

THE CORPORATION OF THE DISTRICT OF BURNABY

BYLAW NO. 9012

A BYLAW to authorize a lease to Hart Restaurant Ltd. of municipally owned property situate at Deer Lake Avenue.



The Council of The Corporation of the District of Burnaby ENACTS as follows:

1. This Bylaw may be cited as BURNABY LEASE AUTHORIZATION BYLAW NO. 2, 1988.

2. The Council is hereby authorized and empowered to lease unto Hart Restaurant Ltd. upon the terms, covenants and conditions more particularly set forth in the form of lease hereunto annexed (hereinafter called the "said lease") that part of municipally owned property situate at Deer Lake Avenue, in the Municipality of Burnaby, legally described as All that part of Lot 6 of District Lots 85 and 79, Group 1, Plan 11109, New Westminster District, as shown outlined on Reference Plan drawn by R.E. Petersen, B.C.L.S. on the 11th day of April, 1988.

2. The Municipal Clerk is hereby authorized and empowered to execute the said lease, signing the same and affixing the corporate seal thereto.

Read a first time this 24th day of MAY 1988
Read a second time this 24th day of MAY 1988
Read a third time this 24th day of MAY 1988
RECONSIDERED AND ADOPTED THIS 30th DAY OF MAY 1988


MAYOR

CLERK

THIS AGREEMENT made this day of , 1988.

BETWEEN:

THE CORPORATION OF THE DISTRICT OF BURNABY
4949 Canada Way
Burnaby, B.C. V5G 1M2

(hereinafter called the "Lessor")

OF THE FIRST PART

AND:

HART RESTAURANT LTD. (Incorporation No. 343420)
a company duly incorporated under the laws of the
Province of British Columbia and having its
registered office at Suite 1450-701 West Georgia
Street, in the City of Vancouver, Province of
British Columbia, V7Y 1C6

(hereinafter called the "Lessee")

OF THE SECOND PART

AND:

REGENCY CATERERS LTD. (Incorporation No. 68426)
a company duly incorporated under the laws of the
Province of British Columbia and having its
registered office at Suite 1450-701 West Georgia
Street, in the City of Vancouver, Province of
British Columbia, V7Y 1C6

AND:

PETER SCOTT, Businessman, of 4310 Musqueam Drive,
Vancouver, B.C. V6N 3R7

(hereinafter called the "Guarantor")

OF THE THIRD PART

WHEREAS the Lessor is the registered owner in fee simple
of property situate within the Municipality of Burnaby in the
Province of British Columbia, legally described as:

All that part of Lot 6 of District Lots 85 and 79,
Group 1, Plan 11109, New Westminster District, as
shown outlined on Reference Plan _____ drawn by
R.E. Petersen, B.C.L.S. on the 11th day of April, 1988

(hereinafter called the "Lands") which property includes and
incorporates the Buildings (as hereinafter defined).

AND WHEREAS the Lessee has submitted a proposal for the restoration, renovation and development of the Buildings in response to the Lessor's request for proposals, with the intent that the Lessee will equip and operate the Buildings as a restaurant.

AND WHEREAS the Guarantor has requested that this Lease be granted in the name of the Lessee and has agreed and hereby agrees to guarantee the Lessee's performance of the terms and conditions of this Lease. Regency Caterers Ltd. and Peter Scott each hereby agree and acknowledge that their liability as Guarantor shall be both joint and several.

AND WHEREAS the Lessor has agreed to lease to the Lessee the Lands and the Buildings for a term of fifteen (15) years in order that the Lessee may occupy and enjoy the Lands and the Buildings erected thereon, upon and subject to the conditions herein contained.

NOW THEREFORE THIS INDENTURE WITNESSETH that in consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of the Lessee to be paid, observed and performed, and subject to the charges or interests registered against or affecting the Buildings and the Lands set forth in Schedule A attached hereto and forming part of this Lease, the Lessor doth hereby demise and lease unto the Lessee and the Lessee does hereby take and rent upon and subject to the conditions hereinafter expressed, the Lands and the Buildings.

TO HAVE AND TO HOLD the Lands and the Buildings for and during the Term (as hereinafter defined).

IN ADDITION the Lessor grants to the Lessee a licence for the Licence Term (as hereinafter defined) to enter the Lands for the purpose of undertaking the Lessee's Work as provided in

Clause 4.03 of this Agreement. The said licence is granted subject to the terms, covenants and conditions of this Agreement.

IN ADDITION it is agreed between the Lessor and the Guarantor that the guarantee herein of Peter Scott shall cease and determine upon the expiry of ten years from the Date for Commencement of the Term (as hereinafter defined). Provided always that the guarantee herein of Regency Caterers Ltd. or, if applicable, its successor, shall remain in full force and effect for the entire period of the Term (as hereinafter defined).

YIELDING AND PAYING to the Lessor for the Term (as hereinafter defined), Rent (as hereinafter defined) as provided herein.

This Lease is made upon and subject to the following covenants and conditions and the parties agree to keep, observe and perform same to the extent that they are binding or expressed to be binding upon them.

ARTICLE I

DEFINITIONS

Clause 1.01 Definitions

The terms defined in this Clause 1.01 have the meaning hereinafter specified for all purposes of this Lease, unless otherwise specifically provided herein. The terms herein defined are:

- (a) "Buildings" means collectively, a former residential house known as "the Hart House", a cabana and a garage together with all replacements, alterations, additions, changes,

substitutions, improvements, repairs, renovations or reconstructions thereto or thereof, and all other improvements from time to time constructed or erected upon or affixed or appurtenant to the Lands;

(b) "Date for Commencement of the Term" means the period commencing on the earlier of either:

(i) the 1st day of November, 1988; or

(ii) the date that the Lessee completes the Lessee's Work as provided in Clause 4.03 of this Agreement and opens the Buildings as a restaurant to the public;

and ending, in either event, at 11:59 p.m. on the day immediately preceding the fifteenth (15th) anniversary of the Date for Commencement of the Term;

(c) "Date of Execution" means the date of the execution of this Agreement by the Lessor;

(d) "Lessor's Superintendent" means the person or persons who are so designated by the Lessor;

(e) "Licence Term" means the period commencing on the Date of Execution and ending on the Date for Commencement of the Term;

(f) "Mortgage" means a mortgage or mortgages upon or in respect of the leasehold interest of the Lessee in the Lands and the Buildings or any part thereof and includes any debenture and any deed of trust and mortgage to secure any bonds or debentures issued thereunder;

(g) "Mortgagee" means a mortgagee or mortgagees under a

mortgage and includes any debenture holder and any trustee for bondholders or debenture holders under a deed of trust and mortgage to secure any bonds or debentures issued thereunder;

- (h) "Rent" as of any particular time means the rental provided for in Schedule B of this Lease together with any other and additional amounts which are herein expressed to be added to and made part of Rent;
- (i) "Term" means the period beginning on the Date for Commencement of the Term, and ending at 11:59 p.m. on the day immediately preceding the fifteenth (15th) anniversary of the Date for Commencement of the Term.
- (j) "Trustee" means a trust company duly authorized to carry on business in the Province of British Columbia appointed by the Lessor.

Clause 1.02 Conditions

All the provisions of this Lease shall be deemed and construed to be conditions as well as covenants as though the words specifically expressing or importing covenants or conditions were used in each separate provision hereof.

Clause 1.03 Reference

The words "herein", "hereby", "hereunder" and words of similar import refer to this Lease as a whole and not to any particular article, clause or subclause thereof unless the contrary is expressly provided.

ARTICLE II

RENT

Clause 2.01 Amount of Rent Payable

The Lessee shall yield up and pay to the Lessor Rent for the Term payable without abatements, set-offs or defalcations, in advance in equal monthly instalments payable on the first day of each calendar month during the Term, the first payment to be made on the first day of the Term and thereafter on the first day of each and every month of the Term.

Clause 2.02 Net Lease

All Rent and all other amounts due and payable hereunder by the Lessee to the Lessor shall be paid without any deduction, abatement or set-off whatsoever, it being the intention of this Lease that all expenses, costs, payments and outgoings incurred in respect of the Lands, the Buildings and any other improvements on the Lands or for any other matter or thing affecting the Lands, shall (unless otherwise expressly stipulated herein to the contrary), be borne by the Lessee, that the Rent herein provided shall be absolutely net to the Lessor and free of all abatements, set-off or deduction of real property taxes, business taxes, charges, rates, assessments, expenses, costs, payments or outgoings of every nature arising from or related to the Lands, the Buildings, or any other improvements on the Lands, and that the Lessee shall pay or cause to be paid all such real property taxes, business taxes, charges, rates, assessments, expenses, costs, payments and outgoings.

