

~~assist in the supervision thereof, and to verify that all work is being done in accordance with the approved plans and specifications. Said employee shall not interfere with the progress of the work and Lessor shall designate an authorized representative on the job with whom said employee shall exclusively deal.~~

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The Lessor warrants that in undertaking the aforementioned construction, it will fully comply with the Lien Law in effect in the State in which the demised premises are located and will indemnify the Lessee for any damages suffered as a result of any failures to so comply. In the event any claims or liens of mechanics, materialmen, contractors, sub-contractors, or laborers are filed against the demised premises as a result of the aforementioned construction, which in any manner interrupt or interfere with the Lessee's possession or the operation of its business on the demised premises, the Lessor may bond said lien or upon Lessor's failure so to do within twenty (20) days after same is filed, the Lessee may at its option satisfy any such claims and may deduct the amount of such claims with interest and reasonable attorney's fees from the rental payments due under the provisions of this lease.

IV.

RENT:

a) *Minimum Rental:* The Lessee covenants and agrees to pay to said Lessor a minimum guaranteed rental of **NINETEEN THOUSAND, EIGHT HUNDRED DOLLARS (\$19,800.00)** per year, which rental shall be payable in equal monthly installments in advance on the first day of each and every calendar month during the original term and during any extensions of said term, as hereinabove set forth.

The first rental payment shall be due and owing on the commencement date of this lease. In the event that the commencement date falls on a day other than the first day of a calendar month, then and in that event the rental is to be prorated accordingly in order that the commencement date for rental purposes of this lease be on the first day of the succeeding calendar month.

b) *Percentage Rental:* As further and additional rental, hereinafter called "percentage rental", for said premises, the Lessee covenants and agrees to pay to the Lessor as hereinafter provided, during the original term and any extension thereof, a sum equal to five percent (5%) of the amount, if any, by which Lessee's annual gross sales, hereinafter defined for such year shall exceed twenty (20) times the above mentioned minimum rental.

c) *Business Statements:* The Lessee agrees to submit to the Lessor quarterly statements of gross sales received from the business operated upon the premises, and within thirty (30) days immediately following the end of the first and each succeeding full year of the term a statement of yearly gross sales, and within thirty (30) days following the expiration or earlier termination of said lease a statement of gross sales made since the last quarterly statement. The first such yearly statement shall include gross sales for the first twelve months following the commencement date for rental purposes of this lease as well as gross sales for the portion of the month, if any, preceding such commencement date for rental purposes. All such statements shall be signed by a responsible and authorized financial officer of the Lessee certifying as to the amount of gross sales as hereinafter defined for the period to be accounted for. If by any such yearly statement it appears that any percentage rental is due and payable to the Lessor for the preceding yearly period, it shall be paid to the Lessor within thirty (30) days immediately following the rendition date of such yearly statement. If there is any question concerning the accuracy of any statement, it shall be settled as conveniently as possible between the parties, but not so as to unreasonably interrupt the operation of Lessee's business.

1. *Definition of Gross Sales:* The term "gross sales", as used herein, shall be construed to mean for all the purposes hereof the following:

- a) The aggregate amount of all sales made upon the demised premises;
- b) All other business done upon the demised premises which according to standard use and accepted accounting practices are gross sales of the Lessee excepting the following:
  - (i) The sales price of returned merchandise;
  - (ii) Sales and/or exchanges made to or with other restaurants, stores or other establishments operated and conducted by the Lessee;
  - (iii) Receipts from telephones, cigarette machines, and all other vending type machines, excepting those vending "Howard Johnson's" food products;
  - (iv) The amount of any federal, state or local sales or food taxes now or hereafter levied, assessed or imposed;
  - (v) Meals served to employees of the Lessee whether such meals are served with or without charge, or whether such meals are treated as meals sold for any other purpose.

2. *Lessee's Books:* The Lessee, with respect to business done on the above described premises, shall keep at its Central Accounting Office true and accurate records and accounts which shall show all sales made and all gross receipts from the business done upon and within the demised premises. The Lessee covenants that accurate cash registers will be installed and kept, or caused to be installed and kept, by the Lessee within the demised premises which shall show and record each and every sale made upon and within the demised premises. Such registers shall show the total of the daily sales of all business done upon and within the said demised premises by the Lessee. Said books and accounts of the restaurant shall be available to the Lessor or accountant representing the Lessor and may be inspected at reasonable times after notification to the Lessee; however, said books and records shall be made available only for the full lease year prior to said notification.

V.

INSURANCE

a) *Fire, Extended Coverage and Vandalism and Malicious Mischief:* **Lessee** From and after the date that construction is begun and throughout the term and any extensions of the Lease, the **Lessee** shall provide and pay for fire, extended coverage and vandalism and malicious mischief insurance, insuring the buildings and improvements in an amount no less than eighty percent (80%) of their insurable replacement cost. The insurance policy or policies shall be written in a responsible insurance company or companies authorized to do business in the state in which the premises are located and shall be in a form reasonably satisfactory to the **Lessee**. The policy or policies shall include the Lessor and Lessee as named insureds, as their interests may appear. The interest of an institutional first mortgagee may be included provided the mortgagee has agreed by an instrument in writing to apply the proceeds of the policy or policies to the cost of repairs or restoration. The Lessor hereby waives any and all rights of recovery against the Lessee for any direct or indirect loss occurring to the property.

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Lessor