or otherwise.

then, and in any case, Landlord shall give to Tenant a written notice specifying the default that has occurred and if (A) the default is of the type referenced in subpart (i) or (iii) above and it shall not be fully cured within ten (10) calendar days after the giving of such notice, or (B) the default is of the type referred to in subpart (ii) above and it shall not be fully cured within ten (10) calendar days after the giving of such notice (or if the default is of such a nature that it cannot be cured within such time, Tenant does not commence within ten (10) calendar days and proceed with due diligence to cure such default), Landlord may at its option exercise any one or more of the rights and remedies provided by this Lease, specifically including but not limited to those rights remedies specifically in Section 26(b).

(b) Modified Notice Required. Notwithstanding the provisions of Section 26(a), if either:

(i) Tenant shall fail to make any payment of Rent under this Lease promptly when due or Tenant shall default in the performance of any of the other terms, covenants or conditions of this Lease and on two or more prior occasions during the same year Landlord shall have given Tenant a notice of default under Section 26(a) because of Tenant's failure to make the payments of Rent or to observe any similar term, covenant or condition; or

(ii) To the full extent permissible under the U.S. Bankruptcy Code, specifically, § 365 thereof (11 U.S.C. 365) or any successor thereto, if Tenant shall file a voluntary petition in bankruptcy or take the benefit of any insolvency act or be dissolved or adjudicated a bankruptcy, or if a receiver shall be appointed for its business or its assets and the appointment of such receiver is not vacated within sixty (60) days after such appointment, or if it shall make an assignment for the benefit of its creditors, or

(iii) Tenant begins or continues any alteration to the Premises not permitted hereunder; or

(iv) Tenant shall vacate or abandon the Premises or if Tenant shall fail to operate its business from the Premises for ten (10) consecutive days, or

(v) Tenant at any time uses the Demised Premises or any portion thereof for any illegal or unlawful purpose, or commits or permits the commission therein of any act made punishable by fine or imprisonment, or

(vi) Tenant shall fail to maintain any insurance required to be maintained by it hereunder, or

(vii) Tenant's default is such that Landlord's rights might be prejudiced if they were required to give Tenant the notice and the opportunity to cure provided by Section 26(a),

then, and in any such case, Landlord may exercise any one or more of the rights and remedies set forth in Section 26(c) hereof after giving Tenant notice and initial ten (10) days' opportunity to cure a default occurring under subsections (i) through (vii) of this Section 26(b).

(c) Rights and Remedies. The rights and remedies available to Landlord in the event of any default or threatened default on the part of Tenant as described in Sections 26(a) and 26(b) above ("*Event of Default*") for as long as such Event of Default is continuing are as follows:

(i) Landlord may terminate this Lease by written notice to Tenant. The termination shall be effective as of the date specified by Landlord in its notice of termination and Tenant waives any and all rights it may have to receive any other notice to vacate the Premises. Landlord may thereafter lease the Premises for such price and on such terms as may be immediately obtainable and hold Tenant liable not only for the rent due (including all Gross Rent and Additional Charges) and other obligations incurred to the date of termination but also for the excess, if any, of the net amount that would have been realized by Landlord under this Lease

after the termination over the net amount realized from the new tenant or tenants after deduction of all costs incurred by Landlord in reletting the Premises (including, without limitation, remodeling costs, brokerage fees, reasonable attorneys' fees, experts' fees and all costs and the like) and in collecting the rent in connection therewith.

(ii) Landlord in law or in equity may terminate this Lease, or without terminating this Lease terminate Tenant's right of possession, and in either event Landlord may re-enter the Premises by summary proceedings, self-help or otherwise, with or without process of law, and dispossess the Tenant and expel, remove or put out Tenant or any other person or persons occupying the Premises using such force as may be necessary to do so at Tenant's expense without being liable for prosecution or any claim for damages.

(iii) Landlord may declare immediately due and payable the Gross Rent for the entire unexpired Term of this Lease, including, in each case, any additional extension periods for which Tenant shall have become obligated. Landlord may proceed to effect collection of such accelerated rent together with any other rent and other obligations that may be or become due by Tenant hereunder.

(iv) Landlord shall have the right to maintain a single action against Tenant for recovery as they come due of all damages including, without limitation, amounts equal to the rents and other charges and sums payable under this Lease so that such court shall retain jurisdiction for a period equal to the remainder of the term of this Lease if this Lease would not have been terminated. Such court shall obtain judgments for such rents and other amounts due as and when said rents and other charges and sums are payable under this Lease; and Landlord shall not be required to file separate monthly actions or legal proceedings or to wait until this Lease would have expired. In addition, at Landlord's election, Landlord shall have the right to obtain a judgment for the total of all of the rents and other charges and sums due to Landlord at the time of the termination of this Lease or Tenant's right of possession, plus an amount equal to all rents and other charges due under this Lease for the remainder of the term hereof, minus the fair rental value of the Premises at the time such judgment is obtained. If Landlord shall have leased the Premises to another tenant, then the rental payable by that tenant shall be deemed to be the fair rental value of the Premises for this purpose. In addition, upon any termination of this Lease, Landlord may recover from Tenant the worth at the time of such termination of the Gross Rent and Additional Charges reserved in this Lease for the remainder of the term of this Lease. In no event shall Tenant be entitled to any payment or credit if any subsequent tenant pays rent and other charges in excess of those required to be paid under this Lease. In computing damages or rental due under this Lease, the value of the Overage Rent for any period subsequent to termination of this Lease or Tenant's right of possession shall be included and shall be an amount equal to the highest Overage Rent which was payable by Tenant during the term of this Lease.

(v) Any obligation imposed by law upon Landlord to relet the Premises shall be subject to the right of Landlord to develop and maintain the "tenant mix" Landlord determines, in Landlord's sole discretion, to be appropriate for the Property; and the failure of Landlord to relet, or if relet, to collect the rent under such reletting, shall not release or affect Tenant's liability for damages hereunder. In any event, if the Premises and other stores in the

Property are vacant, Landlord shall not be required to show or lease the Premises until the other stores are leased. Subject to foregoing, Landlord shall use good faith efforts to relet the Premises, provided that in no event shall Landlord be obligated to devote greater efforts to relet the Premises over efforts Landlord devotes to relet other vacant space in the Property, and Landlord shall not be required to give priority to Landlord's efforts to relet the Premises over other vacant space then existing in the Property. In addition, with respect to such good faith efforts, in no event shall Landlord have any obligation to pay for any improvements to the Premises unless Tenant pays for the same.

(vi) Landlord may demand specific performance or a mandatory injunction requiring Tenant to perform his obligations, or both.

(vii) Landlord's damages in the event of Tenant's default under this Lease shall include, in addition to any other damages set forth in this Lease or permitted at law or in equity, all of Landlord's expenses incurred with respect to such default including, (i) reasonable attorneys' fees, commissions, rental concessions to new tenants; (ii) the cost of any repairs, renovations or alterations of the Premises; and (iii) the unamortized portion (straight lined over the original term of this Lease) of any Construction Allowance paid to Tenant.