Clause 2.03 Place of Payment

The Rent and all such other amounts as shall become due

and payable hereunder by the Lessee to the Lessor shall be paid by the Lessee without prior demand therefor at the office of the Lessor as specified in Clause 16.01 herein or at such other place as the Lessor may from time to time designate in writing.

Clause 2.04 Collection of Other Amounts Due

Any sums, costs, expenses or other moneys from time to time due and payable by the Lessee to the Lessor under the provisions of this Lease, including sums payable by way of indemnity and whether expressed to be Rent or not in this Lease, may at the option of the Lessor be treated as and deemed to be Rent, in which event the Lessor shall have all the remedies for the collections of such sums, costs, expenses or other amounts, when in arrears, as are available to the Lessor for the collection of rent in arrears.

Clause 2.05 Interest on Amounts in Arrears

When the Rent or any other amount payable hereunder by the Lessee to the Lessor shall be in arrears, such amount shall bear interest at the rate of three per cent (3%) per annum above the highest prime commercial lending rate of the Bank of Montreal carrying on business in the City of Vancouver, Province of British Columbia, until paid, and the Lessor shall have all the remedies for the collection of such interest, if unpaid after demand, as in the case of rent in arrears, but this stipulation for interest shall not prejudice or affect any other remedy of the Lessor under this Lease.

ARTICLE III

PAYMENT OF TAXES

Clause 3.01 Lessee to pay taxes on the Lands, Buildings and Improvements

In addition to the Rent herein provided, the Lessee will in each and every year during the Term not later than the day immediately preceding the date or dates on which real property taxes and other charges imposed upon real property within the Municipality of Burnaby become due and payable whether monthly, quarterly, twice-yearly or otherwise, pay and discharge or cause to be paid and discharged all taxes, rates, duties, charges and assessments, including school taxes, local improvement rates and other charges which now are or shall or may be levied, rated, charged or assessed against the Lands, the Buildings, all other structures, all machinery, equipment, facilities, and other property of any nature whatsoever thereon and therein, whether such taxes, rates, duties, charges and assessments are charged by any municipality, parliamentary, legislative, regional, school or other authority during the Term.

In the event that the Lands and Buildings have not been entered on the tax roll or for any other reason, taxes, rates, duties, charges and assessments are not officially and formally levied then the Lessee shall pay to the Lessor the monetary equivalent of the said taxes, rates, duties, charges and assessments as if they had been officially and formally levied. The Lessee will indemnify and keep indemnified the Lessor from and against payment of all losses, costs, charges and expenses occasioned by or arising from any and all such taxes, rates, duties, charges and assessments; and any such losses, costs, charges and expenses suffered by the Lessor may be collected by

the Lessor as Rent with all rights of distress and otherwise as reserved to the Lessor in respect of rent in arrears.

The Lessee further covenants and agrees that during the Term, it will deliver to the Lessor for inspection receipts for payments of all taxes, rates, duties, charges, assessments, including school taxes, local improvement rates and other charges in respect of the Lands, the Buildings, all other structures, all machinery, equipment, facilities, improvements and other property of any nature whatsoever thereon and therein which were due and payable during the Term within fourteen (14) days following receipt by the Lessee of each of such receipts for payments. The Lessor shall, not later than ten (10) days following receipt of any notice including all assessment notices delivered to the Lessor by any taxing authority, relating to the Lands, the Buildings, all other structures, all machinery, equipment, facilities, improvements and other property of any nature whatsoever thereon and therein, deliver a copy thereof to the Lessee. The Lessee shall have the right from time to time to appeal any assessment of the Lands or the Buildings, or any other tax, rate, duty, charge or amount referred to in this Clause 3.01, provided that such appeal shall be at the sole cost and expense of the Lessee. If, in the future, the Lessee is unable to appeal any assessment of the Lands, or the Buildings, or any other tax, rate, duty, charge or amount referred to in this Clause 3.01 except in the name of the Lessor, then the Lessee shall have the right to appeal in the name of the Lessor subject to the prior consent of the Lessor.

Notwithstanding anything herein contained, the Lessee shall be responsible only for the payments referred to in this Clause 3.01 for that portion of the year in which this Lease is in effect, such adjustment to be made in arrears on a per diem basis.

Clause 3.02 Delinquent Taxes

If the Lessee shall in any year during the Term fail to pay the taxes and other charges referred to in Clause 3.01 when due, the Lessee shall thereupon pay interest at the percentage rate or rates established by the Municipality of Burnaby by bylaw for unpaid real property taxes in the Municipality of Burnaby.

Clause 3.03 Payment for Utility Services

The Lessee covenants with the Lessor to pay or cause to be paid when due all charges for gas, electricity, light, heat, power, telephone, water, waste and garbage removal and other utilities and services used in or supplied to the Lands and the Buildings throughout the Term and to indemnify and keep indemnified the Lessor from and against payment of all losses, costs, charges and expenses occasioned by or arising from any and all such charges, and any such loss, costs, charges and expenses which relate to such charges suffered by the Lessor may be collected by the Lessor as Rent with all rights of distress and otherwise as reserved to the Lessor in respect of rent in arrears.

Clause 3.04 Business Tax and Licence Fees

The Lessee covenants with the Lessor to pay or cause to be paid when due every tax and permit and licence fee in respect of any and every business carried on, upon or in the Lands, and the Buildings, in respect of the use or occupancy thereof by the Lessee (and any and every sublessee, permittee and licensee) whether such taxes or permit and licence fees are charged by any municipal, parliamentary, legislative, regional or other authority during the Term and will indemnify and keep indemnified the Lessor from and against payment of all losses, costs, charges and expenses occasioned by or arising from any and all such taxes

and permit and licence fees, and any such loss, costs, charges and expenses which relate to such charges suffered by the Lessor may be collected by the Lessor as Rent with all rights of distress and otherwise as reserved to the Lessor in respect of rent in arrears.

Clause 3.05 Laws and Bylaws

The Lessee covenants to promptly and faithfully observe and comply with all laws, bylaws, regulations, statutes and lawful orders which touch and concern the Lands and the Buildings or the Lessee's activities within and upon the Lands and the Buildings.

ARTICLE IV

USE OF LANDS AND BUILDINGS

Clause 4.01 Lessee's Purposes

It is a condition of this Lease and the Lessee agrees that the Buildings and the Lands shall only be used for the purpose of operating a restaurant and catering services respectively for the general public and that the restaurant and catering operations shall maintain the character and historic integrity of the Buildings and the Lands.

Clause 4.02 Conditions of Operation

It is a condition of this Lease and the Lessee agrees that:

- (a) it shall operate within the Buildings a high quality restaurant catering to the general public and shall

operate on the Lands, at its option, restaurant and catering services for the general public;

- (b) it shall not sell any alcoholic beverages unless licenced so to do by the Liquor Control and Licensing Board of the Province of British Columbia and only then in strict compliance with all terms and conditions set by the Board for such service;
- (c) unless the Lessor gives its written consent, the Lessee may only hold from the Liquor Control and Licensing Board of the Province of British Columbia a Dining Lounge licence;
- (d) unless the Lessor gives its written consent, and irrespective of the terms and conditions of the Lessee's liquor licence, no business shall be transacted upon the Lands or within the Buildings between the hours of 2:00 a.m. and 6:00 a.m. save and except for New Year's Eve;
- (e) it shall not conduct or permit entertainment which the Lessor's Superintendent in his discretion deems to be lewd, lascivious, unwholesome or otherwise not in keeping with community standards of good taste;
- (f) it shall not allow, permit or authorize any illegal act or offence on the Lands;
- (g) all signs shall be approved by the Lessor's Director of Planning and Building Inspection in accordance with the regulations contained in the Bylaws of the Municipality of Burnaby.

