



# California Fair Political Practices Commission

March 11, 1987

Carl K. Newton  
City Attorney of Manhattan Beach  
Burke, Williams & Sorensen  
One Wilshire Building  
624 South Grand Avenue, 11th Floor  
Los Angeles, CA 90017

Re: Your Request for Advice  
Our File No. A-87-046

Dear Mr. Newton:

You have requested advice on behalf of Larry Dougherty and Charles Holmes, members of the Manhattan Beach City Council, and on your own behalf as City Attorney, concerning the conflict of interest provisions of the Political Reform Act (the "Act").<sup>1/</sup>

## QUESTION

The applicant for an extension of a temporary certificate of occupancy has filed a claim against the city, Councilmembers Dougherty and Holmes, and yourself. The claim is for actual damages totaling \$650,000, punitive damages of \$1,000,000, and attorneys' fees. May you, as the city attorney, and the two councilmembers participate in:

- (1) Decisions on the claim;
- (2) Decisions on applications related to the claim; or
- (3) Decisions affecting the claimant but unrelated to the claim?

## CONCLUSION

You and the two councilmembers may participate in decisions on the claim, decisions on applications related to the claim, and other decisions affecting the claimant.

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<sup>1/</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise noted. Commission regulations appear at 2 California Administrative Code Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Administrative Code.

### FACTS

In January 1987, Meals America, Inc. ("Meals"), filed a claim against you, the City of Manhattan Beach, and Councilmembers Dougherty and Holmes, alleging negligent interference with contractual relations, interference with prospective economic advantage, conspiracy to interfere with existing contractual relations, fraud and/or negligent misrepresentation, estoppel, conspiracy to defraud, violation of civil rights and damages. The claim seeks damages of \$50,000 for loss of business, \$600,000 for additional lease expenses, \$1,000,000 in punitive damages, and attorneys' fees. Meals has not filed a lawsuit based on the claim, but may do so in the future.

The claim stems from an application for a planned development permit and a conditional use permit for the development of a restaurant, lounge and associated service activities. Meals was the proposed lessee-tenant of the property and the developer of the property for which the permit applications were filed.

In October 1986, the city granted Meals a 90-day temporary certificate of occupancy for its restaurant. One of the conditions of the temporary certificate of occupancy concerned offsite parking for patrons of the restaurant. On January 20, 1987, the temporary certificate of occupancy was scheduled to come before the city council for extension. At that time, the city had received complaints that Meals was not complying with the offsite parking requirement. Meals filed its claim against the city, the two councilmembers and the city attorney prior to the vote on the extension of the temporary certificate of occupancy. The city council voted to extend the temporary certificate of occupancy to March 23, 1987, and continued a request for a further extension to March 17, 1987. Councilmembers Dougherty and Holmes disqualified themselves from participating in the decision on the extension pending the issuance of an advice letter from our office about the effect of the claim on their ability to participate in decisions affecting Meals.

### ANALYSIS

One of the main purposes of the Act is to prevent conflicts of interest in governmental decisionmaking. (Sections 81001(b) and 81002(c).) In this regard, Section 87100 prohibits any public official from making, participating in, or using his official position to influence any governmental decision in which he knows or has reason to know he has a financial interest. An official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on

the public generally, on the official or on a member of his immediate family, or on:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made.

Section 87103.

The officials in question do not have an investment interest in Meals or any ownership in the real property that Meals has developed. They have received no income or gifts from Meals; they are not employed by, nor do they hold any business positions with, Meals. Therefore, the issue raised by your question is whether the officials themselves will be foreseeably and materially affected by the decisions concerning Meals' claim, by decisions on applications related to the claim, or by other decisions affecting Meals.

The effect of a decision will be considered material if there is a substantial likelihood that it will occur. (Thorner Opinion, 1 FPPC Ops. 198 (No. 75-089, Dec. 4, 1975), copy enclosed.) Certainty is not required; however, if the effect is but a mere possibility, it is not considered reasonably foreseeable.

Regulation 18702.1(a)(4) (copy enclosed) contains guidelines for determining whether the reasonably foreseeable effect of a

decision on an official will be considered material. Pursuant to these guidelines, an official is required to disqualify himself from participating in a decision if it is reasonably foreseeable that the personal expenses, income, assets or liabilities of the official will be increased or decreased by at least \$250 by the decision. Disqualification is not required if the decision only affects the salary, per diem, or reimbursement for expenses the official receives from a state or local government agency.

At this point, the city council is faced with decisions concerning the claim and decisions concerning Meals' request for an extension of the temporary certificate of occupancy. The claim filed by Meals imposes no personal liability on you or Councilmembers Dougherty and Holmes. Any decisions the city council makes regarding the claim could not directly result in you or Councilmembers Dougherty or Holmes incurring or avoiding personal liability.

In the future, Meals could file a lawsuit based on the claim. The city council's decision on the claim and on Meals' applications related to the claim may affect whether Meals decides to file a lawsuit in the future. However, at this time, the effect of the decisions currently before the city council on your personal liabilities and the personal liabilities of Councilmembers Dougherty and Holmes is too remote to be considered reasonably foreseeable.

Your letter includes some hypothetical questions about potential litigation that may be filed against the city, the two councilmembers and yourself. We decline to answer your hypothetical questions at this time. (See, Regulation 18329(b)(8)(D), copy enclosed.) If a lawsuit is filed in the future, it would then be appropriate for us to consider the effect of the lawsuit on your participation and that of Councilmembers Dougherty and Holmes in decisions related to the lawsuit.

The issues raised in your questions concerning the potential future litigation have not previously been addressed by the Commission. They include complex policy decisions which are best addressed in a specific factual situation, rather than in the abstract. If a lawsuit is filed, a Commission opinion may be the best vehicle for resolving those substantial questions of interpretation.