(viii) If the obligation to pay Gross Rent and/or Additional Charges has not commenced prior to the termination of this Lease as a result of Tenant's default, whether or not possession of the Premises has been delivered to Tenant, Landlord shall have the right to determine the date that such obligations would most likely have commenced if Tenant had not defaulted, and the date so determined by Landlord shall be used in the calculation of damages payable by Tenant to Landlord as a result of such default.

(ix) No surrender of the Premises shall be effected by Landlord's acceptance of the keys of the Premises, or by any other means whatsoever, unless the same is evidenced by Landlord's written agreement to accept surrender of the Premises; and if Landlord does accept surrender of the Premises, Tenant's obligations to pay rents and to perform the duties and provisions of this Lease required of Tenant hereunder shall not be released or terminated but shall continue for the remainder of the term of this Lease.

(x) Landlord may cure the default and demand of Tenant repayment of all amounts expended or advanced by Landlord in connection therewith within ten (10) days written notice, plus, (a) if Landlord performs repair or maintenance work required by Tenant, 12% of the actual cost thereof for overhead expense excluding executive salaries, and (b) interest thereon on the whole amount due.

(xi) This is a Lease of real property in the Building within the meaning of Subsection 365(b)(3) of the Bankruptcy Code, 11 U.S.C., § 101 et seq. ("**Bankruptcy Code**"). Tenant covenants and agrees that if, at any time, Tenant is adjudged bankrupt or insolvent under the laws of the United States or any state thereof, or makes a general assignment for the benefit of creditors, or if a receiver of Tenant's property in the Demised Premises is appointed and shall not be discharged within sixty (60) days of such appointment, then Landlord may, at its option, declare this Lease terminated and shall forthwith be entitled to immediate possession of the

Demised Premises except that if any such proceedings are pursuant to the Bankruptcy Code, then Landlord shall be entitled to all the rights and remedies accorded landlords, including without limitation those set forth in said Bankruptcy Code. If this Lease is assigned to any person or entity pursuant to the provisions of the Bankruptcy Code, any and all monies or other considerations payable or otherwise to be delivered in connection with such assignment, shall be paid or delivered to Landlord, shall be and remain the exclusive property of Landlord, and shall not constitute property of Tenant or of the estate of Tenant within the meaning of the Bankruptcy Code. Any and all monies or other considerations constituting Landlord's property under the preceding sentence not paid or delivered to Landlord shall be held in trust for the benefit of Landlord and be promptly paid or delivered to Landlord. Any person or entity to which this Lease is assigned pursuant to the provisions of the Bankruptcy Code shall be deemed without further act or deed to have assumed all off the obligations arising under this Lease on and after the date of such assignment. Any such assignee shall, upon demand, execute and deliver to Landlord an instrument confirming such assignment.

(xii) Landlord may exercise the rights granted in Section 15.14 hereof.

(xiii) Landlord may exercise any other right or remedy accorded as a matter of law.

(xiv) **POWER TO CONFESS JUDGMENT**

(1) TENANT HEREBY AUTHORIZES AND EMPOWERS THE PROTHONOTARY OR ANY ATTORNEY OF ANY COURT OF RECORD WITHIN THE COMMONWEALTH OF PENNSYLVANIA OR ELSEWHERE TO APPEAR FOR TENANT, AND, WITH OR WITHOUT DECLARATION FILED, CONFESS JUDGMENT AGAINST TENANT AND IN FAVOR OF THE LANDLORD, AS OF ANY TERM, FOR THE UNPAID OBLIGATIONS HEREUNDER, INCLUDING WITHOUT LIMITATION ALL ACCRUED AND UNPAID INTEREST CHARGES, RENTS OR OTHER CHARGES PAYABLE HEREUNDER, WHETHER BY ACCELERATION OR OTHERWISE, WITH COSTS OF SUIT AND REASONABLE ATTORNEY FEES, WITH RELEASE OF ALL ERRORS, WAIVING ALL LAWS EXEMPTING REAL OR PERSONAL PROPERTY FROM EXECUTION, TO THE EXTENT THAT SUCH LAWS MAY LAWFULLY BE WAIVED. THE AUTHORITY AND POWER TO APPEAR AND CONFESS JUDGMENT AGAINST TENANT SHALL NOT BE EXHAUSTED BY THE INITIAL EXERCISE THEREOF AND MAY BE EXERCISED AS OFTEN AS THE LANDLORD SHALL FIND IT NECESSARY AND DESIRABLE AND THIS LEASE SHALL BE A SUFFICIENT WARRANT THEREFOR. LANDLORD MAY CONFESS ONE OR MORE JUDGMENTS IN THE SAME OR DIFFERENT JURISDICTIONS FOR ALL OR ANY PART OF THE AMOUNT OWING HEREUNDER, WITHOUT REGARD TO WHETHER JUDGMENT HAS THERETOFORE BEEN CONFESSED ON MORE THAN ONE OCCASION FOR THE SAME AMOUNT. IN THE EVENT ANY JUDGMENT CONFESSED AGAINST TENANT HEREUNDER IS STRICKEN OR OPENED UPON APPLICATION BY OR ON TENANT'S BEHALF FOR ANY REASON, LANDLORD IS HEREBY AUTHORIZED AND EMPOWERED TO AGAIN APPEAR FOR AND CONFESS JUDGMENT AGAINST TENANT FOR ANY PART OR ALL

OF THE AMOUNTS OWING HEREUNDER, AS PROVIDED FOR HEREIN, IF DOING SO WILL CURE ANY ERRORS OR DEFECTS IN SUCH PRIOR PROCEEDINGS.