Clause 4.03 Lessee's Renovation, Restoration and Expansion Program

It is a condition of this Lease and the Lessee agrees that as of the commencement of the Licence Term the Lessee shall forthwith undertake wholly at its own expense the restoration, renovation, expansion and development of the Buildings (both interior and exterior) (hereinafter called the "Lessee's Work") at a total cost of not less than Five Hundred Thousand (\$500,000) Dollars. The Lessee shall be solely responsible for the extension and connection of electrical, water, sewage, telephone and other utility services from adjacent municipal roads to the Buildings and any other locations on the Lands. The plans, specifications and construction contract for the Lessee's Work shall first be approved by the Lessor's Superintendent and there shall be no deviation from such plans and specifications unless the Lessor's Superintendent consents in writing to such deviation. The Lessee shall provide to the Lessor, as required, invoices and proof of payment in respect of the Lessee's Work. The Lessee's Work shall either be wholly completed or substantially completed so that, in either event, the Buildings are open and operating as a restaurant serving the general public no later than the 1st day of November, 1988. Save and except as aforesaid the Lessee shall not build, erect, construct, place, maintain or cause, suffer or permit to be built, erected, constructed, placed or maintained any alterations in the structure, plan or partitioning of the Buildings and the Lessee shall not install any plumbing, piping, wiring or heating apparatus or equipment without the prior written approval of the Lessor's Superintendent to the plans and specifications for such work and the Lessee agrees to strictly adhere to such plans and specifications wholly at its own expense.

Clause 4.04 Performance Bond and Labour and Material Bond

The Lessee shall, prior to commencing the Lessee's Work, provide written evidence satisfactory to the Lessor that it has obtained a performance bond and a labour and material payment bond with a bonding company satisfactory to the Lessor, substantially in the form set forth in Schedule C attached hereto and forming part of this Lease, each in an amount of One Hundred Fifty Thousand (\$150,000.00) Dollars as security for the faithful performance and completion of the Lessee's Work. The said performance bond and labour and material payment bond shall be drawn in favour of the Lessor as Obligee.

Clause 4.05 Maintenance and Decoration

The Lessee further agrees that as of the Date for Commencement of the Term, the Lessee shall submit to the Lessor in advance plans and specifications which adequately describe any proposed maintenance, decorating or redecorating of the Buildings and the Lessee shall not undertake any work of maintenance, decorating or redecorating without the prior approval of the Lessor. The Lessee will, at its own expense, ensure that the exterior and interior of the Buildings and all additions or alterations thereto are, throughout the Term, decorated and maintained in a manner satisfactory to the Lessor's Superintendent from time to time.

Section 4.06 Requirements after Performance of the Work

The Lessee shall, upon completion of the Lessee's Work and when requested by the Lessor:

- (a) provide the Lessor with a statutory declaration (hereinafter called the "Declaration"):

- (i) stating that the Lessee's Work has been performed in accordance with all of the provisions of the plans and specifications and that all deficiencies (if any) which the Lessor has brought to the Lessee's attention have been corrected;
 - (ii) stating that there are no Builders' Liens, Mechanics' Liens, Workmen's Compensation Liens or other liens or encumbrances affecting the Buildings or the Lands in respect of work, compensation, services or materials relating to the Lessee's Work and that all accounts for work, compensation, services and materials have been paid in full with respect to all of the Lessee's Work;
 - (iii) listing each contractor and sub-contractor which did work or provided materials in connection with the Lessee's Work;
 - (iv) confirming the date on which the last such work was performed and materials were supplied; and
 - (v) certifying the itemized list which is referred to in subclause (b) below and which is to be attached to the Declaration.
- (b) provide to the Chief Building Inspector of the Lessor an itemized list showing the cost actually expended by the Lessee for completion of the Lessee's Work and submit to the Chief Building Inspector certified copies of signed contracts entered into with all consultants, contractors and sub-contractors who provided services, work or materials in connection with the Lessee's Work.
- (c) provide to the Lessor receipts and any other evidence required by the Lessor to establish due payment by the

Lessee of all bills, invoices, statements of account and financial liabilities incurred by or on behalf of the Lessee in respect of the Lessee's Work and any associated works.

- (d) provide to the Lessor a clearance certificate issued under the Workmen's Compensation Act in respect of each contractor and sub-contractor listed on the Declaration; and
- (e) obtain and provide to the Lessor a copy of every occupancy and other permit which may be required by any governmental or other regulatory authority having jurisdiction, to permit the Lessee to open for business.

ARTICLE V

INSURANCE

Clause 5.01 Motor Vehicle and Third Party Insurance

At all times during the Term the Lessee shall obtain and maintain, at the Lessee's cost and expense, in an insurance company authorized and licenced to carry on business and having an office in British Columbia and in a policy of insurance acceptable to and approved in writing by the Lessor, the following insurance:

(a) Motor Vehicle Liability Insurance

Motor vehicle liability insurance for bodily injury and death to persons and for property damage with the minimum limits as set forth below in respect of all motor vehicles

owned by the Lessee in connection with the operation of the restaurant and all other Lessee's operations on the Lands and Buildings. The minimum limits referred to above are:

Bodily injury to, or death of one or more persons, arising out of any one occurrence.)	
)	
)	Two Million
)	Dollars
)	(\$2,000,000)
Property damage (including loss of use thereof) arising out of any one occurrence.)	inclusive
)	

(b) Comprehensive General Liability

Comprehensive general liability insurance, including non-owned automobile liability insurance, against claims arising out of bodily injury and/or death to persons and from loss or damage to, or destruction of the property of others (including the property of the Lessor) and for loss of use thereof, indemnifying and protecting the Lessor and the Lessee for the minimum limits set forth below. The said comprehensive general liability insurance shall apply to all operations of the Lessee of every kind and description pertaining in any way to the Lessee's restaurant and all the Lessee's operations on the Lands and in the Buildings, ("the Lessee's operations") and without limiting the foregoing, shall agree to pay all sums which it may become liable to pay, by reason of liability imposed by law or assumed under any agreement relating to the Lessee's operations for bodily injury or death to persons and property damage (including property of the Lessor), including loss of use thereof, arising out of the use and/or occupancy of the Buildings, all operations of every kind and description, including those of subcontractors, non-owned automobiles, use and/or consumption of products. The minimum limits referred to above are:

- (i) Bodily injury to or death of any one person in any one occurrence, Two Million Dollars (\$2,000,000), and
- (ii) Bodily injury to or death of two or more persons in any one occurrence, Two Million Dollars (\$2,000,000), and
- (iii) Loss or damage to property, including loss of use thereof in any one occurrence, Two Million Dollars (\$2,000,000).

The said minimum limits may, on a reasonable basis, be changed or amended from time to time by the Lessor.

The said liability policy shall bear an endorsement to the effect that the Lessor is added as a named Insured on the policy and that a cross-liability clause is in effect protecting the rights and interests of the named Insureds as if a separate policy had been issued in respect of each.

Each such policy shall provide that no cancellation, expiration or material change in the policy shall become effective until after thirty (30) days' notice of such cancellation, expiration or change shall have been given to the Lessor by return registered mail, and the Lessee will at the time of execution of this Lease file with the Lessor certified copies of all such policy or policies of insurance and the receipts for payment of premiums thereon, and should the Lessee neglect so to obtain and/or maintain in force any such insurance as aforesaid or deliver such policy or policies and receipts to the Lessor then it shall be lawful for the Lessor to obtain and/or maintain such insurance and the Lessee hereby appoints the

Lessor its true and lawful attorney to do all things necessary for this purpose. All moneys expended by the Lessor for insurance premiums under the provisions of this clause shall be charged to the Lessee and may be collected by the Lessor as Rent with all the rights of distress and otherwise as reserved to the Lessor in respect of rent in arrears.

Clause 5.02 Workers Compensation

The Lessee shall forthwith furnish to the Lessor satisfactory proof that the Lessee has been determined and is then admitted by the Workers' Compensation Board to be an employer within the scope of Part I of the Workers' Compensation Act, R.S.B.C. 1979 Chapter 437, as from time to time amended.

Clause 5.03 Fire Insurance and Pressure Vessel Insurance

At all times during the Term the Lessee shall, at its own cost and expense, insure and keep insured or cause to be insured and kept insured the Buildings in an amount satisfactory to the Lessor in one or more companies entitled to do business in the Province of British Columbia against loss or damage by fire and other perils now or hereafter from time to time embraced by or defined in the Commercial Building form of insurance coverage applicable to similar properties as the Lands and the Buildings in effect in the Province of British Columbia by prudent owners from time to time including, without restricting the generality of the foregoing, the hazards of lightning, earthquake, explosions, wind storm, cyclone, tornado, hail, riot, civil commotion, malicious damage, aircraft, smoke and vehicle damage, to the extent that insurance against such risk or peril, or any of them, may be obtained in an amount equal to the full replacement value thereof, and the Lessee agrees with the Lessor at the Lessee's expense to insure and keep insured the Buildings against all other risks required to be insured against under the

provisions of any mortgage to the extent that insurance against such risk or perils or any of them may be obtained.