If Meals does file a lawsuit based on the claim, you should contact us for further guidance. In the meantime, you and Councilmembers Dougherty and Holmes may participate in decisions

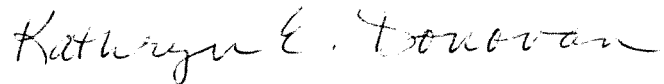
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on the claim, decisions on applications related to the claim,  
and other decisions affecting Meals.

If you have any questions regarding this letter, please  
contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths  
General Counsel



By: Kathryn E. Donovan  
Counsel, Legal Division

DMG:KED:km  
Enclosures

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January 30, 1987

\*PROFESSIONAL CORPORATION

Mr. Gregory Baugher  
Executive Director  
Fair Political Practices Commission  
Post Office Box 807  
Sacramento, CA 95804

Re: Request for Advice of the Commission  
Under Section 83114 Government Code

Dear Mr. Baugher:

This letter is written in my capacity as City Attorney of the City of Manhattan Beach and is intended to serve as a request for advice pursuant to the provisions of Section 83114 of the Government Code.

The request for advice is made relative to the following facts:

In 1983, there was filed with the Planning Commission of the City of Manhattan Beach (City) an application by J.D.J. Management and David Arias for a planned development permit and a conditional use permit for the development of a restaurant, lounge and associated service activities. Following denial of the applications by the Planning Commission, there was an appeal to the City Council, which conditionally approved both applications by the adoption of resolution of the City Council, 4071 (attached as Exhibit A). In September of 1983, the City's Planning Commission conditionally approved the final plans for the commercial planned development permit to allow the development of the restaurant proposed by David Arias. This action was taken by the adoption, by the City's Planning

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Commission, of its Resolution No. PC 83-35 (attached as Exhibit B).

Among the conditions attached to the approvals by both the City Council and Planning Commission mentioned above was a requirement that the applicant provide a minimum of 30 offsite parking spaces to serve the project over and above the proposed 16 onsite parking stalls. (See condition number 1 of Section 4 of City Council Resolution No. 4071 and conditions 1 and 11 of Planning Commission Resolution No. PC 83-35.)

As the project progressed, the owner and lessor of the property on which the restaurant was to be established changed form to Morningside Investments (Morningside), a limited partnership of which David Arias was the general partner. The proposed lessee-tenant and developer of the restaurant changed to Meals America, Inc., of which David Fansler is the president. The name of the restaurant proposed to be established was "Wilikers Restaurant and Bar."

On July 25, 1983, a sublease of 30 parking spaces was entered into between Metlox Potteries (Metlox) and David Arias. Metlox Potteries (also designated as Metlox Manufacturing Company) was the lessee of 85 parking spaces from Atchison, Topeka and Santa Fe Railway Company (Santa Fe) prior to and at the time the July 25, 1983 sublease was entered into between Metlox and David Arias. (July 25, 1983 Parking Sublease - attached as Exhibit C.)

By an Assignment Contract dated January 25, 1985, between Santa Fe, Metlox and Morningside, the leasehold interest of Metlox in 85 parking spaces owned by Santa Fe was assigned to Morningside. (Assignment Contract of January 25, 1985 - attached as Exhibit D.)

The proposed 30 parking spaces required to be provided by the restaurant development, which were also a part of the 85 spaces leased from Santa Fe to Metlox and subleased to Morningside, did not conform to the City's standards for parking spaces. Accordingly, Morningside applied to the Planning Commission for a zone variance to allow the modification of development standards related to the parking lot designed for the restaurant operation on the property owned by Morningside. The application for zone

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variance was granted by the Planning Commission pursuant to Resolution No. PC 85-33. (Attached as Exhibit E.)

In September of 1986, Meals America, Inc. (Meals) apparently encountered difficulties in meeting the City's zoning and building requirements in order to open the restaurant which it was developing and was near completion of construction. A parking difficulty experienced by Meals was apparently based upon disputes which arose between Meals and its landlord, Morningside, relative to subleasing the 30 offsite parking spaces.

On October 7, 1986, Meals, through its president, David Fansler, appeared before the City Council requesting relief from a condition of the conditional use permit, the zone variance and the planned development permit relating to the restaurant development requirement that the 30 offsite parking spaces be provided. Meals' request was denied on a three-to-two vote of the Council, with Council Members Larry Dougharty, Bob Holmes and Connie Seiber voting with a majority, and Council Member Gil Archuletta and Mayor Jan Dennis voting to grant the relief.

On October 24, 1986, Meals and its president, David Fansler, were granted a temporary certificate of occupancy by the City for a 90-day period based upon, among other things, a representation by Mr. Fansler that he had entered into a parking lease which would accommodate the 30 space offsite parking requirement of the restaurant. The temporary certificate of occupancy was subject to a number of conditions and was granted on an interim basis to allow Mr. Fansler to resolve his dispute with Mr. Arias. (City letter dated October 24, 1986, granting the Temporary Certificate of Occupancy, with attached Parking Lot Lease Agreement dated October 23, 1986 - attached as Exhibit F.) Further conditions were required to be met as a condition of approval of the temporary certificate of occupancy.