Initial

(2) WHEN THIS LEASE SHALL HAVE EXPIRED OR BE TERMINATED BY REASON OF THE BREACH OF ANY PROVISION HEREOF, IT SHALL BE LAWFUL FOR ANY PROTHONOTARY OR ANY ATTORNEY OF ANY COURT OF RECORD WITHIN THE COMMONWEALTH OF PENNSYLVANIA TO APPEAR FOR TENANT TO FILE AN AGREEMENT FOR ENTERING IN ANY COURT OF COMPETENT JURISDICTION AN AMICABLE ACTION FOR CONFESSION OF JUDGMENT IN EJECTMENT AGAINST TENANT AND ALL PERSONS CLAIMING UNDER TENANT FOR THE RECOVERY BY LANDLORD OF POSSESSION OF THE LEASED PREMISES, FOR WHICH THIS LEASE OR A TRUE AND CORRECT COPY THEREOF SHALL BE A SUFFICIENT WARRANT, WHEREUPON, IF LANDLORD SO DESIRES, A WRIT OF POSSESSION MAY ISSUE FORTHWITH, WITHOUT ANY PRIOR WRIT OR PROCEEDINGS WHATSOEVER, AND PROVIDED THAT IF FOR ANY REASON AFTER SUCH ACTION SHALL HAVE BEEN COMMENCED THE SAME SHALL BE TERMINATED AND POSSESSION REMAIN IN OR BE RESTORED TO TENANT, LANDLORD SHALL HAVE THE RIGHT UPON ANY SUBSEQUENT DEFAULT OR DEFAULTS, OR UPON THE TERMINATION OR EXPIRATION OF THIS LEASE AS HEREINBEFORE SET FORTH, TO BRING ONE OR MORE AMICABLE ACTION OR ACTIONS AS HEREINBEFORE SET FORTH TO RECOVER POSSESSION BY CONFESSION OF JUDGMENT AS AFORESAID. THE AUTHORITY AND POWER TO APPEAR AND CONFESS JUDGMENT IN EJECTMENT AGAINST TENANT SHALL NOT BE EXHAUSTED BY THE INITIAL EXERCISE THEREOF AND MAY BE EXERCISED AS OFTEN AS THE LANDLORD SHALL FIND IT NECESSARY AND DESIRABLE AND THIS LEASE SHALL BE A SUFFICIENT WARRANT THEREFOR. LANDLORD MAY CONFESS ONE OR MORE JUDGEMENTS IN EJECTMENT IN THE SAME OR DIFFERENT JURISDICTIONS TO RECOVER POSSESSION, WITHOUT REGARD TO WHETHER JUDGMENT HAS THERETOFORE BEEN CONFESSED ON MORE THAT ONE OCCASION FOR POSSESSION. IN THE EVENT ANY JUDGEMENT CONFESSED AGAINST TENANT HEREUNDER IS STRICKEN OR OPENED UPON APPLICATION BY OR ON TENANT'S BEHALF FOR ANY REASON, LANDLORD IS HEREBY AUTHORIZED AND EMPOWERED TO AGAIN APPEAR FOR AND CONFESS JUDGEMENT IN EJECTMENT AGAINST TENANT TO RECOVER POSSESSION, AS PROVIDED FOR HEREIN, IF DOING SO WILL CURE ANY ERRORS OR DEFECTS IN SUCH PRIOR PROCEEDINGS.

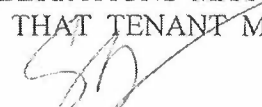

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(3) TENANT HEREBY AUTHORIZES AND EMPOWERS THE PROTHONOTARY OR ANY ATTORNEY OF ANY COURT OF RECORD OR THE SHERIFF (OR THE LAWFUL DESIGNEE OF THE SHERIFF) WITHIN ANY COUNTY OF THE COMMONWEALTH OF PENNSYLVANIA OR ELSEWHERE, TO TAKE ALL ACTION ALLOWED BY OR PROVIDED FOR IN THE PENNSYLVANIA RULES OF

CIVIL PROCEDURE OR OTHER APPLICABLE RULES OF CIVIL PROCEDURE TO EXECUTE ON ANY JUDGMENT ENTERED AGAINST TENANT PURSUANT TO ONE OR BOTH CONFESSIONS OF JUDGMENT SET FORTH ABOVE WITHOUT PRIOR NOTICE OR HEARING OF ANY NATURE WHATSOEVER, WAIVING ALL LAWS EXEMPTING REAL OR PERSONAL PROPERTY FROM EXECUTION TO THE EXTENT THAT SUCH LAWS MAY LAWFULLY BE WAIVED. NO SINGLE EXERCISE OF THE FOREGOING POWER TO EXECUTE ON JEDGMENTS WITHOUT A HEARING SHALL BE DEEMED TO EXHAUST THE POWER, WHETHER OR NOT ANY SUCH EXERCISE SHALL BE HELD BY ANY COURT TO BE VALID, VOIDABLE OF VOID, BUT THE POWER SHALL CONTINUE UNDIMINISHED AND IT MAY BE EXERCISED FROM TIME TO TIME AS OFTEN AS LANDLORD SHALL ELECT.


Initial

(4) BY SIGNING THIS LEASE, TENANT HEREBY ACKNOWLEDGES THAT TENANT HAS READ THIS LEASE (INCLUDING, WITHOUT LIMITATION, THE CONFESSION OF JUDGMENT AND THE POWER TO EXECUTE ON A JUDGMENT WITHOUT A HEARING), HAS HAD THE OPPORTUNITY TO HAVE THIS LEASE REVIEWED BY LEGAL COUNSEL, UNDERSTANDS AND AGREES TO THE PROVISIONS CONTAINED HEREIN, INCLUDING, WITHOUT LIMITATION, THE POWERS TO EXECUTE ON JUDGMENT WITHOUT A HEARING, AND UNDERSTANDS THAT THE POWER TO CONFESS JUDGMENT WITHOUT A HEARING AND TO EXECUTE ON A JUDGMENT WITHOUT A HEARING CONSTITUTES A WAIVER OF RIGHTS TENANT OTHERWISE WOULD HAVE TO PRIOR NOTICE AND A HEARING BEFORE EXECUTION ON A JUDGEMENT, AND THAT THE OBLIGATIONS MAY BE COLLECTED FROM TENANT REGARDLESS OF ANY CLAIM THAT TENANT MAY HAVE AGAINST LANDLORD OR OTHERWISE.


Initial

Landlord's election of a right or remedy shall not be irrevocable. If Landlord elects a right or remedy in respect of a default, it may at any time thereafter elect (and shall be entitled to enforce) one or more different rights or remedies in respect of the default. By way of example (but not limitation), if Landlord elects to accelerated Rent under subpart (ii) or (iii) of this Section 26(c) and Tenant does not pay all of the accelerated Rent promptly on demand, at any time thereafter Landlord may elect (in lieu of enforcing collection of the accelerated Rent or the unpaid part thereof) to terminate this Lease as of any date selected by Landlord, collect the Rent to the date of termination and enforce its rights and remedies under subpart (i) or any other provisions hereof.

(d) No Waiver. Failure on the part of Landlord to complain of any action or non-action on the part of Tenant, no matter how long the same may continue, shall never be deemed to be a waiver by Landlord of any of its rights hereunder. Further, it is covenanted and agreed that no waiver at any time of any of the provisions hereof by Landlord shall be construed as a waiver at any subsequent time of the same provisions. The consent or approval by Landlord to or of any action by Tenant requiring Landlord's consent or approval shall not be deemed to

waive or render unnecessary Landlord's consent or approval to or of any subsequent similar act by Tenant.

(e) Attorneys' Fees. If, on account of a continued default or breach by Tenant of Tenant's obligations under the terms of this Lease, after any notice as may be required hereunder, it shall be necessary for Landlord to employ one or more attorneys to enforce or defend any of Landlord's rights or remedies hereunder, then in such event, any reasonable amounts incurred by Landlord, including but not limited to reasonable attorneys' fees, experts' fees and all other costs, shall be paid by Tenant.