At all times during the Term the Lessee shall at its own cost and expense maintain in respect of the Buildings pressure vessel insurance with one or more companies entitled to do business in the Province of British Columbia protecting the Lessor and the Lessee in respect of all boilers and such other pressure vessels as the Lessor or the Lessee may from time to time deem it necessary to insure in amounts to be designated by the Lessee and approved by the Lessor, such insurance shall also cover loss or damage caused by rupture of steam pipes.

Clause 5.04 Identity of Insured

Any and all policies of insurance covering the Buildings shall be written in the name of the Lessee as the insured with loss payable to the Lessee and the Lessor as their respective interest may appear, subject to the provisions of this Lease including but not limited to the provisions of Clauses 5.05 and 5.06 hereof. Each policy of insurance shall contain a provision or shall bear an endorsement that the insurer will not cancel such policy without first giving the Lessor at least thirty (30) days' notice in writing of its intention to cancel.

Clause 5.05 Payment of Loss under the Insurance Policies

The insurance moneys payable under the policies of insurance referred to in Clause 5.03 hereof shall be paid to the Trustee on behalf of the Lessor and the Lessee. The Lessor and the Lessee agree that the Trustee shall use such moneys and the interest earned thereon to pay for all restoration, reconstruction or replacement of the loss or damage in respect of which such insurance moneys were paid to the Trustee, out of the insurance moneys against certificates of the architect engaged by the Lessee or such other person as the Lessor and the Lessee may

agree upon who is in charge of such restoration, reconstruction or replacement and after receiving such other certificates, evidence or opinions as the Trustee shall require for the purpose of being satisfied that such restoration, reconstruction or replacement is being properly carried out. Any moneys remaining after the Lessee has complied with the provisions of Clause 7.01 shall be paid to the Lessee and Lessor as their interests may appear.

Clause 5.06

All insurance moneys payable under any or all of the policies of insurance covering the Buildings and interest earned thereon shall be applied firstly to the repair, restoration, reconstruction or replacement of the loss or damage in respect of which such insurance moneys were paid and secondly shall be paid to the Lessee and Lessor as their respective interests may appear.

Clause 5.07 Payment of Insurance Premiums

The Lessee shall pay all the premiums under the policies of insurance referred to in this Article V as they become due and payable and in default of payment by the Lessee the Lessor may pay same and the Lessee shall forthwith reimburse the Lessor such sums which shall be deemed to be Rent and as such the Lessor may collect same as rent in arrears and shall have all rights of distress and otherwise for the collection of same.

Clause 5.08 Copies of Insurance Policies

Certified copies of all policies of insurance referred to in this Article V shall be delivered to the Lessor accompanied by evidence satisfactory to the Lessor that the premiums thereon have been paid.

Clause 5.09 Fire and Liability Insurance During Construction of Buildings

(a) The Lessee shall effect or shall cause its contractor or contractors to effect prior to the commencement of the Lessor's Work and shall maintain and keep in force until the insurance hereinbefore required shall have been effected, insurance:

(i) protecting both the Lessee, the Lessor and the Lessor's servants and agents (without any rights of cross claim or subrogation against the Lessor or its servants or agents) against claims for bodily injury, death or property damage or other third party or public liability claims arising from any accident or occurrence upon, in or about the Lands and from any cause, including the risks occasioned by the renovation, repair or construction of the Buildings, and to an amount reasonably satisfactory to the Lessor for any bodily injury, death, property or other claims in respect of any one accident or occurrence; and

(ii) protecting both the Lessee and the Lessor from loss or damage (without any rights of cross claim or subrogation against the Lessor or its servants or agents) to the Buildings and all fixtures, equipment, improvements and building materials on the Lands from time to time to the full replacement value thereof both during and after construction (but which may be by policies effected from time to time covering the risk during different phases of construction of the Buildings against fire, earthquake and all other perils from time to time customarily included in the usual all risks builders' risk form of policy applicable to similar

properties during construction and effected in the Province of British Columbia by prudent owners, and such other perils as the Lessor may reasonably require to be insured against to the full insurable value thereof at all times).

Clause 5.10 Waivers of Subrogation

All insurance policies herein shall contain a waiver or waivers of subrogation against the Lessor.

ARTICLE VI

REPAIRS AND MAINTENANCE

Clause 6.01 Removal of Ice and Snow from Sidewalks

The Lessee shall keep the driveways and sidewalks on the Lands and adjacent thereto reasonably free from ice and snow in accordance with the provisions of the Burnaby Street and Traffic Bylaws and amendments thereto and re-enactments thereof, and failing that, the Lessor, although not obliged to do so, may through its agents, servants, contractors and subcontractors remove such ice and snow at the expense of the Lessee but without notice to the Lessee.

Clause 6.02 Repair of Buildings

The Lessee shall put and keep the Lands and the interior and exterior of the Buildings in a clean and sanitary condition and in good and substantial repair as would a reasonable and prudent owner of same. The Lessee shall observe all health regulations and take any necessary measures for the extermination and control of pests, vermin and infestation. The Lessor may

enter and view the state of cleanliness and repair and the Lessee agrees to clean, repair and maintain upon reasonable notice subject to Article VII hereof.

Clause 6.03 Inspection of the Lands and Buildings

The Lessor and its or their employees, agents or independent contractors may at all reasonable times during the Term enter into and upon the Lands and Buildings to examine the conditions thereof; and further, all wants of repair, cleaning or maintenance which upon such views may be found which the Lessee is liable to remedy and for the amendment of which notice in writing is given to the Lessee, the Lessee will, within thirty (30) days next after every such notice, well and sufficiently repair and made good accordingly.

Clause 6.04 Failure to Maintain

If the Lessee fails to clean, maintain or to repair or to keep the Buildings in repair as provided for in or by virtue of this Lease, the Lessor or its or their employees, agents and independent contractors may at the option of the Lessor enter into and upon the Lands and the Buildings and execute such cleaning, maintenance and repairs and the costs and expenses incurred in effecting such work will be a debt due from the Lessee to the Lessor and will be forthwith recoverable by the Lessor and may be collected by the Lessor as Rent with all the rights of distress and otherwise as reserved to the Lessor in respect of rent in arrears. Any such entry by the Lessor will not constitute a re-entry by the Lessor for breach of covenant and the remedy given by this clause is in addition to and not in substitution for the other remedies which the Lessor has for breach of covenant and further provided that the Lessee will not be entitled to compensation for any inconvenience, loss of profits, nuisance, or discomfort occasioned by the exercise of the Lessor's rights granted herein nor shall there be any

abatement of rent.

Clause 6.05 Condition of the Lands

Without limiting the generality of the foregoing, the Lessee shall at the Lessee's cost and expense, to the satisfaction of the Lessor:

- (a) maintain the grounds of the Lands in a neat and tidy state and condition and the Lessee shall attend to landscaping and the horticultural maintenance of the grounds, including but not limited to mowing grass, edge trimming, planting and care of flower beds and shrubs, clean up of leaves, watering and fertilizing.
- (b) maintain the parking lot and driveway located on the Lands together with the electric lighting on the Lands. Without limiting the foregoing, the Lessee shall ensure that the surface of the parking lot and driveway are at all times suitable for vehicular use and do not contain potholes or uneven surfaces or any other condition that represents a hazard to pedestrians or vehicles. The parking lot and access road shall at all times be kept in a clean and tidy condition; snow, ice, leaves and foliage shall be cleared promptly and shall not be allowed to accumulate.

Clause 6.06 Bylaw Structural Improvements

Subject to Article VII hereof, if the Buildings require structural alterations by reason of municipal bylaws which come into force after the commencement of the Term, the same shall be carried out at the Lessee's expense and in causing such work to be done it shall be for the Lessor to decide the scheduling of such work and whether the Buildings shall in whole or in part be closed to the public. Subject always to the requirements of the municipal authorities supervising bylaw enforcement, the Lessee

shall make reasonable efforts to schedule any such work during the off seasons. Irrespective of when such work is done, there shall be no compensation to the Lessee on account of disruption, loss of profits or otherwise nor shall there be any abatement of rent.