As a culmination of nearly two years of negotiations with Santa Fe, the City acquired by purchase the abandoned railroad right-of-way previously owned by Santa Fe, which included the 85 parking spaces which were leased by Santa Fe to Metlox and Morningside. Title to said property was conveyed by Santa Fe to the City on October 8, 1986. The Purchase Agreement between the City and Santa Fe provided, among other things, that the City would lease back

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to Santa Fe the 85 parking spaces which were previously leased by Santa Fe to Metlox and Morningside. In order for the City to implement the lease of the 85 parking spaces to Santa Fe as lessee, the City as owner of the 85 parking space area cancelled the lease to Metlox and Morningside effective December 5, 1986. Santa Fe currently is contending that the Purchase Agreement which it entered into with the City regarding the abandoned right-of-way property contained only an option to Santa Fe to lease the 85 parking space area, which it now declines to pick up. The City disputes Santa Fe's contention but instead insists that the Purchase Agreement provided for a lease which became effective between the City and Santa Fe upon the cancellation by the City of the prior Santa Fe lease to Metlox and Morningside.

Following issuance of the Temporary Certificate of Occupancy to Meals and the commencement of the operation of Wilikers Restaurant, complaints were received from other merchants to the effect that Meals was not utilizing the required offstreet parking spaces and the offsite parking facility as required by the terms of the conditional use permit, planned development permit, zone variance and temporary occupancy permit. City staff investigation confirmed that Meals was not using the offsite parking facilities, but instead was utilizing a valet parking service which was parking cars in a public vehicle parking structure, on the City Hall and Library public lots and on City streets. (Regarding merchants' complaints, see letter of November 10, 1986, from Downtown Manhattan Beach Business and Professional Association to City Council Members, with attachments (attached as Exhibit G).) (Regarding the staff investigations, see staff memorandum to City Manager, dated November 26, 1986, with attachment (attached as Exhibit H).)

The temporary certificate of occupancy which was granted on October 24, 1986, to Meals and Wilikers Restaurant to operate for a 90-day period was scheduled to expire on January 22, 1987. The City received a request from Wilikers to extend the temporary certificate of occupancy for another 90-day period, or to April 22, 1987. A staff report was prepared on January 20, 1987 for the City Council meeting held on that date. (Said staff report, with attachments, is attached as Exhibit I.)

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A letter dated January 22, 1987 to the City from Peter Ristani, lessor of the offsite parking area to Meals and Wilikers providing the basis for the issuance of the temporary certificate of occupancy, was received. Said letter indicates that the lease from Mr. Ristani to Wilikers and Meals of the offsite parking area is no longer in effect and has not been since the end of December 1986. (See letter of January 22, 1987, from Peter Ristani to the City of Manhattan Beach - attached as Exhibit J.)

On January 27, 1987 the City sent a letter to Mr. Fansler informing him of noncompliance with the terms and conditions of the temporary certificate of occupancy, the planned development permit and the conditional use permit. (Attached as Exhibit K.)

On January 14, 1987, there was filed with the City Clerk a claim by Meals America, Inc., against the City, Carl K. Newton, Larry Dougharty and Charles Robert Holmes. Said claim filed against the City, Councilmen Holmes and Dougharty and City Attorney Newton alleged negligent interference with contractual relations, interference with prospective economic advantage, conspiracy to interfere with existing contractual relations, fraud and/or negligent misrepresentation, estoppel, conspiracy to defraud and violation of civil rights, and damages. The claim seeks damages of \$50,000 for loss of business, \$600,000 for additional lease expense, \$1,000,000 punitive and attorneys' fees. (The claim is attached as Exhibit L.)

On January 27, 1987, I discussed the potential conflict issue with John McClean of the Fair Political Practices Commission legal staff. Based upon that telephone conversation, it was the determination of Mr. McClean that there should be no participation by Councilmen Holmes and Dougharty and no advice by me relative to decisions which might be made on the Meals issue on the agenda or concerning the claim, pending a written opinion issued by the Fair Political Practices Commission on the issues.

At the City Council meeting of January 20, 1987, I limited my advice to the City Council to relaying the recommendation of the Fair Political Practices Commission legal staff to the Council, and Councilman Dougharty abstained from any participation in the Meals matter that was on the agenda. Councilman Holmes was absent from the

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Council meeting. On a two-to-one vote the remaining members of the City Council extended Meals' temporary certificate of occupancy for 60 days to March 23, 1987 and continued the request for a further extension to the meeting of March 17, 1987, in anticipation that an opinion from the Fair Political Practices Commission would be received on or before that date.

A number of questions relative to potential conflict of interest, under the provisions of the Political Reform Act of 1974 as amended, are presented by reason of the claim naming as prospective parties to litigation, two Council Members and the City Attorney. It should be noted that the two Council Members, Dougharty and Holmes, have in the past voted against the requests of the claimant and the restaurant developer, Meals, with regard to the issuance of the requested temporary certificate of occupancy.

During the claim stage, that is prior to the filing of litigation, questions arise as to the voting capacity of the two Council Members named in the claim as follows:

1. Can the Council Members vote on the claim?
2. Can the two Council Members vote on related applications of the claimant concerning the restaurant development and its compliance with conditions attached to the conditional use permit, planned development permit, zone variance and temporary certificate of occupancy?
3. Can the two Council Members vote on unrelated matters involving the claimant, i.e. not involving the restaurant development?

Certain conflicts questions arise as to the activities which properly can be engaged in by the City Attorney during the claim stage or prior to filing litigation as follows:

1. Can the City Attorney advise members of the City staff and City Council regarding the claim?

2. Can the City Attorney advise City staff and members of the City Council regarding related applications of the claimant, such as compliance with the conditions of the conditional use permit, planned development permit, zone variance and temporary certificate of occupancy?
3. Can the City Attorney advise City staff and Council Members relative to unrelated matters of the claimant?

During the litigation stage of the case that is after a lawsuit has been commenced, further questions arise as to the capacity of the two Council Members to vote, as follows:

1. Can the Council Members vote on pending applications of the plaintiff?
2. Can the Council Members vote on issues relating to the City providing a defense for the Council Members? (Government Code § 995.2.)
3. Can the City Councilmen vote on the issue of indemnification for judgment? (Government Code § 825.)