27. **HOLDOVER BY TENANT.** If Tenant remains in possession of the Premises after the expiration of the tenancy created hereunder and without the execution of a new lease, Tenant shall be deemed to be occupying the Premises as a tenant at will and subject to all of the rents and provisions of this Lease in effect on the day before the expiration of the tenancy, except those relating to term and except that the Gross Rent shall be one hundred fifty (150%) percent of the amount payable during the last month of the Lease term, without prejudice to any damages or other rights Landlord may have against Tenant for Tenant's failure to vacate the Premises on the date required hereunder. Said at will tenancy may be terminated by Landlord or Tenant by giving written notice to the other, in which event this Lease shall terminate as of the date set forth in such written notice of termination (which shall not be less than ten (10) days after the date of delivery of such notice); except that neither Landlord nor Tenant shall be required to give notice with respect to vacation of the Premises at the end of the term or upon the earlier termination of this Lease.

28. **RIGHTS OF LANDLORD.**

(a) Landlord and Landlord's agents shall have the right upon twenty-four (24) hours of written notice unless if it is for an emergency to (i) show the Premises to prospective purchasers, mortgagees and lessees provided that the Tenant or its representative is present; (ii) go upon and inspect the Premises and every part thereof; (iii) at Landlord's option cure Tenant's defaults and/or make emergency repairs or other repairs which are the obligation of Tenant hereunder; and (iv) construct other portions of the Property and to make repairs, alterations and additions to the Premises or the Property; and Landlord shall not be liable to Tenant in connection with the exercise of Landlord's rights, pursuant to this Section.

(b) If Landlord shall make any payments on behalf of Tenant or otherwise cure any default of Tenant, or if Landlord shall make repairs to the Premises which are Tenant's obligation under this Lease (whether or not an emergency situation exists) than any amounts so paid or incurred by Landlord are agreed and declared to be "additional rent" and shall be due and payable to Landlord from Tenant upon submission to Tenant of an invoice, bill or statement therefor.

(c) Landlord shall not be deemed to be in default of any provision of this Lease unless Tenant shall have given written notice specifying the default to Landlord and Landlord shall not have cured such default within thirty (30) days after receipt thereof; provided, however,

that such thirty-day period shall be extended to the extent reasonably required to cure such default.

29. SUBORDINATION; ATTORNMENT.

(a) Landlord reserves the right to demand and obtain from Tenant, and Tenant shall deliver to Landlord within ten (10) days after receipt of such demand, a waiver of priority or subordination of this Lease, in recordable form, subordinating Tenant's Lease in favor of any mortgages, refinancings, replacements, renewals, modifications, extensions or consolidations of financings placed upon the Premises from time to time by the Landlord; provided that Landlord shall procure from any mortgagees an agreement providing in substance that so long as Tenant shall faithfully discharge the obligations on its part to be kept and performed under the terms of this Lease, Tenant's tenancy will not be disturbed by any default under such mortgage, and Tenant agrees that this Lease shall remain in full force and effect even though default in the mortgage may occur. Tenant agrees to attorn to any ground lessor or any mortgagee or purchaser in a foreclosure sale as Landlord under this Lease.

(b) Tenant covenants and agrees that Tenant shall within ten (10) days after Landlord's request execute in recordable form and deliver to Landlord whatever instruments may be required to acknowledge and further evidence the subordination of Tenant's Lease and/or the attornment by Tenant to such lessor, mortgagee or purchaser. If Tenant within ten (10) days after submission of any such instrument fails to execute the same, Landlord is hereby authorized to execute the same as attorney-in-fact for Tenant.

(c) Any mortgagee of all or any part of the Property Site may at any time elect to have this Lease have priority over its mortgage, by executing unilaterally an instrument subordinating its mortgage to this Lease, or placing a clause of such subordination in its mortgage and recording the same or in any pleadings filed by such mortgagee, in which events this Lease shall have priority over said mortgage.

30. PROPERTY EASEMENTS AND RESTRICTIONS. Tenant covenants to comply with all easements, agreements, covenants and restrictions pertaining to the Property. This Lease is and shall be subject and subordinate to any easements, covenants, restrictions, and agreements between or among the various owners of the fee or any leasehold interest in the fee of the Property Site and/or between or among the owners of leasehold interests in the fee of lands adjoining the Property Site, affecting the Property.

31. NO WAIVER BY LANDLORD. No waiver of any of the terms, covenants, provisions, conditions, rules and regulations required under this Lease and no waiver of any legal or equitable relief or remedy of Landlord against Tenant shall be implied by the failure of Landlord to assert any rights or for any other reason, unless said waiver shall be in writing signed by the Landlord. No waiver by Landlord or forgiveness of performance by Landlord in respect to one or more tenants of the Property constitutes a waiver or forgiveness of performance in favor of Tenant herein, or any other tenants; nor shall the forgiveness of performance of any one or more of the terms, provisions, conditions, rules and regulations of this Lease be claimed or pleaded by Tenant to excuse a subsequent failure of performance of any of the terms, provisions, conditions,

covenants, rules and regulations of this Lease. The failure of Landlord to provide an annual statement pursuant to Section 9(b) or any other statement or bill required under this Lease shall not be construed as a waiver of Landlord's right to bill and collect any sums or amounts due under this Lease.

32. VACATION OF PREMISES. Tenant shall deliver up and surrender to Landlord possession of the Premises, including all Tenant's Work (and all replacements thereof), all fixtures permanently attached to the Premises during the term (except such fixtures and improvements as Landlord shall direct Tenant to remove) and all property required to be left in the Premises pursuant to this Lease upon the expiration of this Lease or its termination in any way, in the same condition as the Premises shall be when Tenant opens for business (ordinary wear and tear only excepted) and Tenant shall deliver the keys to the office of Landlord or Landlord's agent.

33. SHORT FORM LEASE. This Lease shall not be recorded, but a Memorandum of Lease describing the property herein demised, giving the term of this Lease and renewal rights, if any, and referring to this Lease, may be recorded by both parties if requested by either party. All governmental charges and/or taxes attributable to the execution or recording of this Lease shall be charged to and be paid by the party recording the Memorandum of Lease.

34. RENT DEMAND; ACCORD AND SATISFACTION.

(a) After the service of any notice, the commencement of any suit, or the rendering of a final judgment therein, Landlord may receive and collect any rent due and such collection or receipt shall not operate as a waiver of or affect or prejudice any such notice, suit or judgment.

(b) No payment by Tenant or receipt by Landlord of a lesser amount than the rental herein stipulated shall be deemed to be other than on account of the earliest stipulated rent nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction. Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy provided for in this Lease or available at law or in equity.

35. NOTICES. Any notice or consents required to be given by or on behalf of either party upon the other shall be in writing and shall be given by sending them by FedEx or other recognized one-day national delivery service which obtains a receipt for delivery, or by mailing such notices or consents by registered or certified mail addressed (i) to Landlord c/o Robert L. Stark Enterprises, Inc., 1350 West 3rd Street, Cleveland, Ohio 44113, Attn: Robert L. Stark, and with a copy at the same address Attn: Legal Department, and (ii) to Tenant at Davio's Corporate Offices, P. O. Box 786, Sagamore Beach, Massachusetts 02562 (and/or to c/o Restaurant Accounting, 41 Meetinghouse Lane, Suite 7, Sagamore Beach, Massachusetts 02562) with a copy to James L. Rudolph, Esquire, Rudolph Friedmann, 92 State Street, Boston, Massachusetts 02109 or at such other address as may be specified from time to time, in writing, delivered to the other party. Notwithstanding the foregoing, in the event of emergency, notice to Tenant may be sent to the Premises. Notice shall be deemed received on the date of delivery as set forth in the records of the national delivery service or the return receipt card, as the case may be, the date

that such notice shall be rejected if rejected by the addressee, or the date of first attempted delivery of such notice, whichever shall be the first to occur.