Clause 6.07 Unavoidable Delays

If, by reason of strike, lockout or other labour dispute, material or labour shortage not within the control of the Lessee, fire or explosion, flood, wind, water, earthquake, act of God or other similar circumstance beyond the reasonable control of the Lessee and not avoidable by the exercise of reasonable foresight by the Lessee, the Lessee is, in good faith and without default or neglect on its part, prevented or delayed in the commencement of construction or completion of construction or repair of the Buildings which under the terms of this Lease the Lessee is required to do by a specified date or within a specified time, the date or period of time in which the work was to have been completed shall be extended by the Lessor by a reasonable period at least equal to that of such delay or prevention and the Lessee shall not be deemed to be in default if it performs or completes the work in the manner required by the terms of this Lease within such extended period of time, or within such further extended period of time as may be agreed upon from time to time between the Lessor and the Lessee.

Clause 6.08 Builders' Liens

The Lessee shall promptly pay all amounts for work, service and material when due and shall forthwith remove any builders' liens or other liens or other charges registered against the Lands or the Buildings or any part thereof on account of the Lessee's Works. And the Lessee shall not permit or suffer any charges or builders' lien or other liens for labour, compensation, services or materials to be registered against the

Lands or the Buildings. The Lessee shall, in any event, pay, satisfy, release and discharge same within forty-two (42) days after the Lessor shall send to the Lessee written notice by registered mail of any claim for any such lien, provided however, that in the event of a bona fide dispute by the Lessee of the validity or correctness of any such claim, the Lessee shall not be bound by the foregoing but shall be entitled to defend against the same in any proceedings brought in respect thereof after first paying into Court or otherwise satisfying the Court as to security for the claim as the Court may direct and obtaining and registering a Court Order directing cancellation of such claim, or otherwise providing security in an amount and form as the Lessor may in writing approve in order to secure cancellation and discharge of any lien. The Lessee shall at all times defend and conduct such action in a prompt and diligent manner. If the Lessee fails to promptly discharge or cause any such lien to be discharged, or fails to conduct a diligent, prompt or bona fide dispute of same, then in addition to any other rights or remedies of the Lessor, the Lessor may, but shall not be obligated to, discharge the lien by paying the amount claimed to be due into Court or directly to the Lien Claimant, and the amount so paid and all costs and expenses (including legal costs and expenses) shall be immediately due and payable by the Lessee to the Lessor as additional Rent on demand.

ARTICLE VII

DAMAGE OR DESTRUCTION

Clause 7.01 Buildings to be Repaired or Replaced

If the Buildings are partially or substantially or completely destroyed, the Lessee shall forthwith proceed to diligently replace or repair the Buildings and all machinery,

equipment and other property of any nature whatsoever that was thereon and therein at the time of such destruction, and such repair or replacement shall be to a standard equivalent to the condition of the Buildings and such machinery at the time of such destruction.

Clause 7.02 Major Alterations or Replacements

Notwithstanding any other provision of this Article, where the estimated cost, as determined by the Lessor, of any alteration or repair to anything on the Lands or on or in the Buildings, at one time, or of any continuous or continual program of alterations, exceeds in value a sum equal to \$100,000.00, the provisions of Clauses 4.03, 4.04, 4.05 and 4.06 shall apply, mutatis mutandis, to such alteration or repair.

Provided however, that nothing in this Clause contained will in any way be deemed to affect the obligation of the Lessee to repair, maintain, replace or rebuild the Buildings as provided by the terms of this Lease.

ARTICLE VIII

INDEMNIFICATION

Clause 8.01 Indemnification of Lessor

In addition to all other provisions herein the Lessee covenants with the Lessor that the Lessee shall indemnify and save harmless the Lessor and its servants and agents from all costs, losses, damages, builders' and other liens, compensation and expenses of any nature whatever relating to or arising from the Lessee's enjoyment, occupation of or possession of the Lands and Buildings and the Lessee's operations and from all actions,

claims, demands, suits and judgments against the Lessor or its servants and agents on account of injury or death to any persons or animals, or damage to or loss of property occurring in or about the Lands and Buildings or relating to or arising from the Lessee's occupation or possession of the Lands and Buildings and the Lessee's operations.

Clause 8.02 Assumption of Risk

The Lessee assumes all risks in any way arising from the Lessee's use, occupation, possession or enjoyment of the Lands and Buildings. Without limiting the generality of the foregoing, the Lessee covenants and agrees with the Lessor that the Lessor shall not be responsible or in any way liable to the Lessee in respect of any loss, disruption, stoppage or malfunction in the supply and servicing of electricity, gas, water, sewage, telephone or any other utility servicing the Lands and Buildings.

ARTICLE IX

WASTE AND NUISANCE

Clause 9.01 Lessee not to Commit Waste

The Lessee shall not suffer, cause or permit the commission of permissive, voluntary or equitable waste to the Lands or the Buildings.

Clause 9.02 Lessee not to Commit Nuisance

The Lessee shall not suffer, cause or permit any nuisance on the Lands or Buildings.

ARTICLE X

ASSIGNING AND SUBLETTING

Clause 10.01 Subletting by Lessee

The Lessee shall not nor will during the Term sublease the Lands, the Buildings or any part thereof to any person, persons or corporation whatsoever without the prior consent in writing of the Lessor which consent the Lessor may arbitrarily withhold.

Clause 10.02 Assignment by Lessee

The Lessee shall not nor will during the Term, either by act or by deed, assign, transfer, bargain or sell this Lease, the Lands or the Buildings to any person, persons or corporation whatsoever without the consent in writing of the Lessor which consent the Lessor shall not unreasonably withhold, provided however it shall be reasonable for the Lessor to withhold its consent if in the Lessor's opinion the prospective assignee does not have sufficient experience in the restaurant and retail business or does not have the financial resources to properly operate the Lands and Buildings in accordance with the terms of this Lease. Provided that any permitted assigns of the Lessee shall, concurrent with such assignment, acknowledge to being bound by all the terms and conditions of this Lease and in pursuance whereof shall execute such documents and instruments as shall be required by the Lessor.

Clause 10.03 Mortgaging by Lessee

Nothing herein contained shall be construed to prevent or prohibit the assignment or subletting by the Lessee of this Lease or its leasehold interest in the Lands and Buildings by way of

mortgage provided however that in the event of and notwithstanding any such assignment or subletting, the Lessee shall be and remain liable for the payment of all Rent and taxes and the performance of all the terms, covenants and conditions of this Lease.

ARTICLE XI

DEFAULT BY LESSEE

Clause 11.01 Re-entry on certain defaults by Lessee

The Lessor and the Lessee agree that, subject to the provisions of Clause 11.04, if

- (a) the Lessee shall default in the payment of Rent or taxes or any other sums required to be paid to the Lessor or any other party by any provision of this Lease, and such default shall continue for twenty (20) days after notice in writing thereof given by the Lessor to the Lessee; or
- (b) the Lessee shall default in performing or observing any of its other covenants or obligations under this Lease, or any contingency shall occur which by the terms of this Lease constitutes a breach hereof or confers upon the Lessor the right to re-enter or forfeit or terminate this Lease, and the Lessor shall have given to the Lessee notice of such default or the happening of such contingency, and at the expiration of thirty (30) days after the giving of such notice the default or contingency shall continue to exist, or in the case of a default which cannot with due diligence be cured within the period of thirty (30) days aforesaid, the Lessee fails to proceed promptly after the giving of such notice to cure such

default or contingency and to prosecute same to completion with reasonable diligence; or

- (c) this Lease shall expire or be terminated by any other provision in it contained;

the Lessor or the Lessor's agents or employees authorized by the Lessor may immediately or at any time thereafter re-enter the Lands and the Buildings without being liable to any prosecution or damages therefor, and may repossess and enjoy the Lands, the Buildings and all fixtures and improvements upon the Lands, except fixtures and improvements which are of the nature of usual tenants' fixtures and normally removable by tenants, and which are not part of the Buildings or the Lands, without such re-entry and repossession operating as a forfeiture or waiver of the Rent or any other sums required to be paid by the Lessee to the Lessor, and the covenants to be performed by the Lessee up to the date of such re-entry and repossession. The Term shall immediately become forfeited, and cease and determine and these presents thereupon shall be void and of no further force or effect either at law or in equity save and except in respect to any moneys due or owing by the Lessee to the Lessor at such time and save and except for any rights or remedies against the Lessee and Guarantor, which rights and remedies shall survive the Lease in favour of the Lessor. Provided however that nothing herein shall release or absolve the Guarantor from any liabilities and obligations under this Lease and nothing in this Clause 11.01 shall abrogate the rights of any Mortgagee as provided in Clause 10.03 and 11.04.