Similar questions as to conflicts arise for the City Attorney during the litigation stage, that is after the lawsuit has been commenced, as follows:

1. Can the City Attorney advise City staff and the Council relative to applications of the plaintiff?
2. Can the City Attorney advise City staff and the Council regarding the City providing a defense as to Council Members or the City Attorney? (Section 995.2 Government Code.)

The foregoing factual presentation and questions raised as set forth above present some very difficult policy questions for determination by the Fair Political Practices Commission. The possibility must be recognized that the

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motivation of Meals in presenting its claim to the City in the manner in which it has done so may be to utilize the provisions of the Fair Political Practices Act to remove members of the City Council who have opposed their requests in the past, so that they are unable to vote, thus manipulating the power of local government. If a developer can file a claim and thereby remove those who oppose his project, it would enable such a developer to tamper with the processes of government through the use of the Fair Political Practices Act, thus achieving a result clearly contrary to its purposes.

Section 81001, Government Code, sets forth the findings and declarations which are declared on behalf of the people as a basis for enacting the Political Reform Act. Subparagraph (b) appears applicable to the conflict issues presented in this matter. Subparagraph (b) provides:

"(b) Public officials, whether elected or appointed, should perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them;"

The financial interest which is the subject of the potential conflict applicable to the two City Councilmen named in Meals' claim and myself as City Attorney, which is the subject matter of this letter, is imposed upon us and created by the claimant, Meals, upon the filing of the claim. It may be appropriate to exempt a public official from a conflict situation when the decision relates to a financial interest which is created by the party who is directly affected by the decision. It simply violates every precept of government if a party interested in a decision can manipulate a public body by eliminating opponents from that body by creating a financial interest in them which disables them from participating in the governmental process.

Section 81002 of the Government Code sets forth the purposes of the Political Reform Act. Subparagraph (c) enumerates a purpose as follows:

"(c) Assets and income of public officials which may be materially affected by their official actions should be disclosed and in appropriate

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circumstances the officials should be disqualified from acting in order that conflicts of interest may be avoided."

The assets of the two City Councilmen who are the subject matter of the claim filed by Meals are subject to some effect of the claim only by reason of filing of the claim. It seems possible that a logical rule to be applied under the circumstances of this case would be that disclosure of the potential influence on behalf of the public officials is sufficient and that disqualification would be inappropriate when the party who has created the potential influence upon the asset of the governmental official may stand to gain by reason of the elimination of the official through the disqualification process. The rule of necessity as set forth in Section 87101 does allow the participation of public officials in the decision process, even though a conflict of interest exists. It seems possible that the Commission may determine that a policy based rule of necessity exists which would preclude disqualification in an instance where the Political Reform Act was being misused in order to eliminate persons who had opposed the position of the claimant in the past.

I trust that the foregoing will provide you with facts and information upon which you can base advice or guidance to the City of Manhattan Beach and more specifically to Councilmen Larry Dougharty, Bob Holmes and myself. If you should need anything further regarding this matter, please don't hesitate to contact me.

Sincerely,



CARL K. NEWTON  
OF BURKE, WILLIAMS & SORENSEN  
City Attorney  
City of Manhattan Beach

CKN/sjw  
Enclosures  
cc: Mayor and Members  
of the City Council  
David J. Thompson, City Manager  
Terry Stambler-Wolfe, Director of  
Community Development



# California Fair Political Practices Commission

February 5, 1987

Carl K. Newton  
Manhattan Beach City Attorney  
Burke, Williams & Sorensen  
One Wilshire Building  
624 South Grand Avenue, 11th Floor  
Los Angeles, CA 90017

Re: 87-046

Dear Mr. Newton:

Your letter requesting advice under the Political Reform Act was received on February 3, 1987 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Kathryn E. Donovan, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days. You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

A handwritten signature in cursive script that reads "Diane M. Griffiths".

Diane M. Griffiths  
General Counsel

DMG:plh

1 RESOLUTION NO. 4071

2 A RESOLUTION OF THE CITY COUNCIL OF THE CITY  
3 OF MANHATTAN BEACH, CALIFORNIA, REVERSING  
4 THE DECISION OF THE PLANNING COMMISSION MADE  
5 IN ITS RESOLUTION NO. 83-27, APPROVING A CONDI-  
6 TIONAL USE PERMIT AND GRANTING TENTATIVE AP-  
7 PROVAL FOR COMMERCIAL PLANNED DEVELOPMENT PER-  
8 MIT PURSUANT TO THE APPLICATION OF J.D.J. MAN-  
9 AGEMENT AND DAVID ARIAS FOR PROPERTY LOCATED  
10 AT 401 MANHATTAN BEACH BOULEVARD IN SAID CITY

11 WHEREAS, there was filed with the Planning Commission  
12 of the City of Manhattan Beach, California, an application by  
13 J.D.J. Management and David Arias for development approval in  
14 the Commercial Planned Development Zone (C-P-D) on the real  
15 property hereinafter described, in conjunction with a Conditional  
16 Use Permit application, to develop a two-story structure to be  
17 used for a restaurant, lounge and associated service areas,  
18 pursuant to the provisions of Sections 10-3.801-B to 10-3.805-B,  
19 inclusive, of the Manhattan Beach Municipal Code; and

20 WHEREAS, after duly processing said application and  
21 holding a public hearing thereon, the Planning Commission did  
22 duly and regularly adopt its Resolution No. 83-27 (which is now  
23 on file in the office of the Secretary of said Commission in  
24 the City Hall of said City, open to public inspection and hereby  
25 referred to in its entirety, and by this reference incorporated  
26 herein and made part hereof), on the 15th day of June, 1983; and