36. APPLICABLE LAW AND CONSTRUCTION. The laws of the Commonwealth of Pennsylvania shall govern the validity, performance and enforcement of this Lease. Any provision of this Lease which is contrary to a law which the parties cannot legally waive or contract against (such, for example, as antitrust laws) is and shall be void and not binding on either party hereto; provided, however, that the invalidity or unenforceability of any provision of this Lease shall not affect or impair the Lease or any other provision. The submission of this document for examination does not constitute an offer to lease, or a reservation of or option for the Premises, and becomes effective only upon execution and delivery thereof by Landlord and Tenant. All negotiations, considerations, representations and understandings between the parties are incorporated herein and may be modified or altered only by agreement in writing between the parties; and this Lease supersedes any prior agreements or understandings between the parties. Any previous agreements, understanding, warranties or representations made by a party or the agents, employees or contractors of such party shall not be binding on such party unless expressly set forth in this Lease. Landlord makes no representations or warranties as to the composition of all or any portion of the Property or the Property, or other tenants or occupants thereof which may be contemplated by Tenant. To the maximum extent permitted by law, Tenant hereby waives the benefit of all warranties, express or implied, with respect to the Premises including, without limitation, any implied warranty that the Premises are suitable for any particular purpose. In making any yearly calculations required hereunder, Landlord may utilize the convention of a 360 day year. The headings of the several paragraphs contained herein are for convenience only and do not define, limit or construe the contents of such paragraphs. This Lease has been negotiated by Landlord and Tenant and the Lease, together with all of the terms and provisions hereof, shall not be deemed to have been prepared by either Landlord or Tenant but by both equally. Notwithstanding the termination of this Lease for any reason whatsoever, including, without limitation, as the result of the mutual agreement of the parties or the default by Tenant, the provisions relating to the indemnity by Tenant of Landlord and the covenants regarding liability insurance shall survive such termination. Time is declared to be of the essence in all provisions of this Lease. Unless a provision of this Lease specifically requires that a party shall not unreasonably withhold consent or approval, such party shall have the right in its sole discretion to deny such consent or approval. The word "including" shall be deemed to mean "including, without limitation" unless otherwise set forth in the sentence in which such word is contained. If this Lease is executed by more than one person or entity as "Tenant," each such person or entity executing this Lease as Tenant shall be jointly and severally bound and liable hereunder. Notwithstanding the Commencement Date of this Lease, Tenant shall comply with all of the obligations and duties of Tenant hereunder following execution of this Lease, except for the payment of rent and other sums which shall be due and payable at the times set forth in this Lease.

37. TRANSFER OF LANDLORD'S INTEREST; LIABILITY OF LANDLORD.

(a) If Landlord should sell or otherwise transfer Landlord's interest in the Premises, Tenant agrees that Landlord shall thereafter have no liability to Tenant under this Lease or any modification or amendment thereof or extensions or renewals thereof, except for such liabilities

which might have accrued prior to the date of such sale or transfer of Landlord's interest. The Landlord shall be liable under this Lease only while owner of the Premises.

(b) If Landlord shall fail to perform any covenant, term or condition of this Lease upon Landlord's part to be performed or if Landlord shall be liable to Tenant in any way arising out of this Lease, or pursuant to statute, law, ordinance or regulation, or under the common law, whether arising out of contract, tort or otherwise, and, as a consequence, if Tenant shall recover a money judgment against Landlord, such judgment shall be satisfied only out of the proceeds received at a judicial sale upon execution and levy against the right, title and interest of Landlord in the Property Site. If Landlord is an individual, corporation, a trustee of a trust or a partnership (general or limited), or limited liability company, there shall be no personal liability on the part of the individual, corporation, the trustees of said trust, the beneficiaries of said trust, the partnership, or the partners of the partnership, or the members, and any such liability shall be limited only to the interest of the Landlord in the Property Site.

38. NO PARTNERSHIP. Landlord is not and shall not become by this Lease or by any rights granted or reserved herein a partner or joint venturer of or with Tenant in the conduct of Tenant's business or otherwise.

39. MORTGAGE FINANCING.

(a) Tenant will cooperate with Landlord so that Landlord will be able to sell, transfer or lease the Property or to procure mortgage financing for the Property. Within ten (10) days after request by Landlord, Tenant agrees to execute and deliver to Landlord estoppel certificate or offset letter as required by Landlord or by Landlord's mortgage lenders, which estoppel certificate and/or offset letter shall be addressed to Landlord, Landlord's mortgage lender, and/or any party designated by Landlord, and applications for any lease guarantee insurance Landlord may wish to acquire for this Lease. The estoppel letter shall certify the date of this Lease and any amendments, that Landlord is not in default of any of the terms and provisions of this Lease or specifying the provisions as to which Landlord is in default if Landlord shall be in default, that Landlord has performed all inducements required of Landlord in connection with this Lease including any construction obligations, or specifying any inducements which have not been fulfilled by Landlord, the date to which rent has been paid, and any other matters which Landlord or its proposed lenders may reasonably require.

(b) Tenant also agrees to deliver to Landlord, on an annual basis on or before April 1 of each calendar year during the term of this Lease, a correct and complete copy of Tenant's most current financial statement including, without limitation, its most current profit and loss statement and balance sheet (together with the most current financial statements with respect to any guarantor of this Lease, if any guarantor then exists). Landlord agrees that it shall keep such information confidential except as such information is requested by any present or future mortgagee, and/or by any prospective mortgagee or purchaser of the Property.

(c) Tenant agrees to deliver to any of Landlord's mortgagees and to the holder of any trust deed concerning the Premises, a copy of any notice of default served upon Landlord, provided that prior thereto Tenant has been notified, in writing (by way of Notice of Assignment

of Rents and Leases, or otherwise) of the address of such mortgagees and/or trust deed holders. Anything contained herein to the contrary notwithstanding, Tenant agrees that if Landlord shall fail to cure the default recited in such notice of default within the time provided for herein, then such mortgagees and/or trust deed holders shall have an additional thirty (30) days within which to cure such default; provided, however, that if such default cannot be cured within said thirty (30) days, then such mortgagees and/or trust deed holders shall have such additional time as may be necessary to cure such default, if within said thirty (30) days such mortgagee and/or trust deed holder have commenced and are diligently pursuing the cure of such default (including, but not limited to, commencement of foreclosure proceedings if necessary to effect such cure). This Lease shall not be terminated by Tenant while such remedies and cures are being so pursued.