Clause 11.02 Bankruptcy and Judgments against the Lessee

The Lessee covenants with the Lessor that if the Term hereby granted shall be at any time seized or taken in execution or in attachment by any creditor or creditors of the Lessee or its assigns, or if the Lessee or its assigns shall make any

assignment for the benefit of creditors or becoming bankrupt or insolvent, shall take the benefit of any Act that may be in force for bankrupt or insolvent debtors, or if the Lessee shall enter into receivership whether voluntarily or involuntarily or if a receiver or trustee in bankruptcy is appointed over some or all of the affairs of the Lessee, the then current monthly rent shall immediately become forfeited, and the Term shall immediately become forfeited, and the Term shall immediately cease and determine and become forfeited and void and these presents thereupon shall be void and of no further force or effect either at law or in equity save and except in respect to any moneys due or owing by the Lessee to the Lessor at such time. Provided however that nothing herein shall release or absolve the Guarantor from any liabilities and obligations under this Lease and nothing in this Clause 11.02 shall abrogate the rights of any Mortgagee as provided in Clauses 10.03 and 11.04.

Clause 11.03 Condonation of Breach not a Waiver

It is mutually agreed that any excusing, condoning or forbearance by the Lessor in respect of any default, breach or non-observance by the Lessee at any time of any covenant, provision, condition or requirement in this Lease shall not operate as a waiver of the Lessor's rights hereunder in respect of any subsequent default, breach or non-observance of the terms of this Lease and shall not defeat or affect in any way the Lessor's rights in respect of any such subsequent default or breach.

Clause 11.04 Notice to and Remedies of Mortgagee

- (a) No re-entry, termination or forfeiture of this Lease by the Lessor shall be valid against the Mortgagee who has filed with the Lessor notice of Mortgage in favour of the Mortgagee and specified an address for notice under Article XVI unless the Lessor shall first have given to

the Mortgagee notice of the default or contingency entitling the Lessor to re-enter, terminate or forfeit this Lease, specifying the nature of that default or contingency, and stating that the Lessor's intention to take such proceedings and requiring the Mortgagee:

- (i) to cure the default or contingency specified in the notice within a period of thirty (30) days from the date of receipt of that notice by the Mortgagee;
or
- (ii) if the default or contingency is other than failure to pay Rent or taxes or any other sums required to be paid to the Lessor or any other party by any provision of this Lease and if the default or contingency cannot reasonably be cured within such thirty (30) day period, then to immediately commence to cure the same within a period specified by the Lessor and to diligently prosecute to completion all acts necessary to cure the default or contingency,

and the Lessor hereby grants the Mortgagee access to the Lands and the Buildings for that purpose. If the default or contingency is cured within the period specified, the Mortgagee shall be entitled to continue as tenant for the balance of the Term remaining at the date of the notice of default or contingency, providing that the Mortgagee attorns as tenant to the Lessor and undertakes to be bound by and perform the covenants and agreements of this Lease; PROVIDED HOWEVER that in the event the Mortgagee consists of more than one mortgagee each having a separate charge upon the Lessee's interest in this Lease, and more than one of them wishes to cure the default or contingency specified in the notice aforesaid, then the Lessor hereby agrees to permit curing of the default or contingency

specified as aforesaid, and the assumption of the balance of the Term as aforesaid, by that mortgagee which is willing to cure and assume as aforesaid and whose charge ranks in priority over the charge or charges held by the other mortgagee or mortgagees willing to cure and assume as aforesaid; EXCEPT THAT in the event any Mortgagee has commenced a foreclosure action, the provisions of Clause 11.04 (b) shall apply.

(b) In the event the Mortgagee commences foreclosure proceedings against the Lessee, whether or not the Lessee is in default of the performance of its covenants and agreements with the Lessor under this Lease at the time such foreclosure proceedings are commenced, the Lessor shall not re-enter, terminate or forfeit this Lease after the commencement of foreclosure proceedings on the ground of any default or contingency entitling the Lessor to re-enter, terminate or forfeit this Lease if the Mortgagee:

(i) shall first have given to the Lessor notice of the foreclosure proceedings;

(ii) is actively prosecuting the foreclosure proceedings;

(iii) cures the default or contingency within a period of thirty (30) days from the date of receipt of notice from the Lessor specifying the nature of the default or contingency, or if the default or contingency is other than the failure to pay Rent, Basic Rent or taxes or any other sums required to be paid to the Lessor or any other party by any provision of this Lease and if such default or contingency cannot reasonably be cured within such thirty (30) day period, immediately commences to

cure the same within a reasonable period specified by the Lessor and to diligently prosecute to conclusion all acts necessary to cure the default or contingency;

- (iv) performs and observes all of the Lessee's covenants and agreements under this Lease and without undue delay diligently prosecutes to a conclusion the foreclosure proceedings commenced by the Mortgagee.

In the event that the Mortgagee acquires title to the Lessee's interest in the Lands and Buildings pursuant to the foreclosure proceedings, the Mortgagee shall thereupon become subrogated to the rights of the Lessee under this Lease provided it attorns to the Lessor as tenant and undertakes to be bound by and perform the covenants and agreements of this Lease. PROVIDED HOWEVER that in the event the Mortgagee consists of more than one mortgagee and more than one of them commences foreclosure proceedings, the right to cure any default or contingency granted by this Clause 11.04 (b) to a foreclosing mortgagee shall be deemed granted to them in the order of priority of the charges held by the foreclosing mortgagees.

- (c) Any re-entry, termination or forfeiture of this Lease made in accordance with the provisions of this Lease as against the Lessee shall be valid and effectual against the Lessee even though made subject to the rights of any Mortgagee to cure any default of the Lessee and to continue as tenant under this Lease.
- (d) No entry upon the Lands or the Buildings by the Mortgagee pursuant to this Clause 11.04 for the purpose of curing any default or defaults of the Lessee shall release or suspend the continuing obligation of the Lessee.

Clause 11.05 Remedies of Lessor are Cumulative

The remedies of the Lessor specified in this Lease are cumulative and are in addition to any remedies of the Lessor at law or equity. No remedy shall be deemed to be exclusive, and the Lessor may from time to time have recourse to one or more of all of the available remedies specified herein or at law or equity. In addition to any other remedies provided in this Lease, the Lessor shall be entitled to restrain by injunction any violation or attempted or threatened violation by the Lessee of any of the covenants or agreements hereof.

ARTICLE XII

SURRENDER OF LEASE

Clause 12.01 Showing of Lands and Buildings

At any time during the last twelve (12) months of the Term, or if the Lessee is holding over, then at any time during such holding over, the Lessor may show the Lands and Buildings during normal business hours to agents of the Lessor and to prospective purchasers or tenants and their agents and advisors.

Clause 12.02 Surrender of Lease

At the end of the Term, either by forfeiture, default or lapse of time, the Lessee shall surrender the Lands and the Buildings to the Lessor without compensation or further consideration from the Lessor. Upon such surrender the Lessee shall assign to the Lessor the benefit of all leases, licences, agreements and other agreements and rights benefitting the Lands or the Buildings or the Lessee's interest therein, if and to the

extent that the Lessor shall require such benefits to be so assigned, and if and to the extent the same are assignable.

Clause 12.03 Vacant Possession

Upon termination of the Term hereby granted, whether by effluxion of time or otherwise, the Lessee shall peaceably surrender and deliver up vacant possession of the Lands and the Buildings and shall leave the Lands and the Buildings in a sanitary, neat, tidy, safe and empty condition free from all nuisance, debris, rubbish, stock in trade and in the state of repair required hereunder. The Lessee shall not cause any damage to the Buildings in removing any objects therefrom.

Clause 12.04 Overholding

If the Lessee shall hold over after the expiration of the Term, whether by effluxion of time or otherwise, the new tenancy thereby created shall be a tenancy from month to month and not from year to year, and shall be subject to the covenants and conditions herein contained so far as may be applicable to a tenancy from month to month and the rent then payable shall be one twelfth of the then annual rental market value of the Lands and Buildings as determined from time to time by the Lessor.