27 WHEREAS, within the time permitted by law and pursuant  
28 to the provisions of the Municipal Code, an appeal was filed by  
29 the applicants; and

30 WHEREAS, the Council of said City pursuant to the  
31 provisions of Section 10-3.805-B of the Municipal Code held a  
32 duly noticed public hearing on July 5, 1983, continued to  
July 19, 1983, receiving and filing all written documents and  
hearing oral argument for and against; thereafter on the 19th  
day of July, 1983, the Council directed that the recommendation  
of said Commission as reflected in Resolution No. 83-27 be

1 overruled and that said Commercial Planned Development Permit  
2 be granted tentative approval;

3 NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF  
4 MANHATTAN BEACH, CALIFORNIA, DOES HEREBY RESOLVE, DECLARE, FIND,  
5 DETERMINE, AND ORDER AS FOLLOWS:

6 SECTION 1. That the said application is an application  
7 which was properly made to the Planning Commission pursuant to  
8 the provisions of Section 10-3.801-B to 10-3.805-B, inclusive,  
9 of the Manhattan Beach Municipal Code.

10 SECTION 2. That the planned development permit applied  
11 for and the real property affected thereby are set forth in the  
12 application for permit as follows:

13 Request: The applicant proposes to construct  
14 a 2-story structure containing  
15 8,400 square feet to be used for  
16 restaurant, lounge and associated  
17 service areas, on property encom-  
18 passing 12,210 square feet.

19 Legal Description: Lots 1 and 2, Block 97, Manhattan  
20 Beach Division No. 2, to include  
21 a vacated portion of 12th Street,  
22 commonly known as 401 Manhattan  
23 Beach Boulevard in the City of  
24 Manhattan Beach.

25 SECTION 3. That the City Council hereby makes the  
26 following findings:

27 1. That the proposed commercial planned development  
28 conforms to the General Plan.

29 2. That the Facts set forth in the oral and written  
30 presentation by the applicants regarding this project constitute  
31 a basis for approval of the commercial planned development and  
32 the same are incorporated hereby by reference as findings.

33 3. The project is in accordance with the California  
34 Environmental Quality Act and a mitigated Negative Declaration  
35 has been filed.

36 4. The property proposed to be developed is exempt  
37 from parking requirements under the Zoning Ordinance pursuant to  
38 Section 10-3.1319, Manhattan Beach Municipal Code.

39 5. The applicant will supply 16 on site parking spaces  
40 and will lease 30 parking spaces from Motlox-Santa Fe to  
41 mitigate the environmental consequences noted in the Mitigated  
42 Negative Declaration.

1                    SECTION 4. That the City Council does hereby grant  
2 a Planned Development Permit and Conditional Use Permit to J.D.J.  
3 Management and David Arias for the purposes set forth in Section  
4 2 of this resolution, subject to the following conditions:

5                    1. A minimum of 30 parking spaces shall be provided  
6 on a permanent basis in conjunction with the project over and  
7 above the proposed 16 parking stalls; said space to be leased  
8 from the Metlox Company.

9                    2. The applicant shall work with the Department of  
10 Community Development to address the possibility that a portion  
11 of the structure that is proposed to be constructed is in the  
12 public right-of-way.

13                    3. Additional landscaping shall be installed in the  
14 public right-of-way adjacent to parking stalls 4 and 8.

15                    4. The need for valet parking shall be evaluated  
16 six months after granting of occupancy.

17                    5. Utilities serving the site shall be underground  
18 pursuant to City Ordinance.

19                    6. A survey suitable for purposes of recordation  
20 shall be performed by a Civil Engineer or Land Surveyor licensed  
21 in the State of California including permanent monumentation of  
22 all property corners and the establishment or verification of  
23 centerline ties at the intersections of Morningside Drive with  
24 Manhattan Beach Boulevard, Morningside Drive with 13th Street,  
25 Valley Drive with the easterly extension of the southerly line  
26 of the civic center, and Valley Drive with Manhattan Beach  
27 Boulevard.

28                    7. A site landscaping plan shall be submitted for  
29 approval in conjunction with building permit application which  
30 shall include a minimum of two street trees on the Manhattan  
31 Beach Boulevard property frontage and four street trees on the  
32 Morningside Drive property frontage, of size, variety, and  
location subject to approval by the Public Works Department.  
The site landscaping plan shall include relocation of all street  
trees which interfere with proposed street improvements.

                  8. A refuse enclosure area shall be constructed in  
accordance with City requirements and subject to approval as to  
serviceability by the Sanitation Superintendent.

                  9. All defective Portland cement concrete curb,  
gutter, and sidewalk on the periphery of the site shall be re-  
constructed in accordance with City standards and subject to  
the approval of the Public Works Department.

                  10. The northerly side of Manhattan Beach Boulevard  
adjacent to the site shall be widened such that Manhattan  
Beach Boulevard will be a uniform 60 feet in width, and include  
a curb radius of 25 feet on the corner of Manhattan Beach  
Boulevard and Morningside Drive, in accordance with a traffic  
investigation previously adopted by the City Council. Plans  
for the miscellaneous street improvements shall be subject to  
approval by the Public Works Department and shall comply with  
all applicable City standards. Miscellaneous related work shall

1 include but not necessarily be limited to relocation of existing  
2 street trees, relocation and/or installation of new traffic  
3 regulatory signing, parking meter relocation and transitioning  
4 of new street improvements to join existing improvements which  
5 will be later modified in conjunction with development of the  
6 adjacent property.

7 SECTION 5. This resolution shall become effective  
8 immediately.

9 SECTION 6. The City Clerk shall certify to the passage  
10 and adoption of this resolution; shall cause the same to be  
11 entered in the book of original resolutions of said City; shall  
12 make a minute of the passage and adoption thereof in the  
13 minutes of the meeting at which the same is passed and adopted;  
14 and shall forward a certified copy of this resolution to the  
15 Director of Community Development and the applicant for their  
16 information and files.