40. QUIET ENJOYMENT. Landlord hereby covenants and agrees that if Tenant shall perform all of the covenants and agreements herein stipulated to be performed on Tenant's part, Tenant shall at all times during the continuance hereof have peaceable and quiet enjoyment and possession of the Premises without hindrance from Landlord or any person or persons lawfully claiming the Premises by or through Landlord, subject, however, to the terms of this Lease and to all mortgages, and agreements to which this Lease is subordinate.

41. BROKER. Tenant warrants and represents that Tenant has dealt with no real estate broker, agent or finder in connection with this transaction except The Carter Group LLC who shall be paid in accordance with a separate agreement; and Tenant agrees to indemnify and save Landlord harmless from and against any and all liabilities, costs, causes of action, damages and expenses, including, without limitation, attorneys' fees, for any claims made by any real estate broker, agent or finder with respect to this Lease.

42. FORCE MAJEURE. If either Landlord or Tenant is prevented or hindered from timely satisfying any provisions set forth herein because of a shortage or inability to obtain materials or equipment, strikes or other labor difficulties, governmental restrictions, fire, casualties, acts of God, or any other cause beyond such party's reasonable control, said party shall be permitted an extension of time of performance by the number of days during which such performance was prevented or hindered; provided, however, that this paragraph shall not apply to the payment of rent or other monies by Landlord or Tenant, nor shall the provisions of this paragraph postpone the date that rent is payable pursuant to this Lease.

43. AUTHORITY TO SIGN LEASE. If Tenant is a corporation, limited liability company or a partnership (general or limited), each person(s) signing this Lease as an officer, member, manager, or partner of Tenant represents to Landlord that such person(s) is authorized to execute this Lease without the necessity of obtaining any other signature, that the execution of this Lease has been properly authorized, and that this Lease is fully binding on the Tenant.

44. INTENTIONALLY DELETED.

45. OPTION TO EXTEND TERM. If Tenant shall not be in default beyond the applicable cure period under any of the terms and provisions of this Lease, shall be operating for the Permitted Use and if this Lease shall be in full force and effect, then Tenant shall have the option to extend the term of this Lease for two (2) successive periods of five (5) years each (each an

“Extended Term”), upon the same terms and provisions set forth in this Lease, except that the annual Gross Rent and monthly installments thereof and the Gross Sales Base shall be as follows:

Lease Year	Annual Gross Rent	Monthly Installment	Rent Per Square Foot	Gross Sales Base
11-15	\$584,152.80	\$48,679.40	\$61.60	\$7,000,000.00
16-20	\$654,232.17	\$54,519.35	\$68.99	\$7,000,000.00

To exercise said option, Tenant shall give written notice which must be sent to Landlord at least nine (9) months prior to the beginning of the applicable Extended Term.

46. GUARANTY. In consideration of Landlord’s execution of this Lease, Tenant shall cause Steve DiFillippo (“Guarantor”) to execute and deliver to Landlord, concurrently with the execution and delivery of this Lease by Tenant to Landlord, the Guaranty in the form of Exhibit G attached hereto and made a part hereof. If Landlord does not receive the executed Guaranty from Guarantor concurrently with the execution and delivery of this Lease by Tenant, Landlord shall have the right to terminate this Lease upon written notice to Tenant.

47. PATRIOT ACT; OFAC COMPLIANCE. Neither Tenant nor any of its affiliates, nor any of their respective partners, members, shareholders or other equity owners, and none of their respective employees, officers, directors, representatives or agents is, nor shall prior to the Commencement Date, become, a person or entity with whom Landlord is restricted from doing business under the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, H.R. 3162, Public Law 107 56 (commonly known as the “USA Patriot Act”) and Executive Order Number 13224 on Terrorism Financing, effective September 24, 2001, and regulations promulgated pursuant thereto, or under any statute, executive order (including the September 24, 2001 Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action (collectively, the “Anti-Terrorism Laws”), including persons and entities named on the Office of Foreign Asset Control Specially Designated Nationals and Blocked Persons List (collectively, the “Prohibited Persons”). Tenant will not knowingly contract with or otherwise engage with any dealings or transactions otherwise associated with any Prohibited Persons in connection with the use or occupancy of the Premises.

48. JOB REPORTING. Tenant acknowledges that the Project is financed, in part, through the Urban Redevelopment Authority’s (URA) Tax Incremental Financing (TIF) program and through certain other governmental programs. Within thirty (30) days after written request therefor (but no more often than two (2) times in any twelve (12) month period), Tenant agrees to fill out and return to Landlord a TIF employment reporting form as reasonably required by the applicable governmental program.

49. POWER OF ATTORNEY. The Tenant acknowledges and agrees that (a) this Lease contains one or more provisions, including the power to confess judgment provisions, authorizing the Landlord or other persons or entities, as applicable (the Landlord and such other persons or entities, acting in such capacity (are each an “Authorized Person”), to act as the

Tenant's attorney-in-fact or agent (collectively the "Power of Attorney"); (b) the purpose of the Power of Attorney is to give each Authorized Person broad powers to take any action which any Authorized Person may deem necessary or advisable to accomplish the purposes hereof and otherwise act in the name of the Tenant; (c) the Power of Attorney is coupled with an interest and, as such, any Authorized Person, in exercising any of its rights under the Power of Attorney is not a fiduciary of the Tenant; (d) any Authorized Person may exercise any of its rights under the Power of Attorney for the sole benefit if such Authorized Person, without regard to the interests of the Tenant; (e) the Power of Attorney shall in no way be construed as to benefit the Tenant; (f) no Authorized Person shall have any duty to exercise any powers granted by the Power of Attorney for the benefit of the Tenant or in the Tenant's best interest; (g) no Authorized Person shall have any duty of loyalty to the Tenant; (h) each Authorized person shall, to the extent exercisable, exercise any and all powers granted by the Power of Attorney solely for the benefit of such Authorized Person; (i) any rights the Tenant may have under 20 Pa.C.S. §§ 5601 – 5612, as amended (the "POA Act") are hereby forever waived and relinquished; (j) without limiting the generality of the foregoing, (A) the Power of Attorney shall not be construed in accordance with the provisions of the POA Act, and (B) no Authorized Person shall have any of the duties described in 20 Pa.C.S. § 5601.3(b); (k) the Power of Attorney is irrevocable; and (l) the Tenant has read and understands this Section 49.

50. LIQUOR PERMIT; APPROVALS.

(a) Upon the execution of this Lease, Tenant shall, within thirty (30) days, make an application with the Pennsylvania Liquor Control Board ("Liquor Control") for a liquor permit that will allow for the retail sale by Tenant of beer, wine, and spirituous liquor during Tenant's intended hours of operation (the "Liquor Permit") and diligently pursue such application until issuance. If Tenant is unable to obtain the Liquor Permit within one hundred eighty (180) days from the Effective Date, then Tenant may, but shall not be obligated to, terminate this Lease upon written to Landlord within ten (10) days of the expiration of such one hundred eighty (180) day period, in which case this Lease shall terminate and neither party shall have any further liability to the other. Tenant may waive its right to terminate the Lease under this Section 50(a) at any time by providing written notice to Landlord. If Tenant does not exercise its termination right within the time period set forth above, then the right to terminate set forth in this Section 50(a) shall be deemed waived and this Lease shall continue in full force and effect.