Clause 12.05 Trade Fixtures

At the expiration or other determination of the Term the trade fixtures and equipment installed in the Buildings prior to or during the Term at the cost of the Lessee, shall remain personal property and shall not be deemed to become part of the Lands and Buildings if the Lessee shall notify the Lessor's Superintendent in writing within thirty (30) days prior to termination or expiration of this Lease of the trade fixtures or equipment the Lessee intends to remove. Unless the Lessor objects to the removal of any trade fixtures and equipment within

ten (10) days of receipt of written notice as aforesaid, the Lessee shall within a period of fifteen (15) days after the termination of this Lease or any extension or overholding thereof remove from the Lands and Buildings any trade fixtures or equipment of the Lessee and any such trade fixtures and equipment. Any trade fixtures and equipment which are not removed within the said fifteen (15) days, shall be deemed to be abandoned and shall become the property of the Lessor. The Lessee shall make good all damage to the Lands and Buildings caused by the removal and costs of removing trade fixtures and equipment and shall replace doors, windows and structures, all to the satisfaction of the Lessor's Superintendent.

For the purpose of the preceding paragraph "trade fixtures" and "equipment" shall mean moveable property of the Lessee, bar and equipment, draperies and rugs. It is specifically agreed that air conditioning plant, equipment, outlets and all associated works shall not constitute "trade fixtures" and "equipment" and that they shall not be removed by the Lessee.

ARTICLE XIII

LESSEE'S COVENANTS SURVIVE TERMINATION

Clause 13.01

The covenants, provisos and conditions herein on the part of the Lessee which, as of termination of this Lease whether by effluxion of time or otherwise, remain unfulfilled, undischarged or otherwise outstanding shall notwithstanding termination of this Lease continue in full force and effect and be binding upon the Lessee until such covenants, provisos and conditons are discharged or satisfied in full.

ARTICLE XIV

QUIET ENJOYMENT

Clause 14.01 Covenant for Quiet Enjoyment

If the Lessee pays the rent hereby reserved and the other charges, and performs the covenants herein on the Lessee's part contained, the Lessee shall and may peaceably enjoy and possess the Lands and Buildings for the Term, without any interruption or disturbance whatsoever from the Lessor or any third party lawfully claiming from or under the Lessor, subject always to the terms and conditions hereof.

ARTICLE XV

RIGHTS OF LESSOR AND LESSEE

Clause 15.01

All rights and benefits and all obligations of the Lessor and the Lessee under this Lease shall be rights, benefits and obligations of the Lessor and the Lessee respectively in their capacities as Lessor and Lessee respectively under this Lease.

ARTICLE XVI

NOTICE

Clause 16.01

All notices, demands and requests which may be or are required to be given pursuant to this Lease shall be in writing and shall be sufficiently given if served personally upon the party or an executive officer of the party for whom it is intended or mailed prepaid and registered, in the case of the Lessor addressed to:

The Municipal Solicitor
The Corporation of the District of Burnaby
4949 Canada Way
Burnaby, B.C.
V5G 1M2

and in the case of the Lessee addressed to:

Hart Restaurant Ltd.
Suite 1450-701 West Georgia Street
Vancouver, B.C. V7Y 1C6

and in the case of the Guarantor addressed to:

Regency Caterers Ltd.
Suite 1450-701 West Georgia Street
Vancouver, B.C. V7Y 1C6

and:

Peter Scott
4310 Musqueam Drive
Vancouver, B.C. V6N 3R7

or at such other addresses as the parties may from time to time advise by notice in writing. Mortgagees hereof shall supply their respective mailing addresses to the Lessor and the Lessee. The date of receipt of any such notice, demand or request shall be deemed to be the date of delivery if such notice, demand or request is served personally or if mailed as aforesaid, on the third business day next following the date of such mailing, PROVIDED HOWEVER that if mailed, should there be between the time of mailing and the actual receipt of the notice a mail strike,

slow down of postal service or other labour dispute which affects the delivery of such notice, then such notice shall be deemed to be received when actually delivered.

ARTICLE XVII

MISCELLANEOUS

Clause 17.01

The Lessor and the Lessee agree that at any time and from time to time upon not less than thirty (30) days prior request by the other party, each will execute, acknowledge and deliver to the other a statement in writing certifying:

- (a) that this Lease is unmodified and in full force and effect or if there have been modifications that the same are in full force and effect as modified and identifying the modifications;
- (b) the dates to which the rent and other charges have been paid and the request shall specify the charges in respect of which such information is required; and
- (c) that, so far as the maker of the statement knows, the party who requests the statement is not in default under any of the provisions of this Lease, or, if in default, the particulars thereof.

Clause 17.02

The Lessee shall, throughout the Term, at its own cost, provide the Lessor with a monthly financial statement attesting to the revenues, expenses and any other information requested by

the Lessor in respect of the Lessee's restaurant operations on the Lands. The Lessee shall, at the request of the Lessor, throughout the Term, at its own cost, provide the Lessor with an annual audited financial statement respecting the Lessee's said restaurant operations, which statement shall be prepared and certified by a chartered accountant licensed and qualified to practise in British Columbia. The Lessee shall also, at its own cost, at such times stipulated by the Lessor, provide the Lessor with such information, financial statements or other documentation attesting to the Lessee's financial standing, restaurant operations and corporate organization as the Lessor requires.

The Lessee and Guarantor confirm and authorize the Lessor at any time to conduct and obtain a credit check or financial information with respect to the Lessee and to conduct any related enquiries thereto.

Clause 17.03

Time shall be of the essence of this Lease, save as herein otherwise specified.

Clause 17.04

This Lease may not be modified or amended except by an instrument in writing of equal formality herewith executed by the Lessor and the Lessee or by the successors or assigns of the Lessor and the successors or permitted assigns of the Lessee.

Clause 17.05

The captions and headings throughout this Lease are for convenience and reference only and the words and phrases contained herein shall in no way be held or deemed to define, limit, describe, explain, modify, amplify or add to the

interpretation, construction or meaning of any provision of or the scope or intent of this Lease nor in any way affect this Lease.

Clause 17.06

Words herein importing the singular number or the masculine gender only shall include more persons, parties or things of the same kind than one, and females as well as males, and the converse whenever the context requires; also these presents shall enure to the benefit of and be binding upon the heirs, executors, administrators, successors and assigns of the respective parties hereto. Reference herein to the Lessor and the Lessee shall be deemed to include the servants, agents, contractors, subcontractors, licensees and invitees wherever the context requires.

IN WITNESS WHEREOF the Lessor and the Lessee have caused these presents to be signed under the hands of their proper officers in that behalf and the Guarantor has executed these presents in that behalf as of the day and year first above written.

THE CORPORATE SEAL OF THE CORPORATION OF THE DISTRICT OF BURNABY WAS HEREUNTO AFFIXED IN THE PRESENCE OF:

Municipal Clerk - Authorized Signatory

THE CORPORATE SEAL OF HART RESTAURANT LTD. WAS HEREUNTO AFFIXED IN THE PRESENCE OF:

Authorized Signatory

Authorized Signatory

THE CORPORATE SEAL OF THE
GUARANTOR, REGENCY CATERERS LTD.
WAS HEREUNTO AFFIXED IN THE
PRESENCE OF:

Authorized Signatory

Authorized Signatory

SIGNED, SEALED AND DELIVERED
BY THE GUARANTOR, PETER SCOTT
IN THE PRESENCE OF:

Name

PETER SCOTT

Address

Occupation

SCHEDULE A

Easement 130390C

Easement 130391C

Statutory Right of Way BY112433

SCHEDULE B

The Lessee shall pay to the Lessor during the Term, Rent in the following amounts:

Years 1 and 2 of the Term inclusive:

4.5% of gross revenues in excess of \$1.4 million from all business operations conducted by the Lessee on the Lands, exclusive of sales tax and sale of alcoholic beverages.

Years 3 to 7 of the Term inclusive:

\$24,000 per annum plus 4.5% of gross revenues in excess of \$1.4 million from all business operations conducted by the Lessee on the Lands, exclusive of sales tax and sale of alcoholic beverages.

Years 8 to 10 of the Term inclusive:

\$93,355 per annum plus 4.5% of gross revenues in excess of \$1.4 million from all business operations conducted by the Lessee on the Lands, exclusive of sales tax and sale of alcoholic beverages.