17 PASSED, APPROVED and ADOPTED this 2nd day of  
18 August, 1983.

19 Ayes: Lesser, Sweeney, Switzer, Walker and Mayor Holmes  
20 Nocs: None  
21 Absent: None  
22 Abstain: None

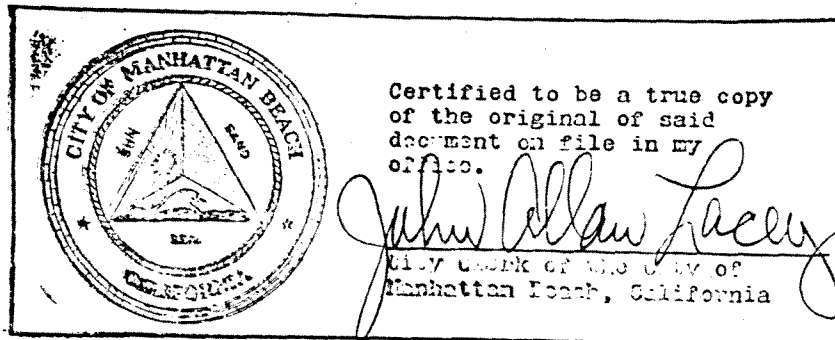
23 /s/ C. R. Holmes

24 Mayor, City of Manhattan Beach,  
25 California

26 ATTEST:

27 /s/ John Allan Lacey

28 City Clerk





---

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MANHATTAN BEACH APPROVING THE FINAL PLANS FOR A COMMERCIAL PLANNED DEVELOPMENT PERMIT TO ALLOW THE DEVELOPMENT OF A TWO-STORY RESTAURANT CONTAINING 8,400 SQUARE FEET ON A PORTION OF PROPERTY PRESENTLY UTILIZED BY THE METLOX POTTERY MANUFACTURING COMPANY, LOCATED AT 401 MANHATTAN BEACH BOULEVARD, IN THE CITY OF MANHATTAN BEACH (Arias)

WHEREAS, the Planning Commission of the City of Manhattan Beach conducted a hearing pursuant to applicable law to review the final plans for a Commercial Planned Development Permit for the property legally described as Lots 1 and 2, Block 97, Manhattan Beach Division No. 2, to include a vacated portion of 12th Street, in the City of Manhattan Beach; and,

WHEREAS, the applicant for the Final Commercial Planned Development Permit is David Arias, owner-in-escrow of the subject property; and,

WHEREAS, the hearing was advertised pursuant to applicable law, testimony was invited and received; and,

WHEREAS, the tentative Commercial Planned Development Permit application was filed in conjunction with a Conditional Use Permit application; and,

WHEREAS, the purpose of the application is to allow the development of a two-story structure containing 8,400 square feet which will be used for a restaurant, lounge, and associated service areas on property encompassing 12,210 square feet; and,

WHEREAS, the tentative Commercial Planned Development Permit and Conditional Use Permit was approved by the City Council subject to conditions as stated in Resolution No. 4071; and,

WHEREAS, a detailed Initial Study/Environmental Assessment was prepared for the project which focused primarily on the aesthetics, land use, parking, traffic, and circulation aspects of the development. It was determined that an additional amount of parking was necessary to mitigate a parking impact. The City Council determined that the provision of an additional 30 spaces would mitigate the environmental consequences and ratified a Mitigated Negative Declaration for the project; and,

WHEREAS, the submitted plans were reviewed and were found to be in substantial compliance with all of the conditions of the tentative approval; and,

WHEREAS, the submitted lease agreement did not provide for a term (length) of the lease. It was determined that a contingency plan be provided so that the 30 off-site parking spaces are permanently preserved should the lease agreement become void or otherwise inoperative.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Manhattan Beach hereby APPROVES the final plans as per City Council Resolution No. 4071 approving the Final Commercial Planned Development Permit for the subject property subject to the following conditions:

1. A minimum of 30 parking spaces shall be provided on a permanent basis in conjunction with the project over and above the proposed 16 parking stalls; said space to be leased from the Metlox Company.
2. The applicant shall work with the Department of Community Development to address the possibility that a portion of the structure that is proposed to be constructed is in the public right-of-way.
3. Additional landscaping shall be installed in the public right-of-way adjacent to parking stalls 4 and 8.

RESOLUTION NO. PC 83-35  
(Continued)

4. The need for valet parking shall be evaluated six months after granting of occupancy.
5. Utilities serving the site shall be underground pursuant to City Ordinance.
6. A survey suitable for purposes of recordation shall be performed by a Civil Engineer or Land Surveyor licensed in the State of California including permanent monumentation of all property corners and the establishment or verification of centerline ties at the intersections of Morningside Drive with Manhattan Beach Boulevard, Morningside Drive with 13th Street, Valley Drive with the easterly extension of the southerly line of the Civic Center, and Valley Drive with Manhattan Beach Boulevard.
7. A site landscaping plan shall be submitted for approval in conjunction with building permit application which shall include a minimum of two street trees on the Manhattan Beach Boulevard property frontage and four street trees on the Morningside Drive property frontage, of size, variety, and location subject to approval by the Public Works Department. The site landscaping plan shall include relocation of all street trees which interfere with proposed street improvements.
8. A refuse enclosure area shall be constructed in accordance with City requirements and subject to approval as to serviceability by the Sanitation Superintendent.
9. All defective Portland cement concrete curb, gutter, and sidewalk on the periphery of the site shall be reconstructed in accordance with City standards and subject to the approval of the Public Works Department.
10. The northerly side of Manhattan Beach Boulevard adjacent to the site shall be widened such that Manhattan Beach Boulevard will be a uniform 60 feet in width, and include a curb radius of 25 feet on the corner of Manhattan Beach Boulevard and Morningside Drive, in accordance with a traffic investigation previously adopted by the City Council. Plans for the miscellaneous street improvements shall be subject to approval by the Public Works Department and shall comply with all applicable City standards. Miscellaneous related work shall include but not necessarily be limited to relocation of existing street trees, relocation and/or installation of new traffic regulatory signing, parking meter relocation, and transitioning of new street improvements to join existing improvements which will be later modified in conjunction with development of the adjacent property.
11. Should the lease agreement become void or otherwise inoperative, a minimum of 30 parking spaces shall be provided on a permanent basis on a suitable location subject to the approval of the Department of Community Development.