Notwithstanding the foregoing, Landlord shall have the right, upon written notice to Tenant within fifteen (15) days after receipt of Tenant's written notice of termination pursuant to this Section 50(a), to elect to obtain the Liquor Permit on Tenant's behalf, and if Landlord shall deliver such written notice to Tenant, Tenant's notice of termination shall be of no further force or effect, and Landlord shall have a period of ninety (90) days, from and after the date of the delivery by Landlord to Tenant of such written notice, to attempt to obtain the Liquor Permit on Tenant's behalf. In such event, Tenant shall reasonably cooperate with Landlord in Landlord's efforts to obtain the Liquor Permit. If Landlord is unable to obtain the Liquor Permit within such ninety (90) day period, then this Lease shall terminate and be of no further force or effect as of the expiration of such ninety (90) day period.

(b) Promptly upon the approval by Landlord of Tenant's Plans, Tenant shall submit all required applications and shall diligently pursue obtaining all required Approvals to permit

both (i) the performance by Tenant of Tenant's Work and (ii) the use of the Premises for the Davio's Restaurant Use. If Tenant has been unable to obtain the Approvals as of the date which is one hundred and eighty (180) days after the Effective Date, then Tenant shall have the right to terminate this Lease upon written notice to Landlord. If Landlord does not receive such written notice from Tenant as of the expiration of such one hundred and eighty (180) day period, Tenant shall have no further right to terminate this Lease pursuant to this Section 50(b). Upon any termination of this Lease pursuant to this Section 50(b), this Lease shall terminate and neither party shall have any further liability to the other.

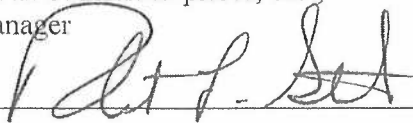
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IN WITNESS WHEREOF, the parties hereto set their hands to two (2) counterparts hereof, each of which shall have the same force and effect as if it were an original, this 10 day of April, 2018, as to Landlord, and this 6th day of April, 2018, as to Tenant.

LANDLORD:

441 SMITHFIELD STREET, LLC

By: Robert L. Stark Enterprises, Inc.,
its Manager

By: 

Name: Robert L. Stark

Title: President

TENANT:

441 SMITHFIELD PITTSBURGH LLC,

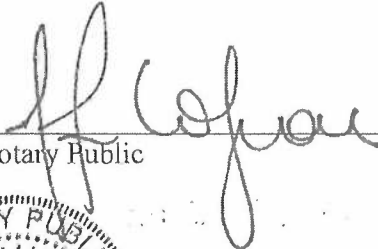
By: 

Name: STEVE DIFILIPPO

Title: CEO

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

The foregoing instrument was acknowledged before me, a Notary Public, this 10 day of April, 2018, by Robert L. Stark the President of Robert L. Stark Enterprises, Inc., Manager of 441 Smithfield Street, LLC, a Delaware limited liability company, on behalf of the limited liability company.



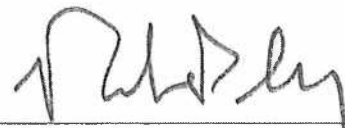
Notary Public



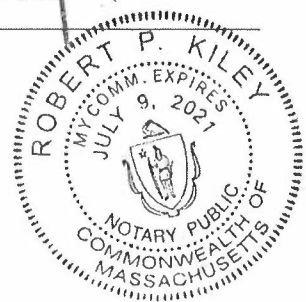
JENNIFER COLGROVE
Notary Public, State of Ohio
Recorded In Lake County
My Commission Expires
January 20, 2020

STATE OF MASS)
) SS:
COUNTY OF BARNSTABLE)

The foregoing instrument was acknowledged before me, a Notary Public, this 6TH day of APRIL, 2018, by STEVE DIFILLIPPO, the CEO of 441 Smithfield Pittsburgh LLC, a Pennsylvania limited liability company, on behalf of the limited liability company.



Notary Public



FIRST AMENDMENT TO LEASE

THIS FIRST AMENDMENT TO LEASE (this "First Amendment") is made and entered into as of this 11 day of October 2018 (the "Effective Date"), by and between 441 SMITHFIELD STREET, LLC, a Delaware limited liability company ("Landlord"), and 441 SMITHFIELD PITTSBURGH LLC, a Pennsylvania limited liability company ("Tenant").

RECITALS:

WHEREAS, Landlord and Tenant are parties to that certain Lease dated April 10, 2018, (the "Lease"); for those certain Premises, containing approximately 9,438 square feet, in The Icon on Smithfield, located in Pittsburgh, Pennsylvania; and

WHEREAS, Landlord and Tenant desire to further amend and modify certain terms and conditions of the Lease.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, agree as follows:

1. The foregoing recitals are incorporated herein by reference. Capitalized words used but not otherwise defined herein shall have the meanings ascribed to them in the Lease. In the event that the terms of this First Amendment conflict with the terms of the Lease, the terms of this First Amendment shall control.

2. **Section 3(b) – Term; Lease Year.** Section 3(b) of the Lease is hereby amended by deleting "December 1, 2019" and replacing it with "December 31, 2020".

3. **Section 10(a) – Construction of Premises.** Section 10(a) of the Lease is hereby amended by deleting the third sentence in its entirety and replacing it with the following:

"Within forty-five (45) days after Landlord notifies Tenant of completion of the demolition work, Tenant shall have plans and specifications (collectively, "Tenant's Plans") delivered to Landlord for Landlord's approval, in sufficient detail to obtain a building permit, prepared by Tenant's architect licensed in Pennsylvania, for all work and improvements to be constructed by Tenant in the Premises in order to initially open for the Davio's Restaurant Use, including the work set forth in Exhibit E ("Tenant's Work")."

4. **Section 10 – Construction of Premises.** Section 10 of the Lease is hereby amended by inserting the following additional provision:

"(f) As part of the Construction Allowance, Landlord hereby grants Tenant an allowance of \$1,896,600.00 for the improvement of the Premises (the "Tenant Improvement Allowance"), which shall be used solely to reimburse Tenant for the hard and soft costs and expenditures related to Tenant's completion of improvements to the Premises for the work detailed on attached Exhibit E (herein, "Tenant's Historic Work")."

(g) Tenant's construction and performance of Tenant's Historic Work and any other improvement, rehabilitation, construction or alteration performed by Tenant or Tenant's contractors during the term of this Lease shall be conducted in the Premises in accordance with the Applicable Rehab Standards and the requirements of Pennsylvania State Historic Preservation Office ("SHPO"). If Tenant or its agents, employees, assigns, contractors or affiliates violates any such standards or requirements, then Landlord shall have the right to enter the Premises and remedy such violation at Tenant's expense. Tenant acknowledges having received and reviewed the Applicable Rehab Standards and the SHPO requirements and Tenant has provided the same to its architect, contractors and other agents performing Tenant's Historic Work.