Years 11 to 15 of the Term inclusive:

\$100,000 per annum plus 5.5% of gross revenues in excess of \$1.4 million from all business operations conducted by the Lessee on the Lands, exclusive of sales tax and sale of alcoholic beverages.

SCHEDULE C

THE CORPORATION OF THE DISTRICT OF BURNABY

LABOUR AND MATERIAL PAYMENT BOND

(Private Contracts - Trustee Form)

NOTE: This Bond is issued simultaneously with another Bond in favour of the Obligee conditioned for the full and faithful performance of the Contract.

KNOW ALL MEN BY THESE PRESENTS THAT

as Principal,

hereinafter called the Principal and

as Surety,

hereinafter called the Surety, are, subject to the conditions hereinafter contained, held and firmly bound unto

as Trustee,

hereinafter called the Obligee, for the use and benefit of the Claimants, their and each of their heirs, executors, administrators, successors and assigns in the amount of

DOLLARS (\$)

of lawful money of Canada for the payment of which sum well and truly to be made the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns jointly and severally, firmly by these presents.

SIGNED AND SEALED this day of 19 .

WHEREAS the Principal has entered into a written contract with the Obligee

dated the day of 19 , for

which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if the Principal shall make payment to all Claimants for all labour and material used or reasonably required for use in the performance of the Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect, subject, however, to the following conditions:

- (1) A Claimant for the purpose of this Bond is defined as one having a direct contract with the Principal for labour, material or both, used or reasonably required for use in the performance of the Contract, labour and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment directly applicable to the Contract provided that a person, firm, or Corporation who rents equipment to the Principal to be used in the performance of the Contract under a contract which provides that all or any part of the rent is to be applied towards the purchase price thereof shall only be a Claimant to the extent of the prevailing industrial rental value of such equipment for the period during which the equipment was used in the performance of the Contract.

The prevailing industrial rental value of the equipment shall be determined insofar as it is practical to do so, in accordance with and in the manner provided for in the latest, revised edition of the publication of the Canadian Construction Association entitled

or holdbacks related thereto held by the Corporation may be paid to the Surety by the Corporation.

- (2) The Surety shall not be liable for a greater sum than the amount specified in this Bond.
- (3) No suit or action shall be instituted by the Corporation herein against the Surety pursuant to these presents after the expiration of two (2) years from the date on which final payment under the Contract is payable.

IN TESTIMONY WHEREOF, the Principal has hereto set its hand and affixed its seal, and the Surety has caused these presents to be sealed with its corporate seal duly attested by the signature of its signing authority, the day and year first above written.

THE CORPORATE SEAL OF

WAS HEREUNTO AFFIXED
IN THE PRESENCE OF:

Principal

Surety

Attorney-In-Fact

THE CORPORATION OF THE DISTRICT OF BURNABY

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS THAT

as Principal,

hereinafter called the Principal, and as Surety, hereinafter called the Surety, are, subject to the conditions hereinafter contained, held and firmly bound unto The Corporation of the District of Burnaby as Oblige, hereinafter called the Corporation, in the amount of

DOLLARS (\$ _____),

lawful money by Canada, for the payment of which sum, well and truly to be made, the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

SIGNED and SEALED, this _____ day of _____ 19 ____ .

WHEREAS, the Principal has entered into a contract with the Corporation dated the _____ day of _____ 19 ____, for

in accordance with the plans and specifications submitted therefore, which contract, plans and specifications and amendments thereto, to the extent herein provided for, are by reference made part hereof, and are hereinafter referred to as the Contract.

NOW, THEREFORE, the conditions of this obligation are such that if the Principal shall well and faithfully observe and perform all the obligations on the part of the Principal to be observed and performed in connection with the Contract (including any amendments thereto, provided such amendments do not collectively increase the amount to be paid to the Principal by more than 10 percent of the amount of the Contract except with the written consent of the Surety) then this obligation shall be void; otherwise it shall remain in full force and effect, subject, however, to the following conditions:

- (1) Whenever the Principal shall be, and declared by the Corporation to be, in default under the Contract, the Surety shall
 - (a) if the work is not taken out of the Principal's hands, remedy the default of the Principal,
 - (b) if the work is taken out of the Principal's hands, and the Corporation directs the Surety to undertake the completion of the work, complete the work in accordance with the Contract provided that if a contract is entered into for completion of the work
 - (i) it shall be between the Surety and the completing contractor, and
 - (ii) the selection of such completing contractor shall be subject to the approval of the Corporation,
 - (c) if the work is taken out of the Principal's hands, and the Corporation after reasonable notice to the Surety, does not direct the Surety to undertake the completion of the work, assume the financial responsibility for the cost of completion in excess of the monies available to the Corporation under the Contract,
 - (d) be liable for and pay all the excess costs of completion of the Contract, and
 - (e) not be entitled to any Contract monies earned by the Principal up to the date of his default on the Contract and any holdbacks relating to such earned Contract monies held by the Corporation, and the liability of the Surety under this Bond shall remain unchanged provided, however, and without restricting the generality of the foregoing, upon the completion of the Contract to the satisfaction of the Corporation, the Contract monies earned by the Principal

"Rental Rates on Contractors' Equipment" published prior to the period during which the equipment was used in the performance of the Contract.

- (2) The Principal, and the Surety hereby jointly and severally agree with the Obligees as Trustees that every Claimant who has not been paid as provided for under the terms of his contract with the Principal before the expiration of a period of ninety (90) days after the date on which the last of such Claimant's work or labour was done or performed or materials were furnished by such Claimant, may as a beneficiary of the trust herein provided for, sue on this Bond, prosecute the suit to final judgement for such sum or sums as may be justly due to such Claimant under the terms of his said contract with the Principal and have execution thereon. Provided that the Obligees is not obliged to do or take any act, action or proceeding against the Surety on behalf of the Claimants or any of them to enforce the provisions of this Bond. If any act, action or proceeding is taken either in the name of the Obligees or by joining the Obligees as a party to such proceedings then such act, action or proceeding shall be taken on the understanding and basis that the Claimants or any of them who take such act, action, or proceeding shall indemnify and save harmless the Obligees against all costs, charges and expenses or liabilities incurred thereon and any loss or damage resulting to the Obligees by reason thereof. Provided still further that, subject to the foregoing terms and conditions, the Claimants or any of them may use the name of the Obligees to sue on and enforce the provisions of this Bond.
- (3) No suit or action shall be commenced hereunder by any Claimant:
 - (a) Unless such Claimant shall have given written notice within the time limits hereinafter set forth to each of the Principal, Surety and Obligees, stating with substantial accuracy the amount claimed. Such notice shall be served by mailing the same by registered mail to the Principal, Surety and Obligees at any place where an office is regularly maintained for the transaction of business by such persons or served in any manner in which legal process may be served in the Province or other part of Canada in which the subject matter of the contract is located. Such notice shall be given (i) in respect of any claim for the amount or any portion thereof required to be held back from the Claimant by the Principal under either the terms of the Claimant's contract with the Principal or under the Mechanics' liens legislation applicable to the Claimant's contract with the Principal, whichever is the greater within one hundred and twenty (120) days after such Claimant should have been paid in full under the Claimant's contract with the Principal; (ii) in respect of any claim other than for the holdback or portion thereof referred to above within one hundred and twenty (120) days after the date upon which such Claimant did or performed the last of the work or labour or furnished the last of the materials for which such claim is made under the Claimant's contract, with the Principal.
 - (b) After the expiration of one (1) year following the date on which Principal ceased work on the Contract, including work performed under the guarantees provided in the Contract.
 - (c) Other than in a court of competent jurisdiction in the Province or District of Canada in which the subject matter of the Contract or any part thereof is situated and not elsewhere, and the parties hereto agree to submit to the jurisdiction of such court.
- (4) The amount of this Bond shall be reduced by and to the extent of any payment or payments made in good faith and in accordance with the provisions hereof, inclusive of the payment by the Surety of Mechanics' Liens which may be filed of record against the subject matter of the Contract, whether or not claim for the amount of such lien be presented under and against this Bond.

(5) The Surety shall not be liable for a greater sum than the specified penalty of this Bond.

IN TESTIMONY WHEREOF, the Principal has hereto set its hand and affixed its seal, and the Surety has caused these presents to be sealed with its corporate seal duly attested by the signature of its Attorney-In-Fact the day and year first above written.

THE CORPORATE SEAL OF

WAS HEREUNTO AFFIXED
IN THE PRESENCE OF:

Principal

Attorney-In-Fact