RESOLUTION NO. PC 83-35  
(Continued)

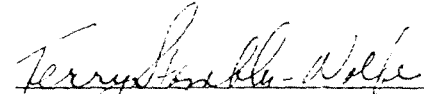
I hereby certify that the foregoing is a full, true, and correct copy of the Resolution as adopted by the Planning Commission at its regular meeting of September 28, 1983, and that said Resolution was adopted by the following vote:

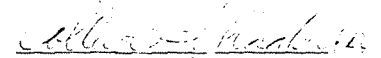
AYES: Ackerman, Armistead, Barnes, and Maturko

NOES: Benard, Dennis, and Wachtfogel

ABSTAIN: None

ABSENT: None

  
TERRY STAMBLER-WOLFE  
Secretary to the Planning Commission

  
Colleen Gallagher  
Recording Secretary

RESOLUTION NO. PC 85-33

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF  
MANHATTAN BEACH GRANTING A ZONE VARIANCE TO ALLOW THE  
MODIFICATION OF DEVELOPMENT STANDARDS RELATED TO PARKING LOT  
DESIGN FOR THE RESTAURANT OPERATION ON THE PROPERTY LOCATED  
AT 401 MANHATTAN BEACH BOULEVARD IN THE CITY OF MANHATTAN  
BEACH

WHEREAS, the Planning Commission of the City of Manhattan Beach conducted a public hearing pursuant to applicable law to consider an application for the property legally described Lots 1 and 2, Block 97, Manhattan Division No. 2 in the City of Manhattan Beach; and,

WHEREAS, the applicant for the Zone Variance is Morningside Investments; and,

WHEREAS, the public hearings were advertised according to applicable law, testimony was invited and received; and,

WHEREAS, an Initial Study/Environmental Assessment was prepared and a Negative Declaration was filed pursuant to CEQA and the City of Manhattan Beach guidelines, finding no significant environmental impacts associated with the project; and,

WHEREAS, the following findings were made with regard to this application:

1. The Zone Variance is required to allow exemption/modification of the Municipal Code requirements related to development standards for parking lot design. The applicant requests that he be permitted to maintain the existing non-conforming Metlox parking area currently situated on the Santa Fe property in its present state of existence.
2. The Planning Commission, at its meeting of September 28, 1983, approved the Final Commercial Planned Development Permit for a 2-story, 8,400 square foot restaurant/bar.
3. The restaurant tenant is proposed to be known as Wilikers. Tenant improvement plans have been approved by the City.
4. The subject property is Unclassified and is therefore deemed to be R-1, single family residential. The proposed off-site parking area is located on the ATSF Railway property between 15th Street (to the north) and Manhattan Beach Boulevard (to the south).
5. Condition No. 1 of Resolutions Nos. PC 83-35 and 4071 state "A minimum of 30 parking spaces shall be provided on a permanent basis in conjunction with the project over and above the proposed 16 on-site parking stalls."
6. The existing parking lot is substandard in the following summarized areas: stall size, aisle width, location and size of landscaped areas, screening, drainage, and irrigation.
7. The parking area was formerly used exclusively by the Metlox Pottery Company. The area will now be shared with the restaurant operation. As a result, the use of the non-conforming parking area will be expanded and intensified.
8. The Municipal Code, Section 10-3.1317, requires that all existing non-conforming parking areas shall be upgraded to conform to landscape standards on or before December, 1978.
9. The use of the railroad right-of-way for parking is determined to be a non-conforming use of the property. Therefore, any intensification of use requires conformance to current Municipal Code standards.
10. The railroad right-of-way is located at the entrance to the downtown commercial area. The City Council has recently granted conceptual approval to a downtown area Streetscape Improvement Plan.

RESOLUTION NO. PC 85-33  
(Continued)

11. The exceptional or extraordinary circumstances or conditions applicable to the property or to the intended use are that improvements at this time to conform the parking area to Code will require violation of the lease agreement between Santa Fe and Morningside Investments. The lease states that no parking areas shall be within six feet (6') of the railroad tracks.
12. The Zone Variance is necessary for the preservation and enjoyment of a substantial property right possessed by other properties in the same zone and vicinity but which, because of special circumstance, is denied to the property in question. This property has been used for parking for Metlox Pottery for nearly 30 years. The City is currently negotiating an agreement with the Santa Fe Railroad to acquire the property for open space and other related public purposes.
13. The granting of the Zone Variance will not be materially detrimental to the public welfare or injurious to the property or improvements in such vicinity and zone in which the property is located.
14. The granting of the Zone Variance will not adversely affect the comprehensive General Plan.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Manhattan Beach hereby GRANTS the Zone Variance subject to the conditions stated below.