(h) In accordance with Section 10(e) herein, Tenant shall submit to Landlord a disbursement request ("Disbursement Request") prepared by Tenant or Tenant's contractor and in content acceptable to the Landlord. The Disbursement Request shall be in the form of AIA document G702 and shall include all supporting or associated paid itemized invoices, itemized receipts, contracts, lien releases, and lien waivers (or other proof of proper completion of Tenant's Historic Work or payment of contractors, materialmen or labors) that Landlord may reasonably request for itself or on behalf of the Landlord Parties. Any portion of the Tenant Improvement Allowance not applicable as a QRE and used by Tenant to complete Tenant's Historic Work or the Premises shall be retained by Landlord.

(i) Tenant's Historic Work and all alterations, additions, substitutions and improvements made and installed for Tenant, whether at Tenant's or Landlord's cost, shall be and remain Landlord's property. Tenant shall be responsible for the maintenance of Tenant's Historic Work in accordance with Applicable Rehab Standards and all such alterations, additions, substitutions and improvements made and installed by Tenant. Tenant shall not remove such additions and substitutions without the written consent of Landlord, except that Tenant's furniture, furnishings and trade fixtures may be removed.

(k) For purposes of this Section 10, the following terms used herein and in any other section of this Lease shall have the following definitions:

"Applicable Rehab Standards" means any provisions agreed to in the Federal Historic Tax Credit "Part 2" approval (as modified from time to time with the consent of the National Park Service) and the Secretary of the Department of the Interior's Standards for Rehabilitation (36 CFR 67) as and if applicable to any part of the Premises.

"Landlord's Accountants" means Novogradac & Company LLP or such other firm of independent certified public accountants with at least 10 years of demonstrated experience with Historic Tax Credits, as may be engaged by the Landlord.

"Code" means the Internal Revenue Code of 1986, as amended from time to time, or any corresponding provision or provisions of prior or succeeding law.

"Federal Historic Tax Credits" means the tax credit allowable pursuant to Section 47 of the Code for QREs incurred in connection with the "certified rehabilitation" of a "certified historic structure."

“*QREs*” means “qualified rehabilitation expenditures” as that term is defined in Section 47(c)(2) of the Code, as determined by Landlord’s Accountants.

“*Tenant’s Historic Work*” means portions of that work detailed on attached Exhibit E, which work shall be completed in accordance with plans and specifications approved by Landlord.

5. **Section 11(a) USE; OPERATION.** The first sentence of Section 11(a) is hereby deleted in its entirety and replaced with the following:

“(a) Tenant covenants that the Premises shall be initially opened for business for the operation of a “Davio’s” high-end and fine-dining steakhouse operating in a manner and feature normally associated with the operation by Tenant (or its affiliates) of other “Davio’s” restaurants (the “Davio’s Restaurant Use”) no later than March 1, 2021.”

6. As a material inducement to Landlord entering into this First Amendment, Tenant represents to Landlord that as of the date hereof: (i) the Lease, as modified hereby, contains the entire agreement between the parties hereto relating to the Premises and there are no other agreements between the parties relating to the Premises, the Lease or the Property which are not contained herein or in the Lease; (ii) to the best of the Tenant’s knowledge with no duty of investigation or inquiry, Landlord is not currently in default in any respect in any of the terms, covenants, conditions of the Lease; and (iii) to the best of the Tenant’s knowledge with no duty of investigation or inquiry, Tenant currently has no existing setoffs, counterclaims or defenses against Landlord under the Lease.

7. Tenant represents and warrants that it has taken all corporate, partnership or other action necessary to execute and deliver this First Amendment and that this First Amendment constitutes the legally binding obligation of Tenant enforceable in accordance with its terms. Tenant shall save and hold Landlord harmless from any claims or damages, including reasonable attorneys’ fees, arising from Tenant’s misrepresentation of its authority to enter into and execute this First Amendment.

8. Landlord represents and warrants that it has taken all corporate, partnership or other action necessary to execute and deliver this First Amendment and that this First Amendment constitutes the legally binding obligation of Landlord enforceable in accordance with its terms. Landlord shall save and hold Tenant harmless from any claims or damages, including reasonable attorneys’ fees, arising from Landlord’s misrepresentation of its authority to enter into and execute this First Amendment.

8. As modified and amended hereby, Landlord and Tenant each ratifies and affirms the terms of the Lease.

10. This First Amendment may be executed in multiple counterparts, each of which may be deemed an original and all of which, when taken together, shall constitute one instrument.

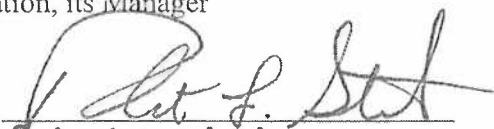
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IN WITNESS WHEREOF, the parties have executed this First Amendment as of the day and year first above written.

LANDLORD:

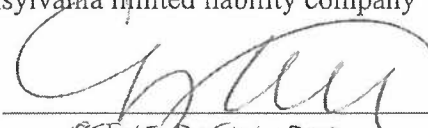
441 SMITHFIELD STREET, LLC,
A Delaware limited liability company

By: Robert L. Stark Enterprises, Inc., an Ohio
corporation, its Manager

By: 
Name: Robert L. Stark
Its: President

TENANT:

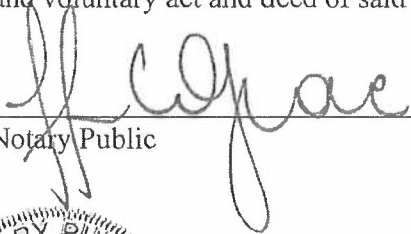
441 SMITHFIELD PITTSBURGH LLC,
A Pennsylvania limited liability company

By: 
Name: STEVE DIFILIPPO
Its: CEO

STATE OF OHIO)
)
COUNTY OF CUYAHOGA)

SS:

The foregoing was acknowledged before me, a Notary Public, this 11 day of Oct, 2018, by Robert L. Stark, President of Robert L. Stark Enterprises, Inc., Manager of 441 Smithfield Street, LLC, a Delaware limited liability company, who being duly authorized acknowledges that he did execute the foregoing instrument and that same is his free act and deed as such officer and the free and voluntary act and deed of said company.



Notary Public

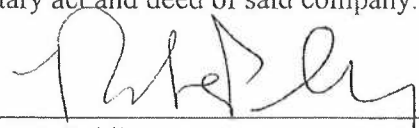


JENNIFER COLGROVE
Notary Public, State of Ohio
Recorded in Lake County
My Commission Expires
January 20, 2020

STATE OF MASSACHUSETTS)
)
COUNTY OF BARNSTABLE)

SS:

The foregoing instrument was acknowledged before me, a Notary Public, this 2nd day of OCTOBER, 2018, by STEVE DIFILIPPE, CEO of 441 Smithfield Pittsburgh LLC, a Pennsylvania limited liability company, who being duly authorized acknowledges that he/she did execute the foregoing instrument and that same is his/her free act and deed as such officer and the free and voluntary act and deed of said company.



Notary Public