1. The parking area shall be repaired to remove and replace any decaying asphalt areas.
2. Valet attendant parking shall be provided during the hours of 11:00 a.m. to 1:30 p.m. and 5:00 p.m. to 9:00 p.m. The valet operation shall be subject to the approval of the Community Development, Public Works, and Police Departments.
3. An appropriate directional/information sign program shall be approved by the Community Development, Public Works, and Police Departments.
4. The area designated for the use by the Los Angeles County Flood Control District shall be continuously maintained in good condition.
5. The parking lot and surrounding area within the right-of-way shall be continuously maintained free of all litter and debris.
6. The management of the restaurant shall be responsible to maintain an orderly use of the parking area so as to reduce loitering and noise and other disturbances to adjoining property owners.
7. All the above stated conditions (1 through 6) shall be implemented and continuously maintained prior to the Certificate of Occupancy being granted for the restaurant development.
8. The conditions listed below shall be implemented upon the change in ownership of the subject Santa Fe Railroad in part or in whole.
  - A. The existing parking area shall be designed to substantially comply with the landscape standards specified by Code subject to the approval of the Community Development and Public Works Departments. All landscaped areas shall be irrigated.
  - B. All screen walls/fences that are installed pursuant to Code or choice shall be of decorative masonry block design and/or wood. No chain link will be permitted.
  - C. A minimum 3-foot wide landscape planter shall be installed along both perimeters of the parking area adjacent to Valley Drive and Ardmore Avenue.

RESOLUTION NO. PC 85- 33  
(Continued)

- D. The ingress/egress (driveway design) shall conform to all applicable City standards as approved by the Director of Public Works. All unused driveways shall be closed with appropriate curb and gutter improvements pursuant to the Public Works Department.

I hereby certify that the foregoing is a full, true, and correct copy of the Resolution as adopted by the Planning Commission at its regular meeting of September 25, 1985, and that said Resolution was adopted by the following votes:

AYES: Barnes, Collins, and Graw

NOES: Cunningham and Chairman  
Ackerman

ABSENT: None

ABSTAIN: None

*Terry Stambler-Wolfe by PK*

TERRY STAMBLER-WOLFE  
Secretary to the Planning Commission

*Janet Loxen*  
Janet Loxen by *[Signature]*  
Recording Secretary

## PARKING LEASE

In consideration of the sum of \$30.00 per month, Metlox Manufacturing Company hereby leases to David Arias 30 parking spaces located in the Metlox parking lot, north of Manhattan Beach Blvd, between Valley Drive and Ardmore, which Metlox leases from the Santa Fe Railway Company.

The lease begins immediately upon the opening of the restaurant to be built by David Arias on Lots 1 and 2 of Block 97 in Manhattan Beach, known as the Metlox property.

The term of the lease shall be based on the same time period and terms that Metlox has in its lease with the Santa Fe Railway Company. The lessee acknowledges that he has received a copy of the Santa Fe lease, and that this lease is subject to all the terms and conditions thereof, except with regard to the payment of rent.

DATED-

July 25, 1983

FOR METLOX MANUFACTURING COMPANY:

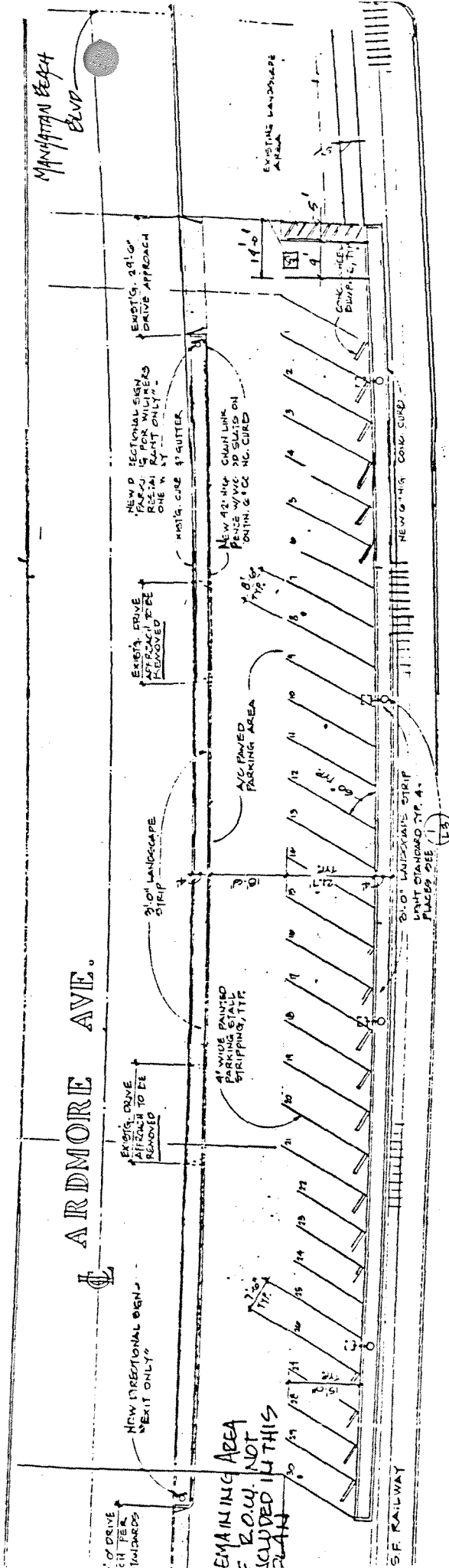
Kenneth E. Avery  
President

David Arias

15TH STREET

R-1 PROPERTIES

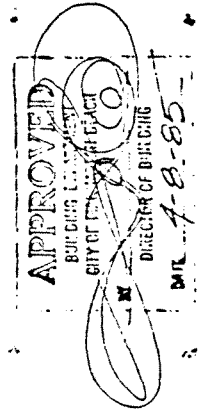
R-3 PROPERTY

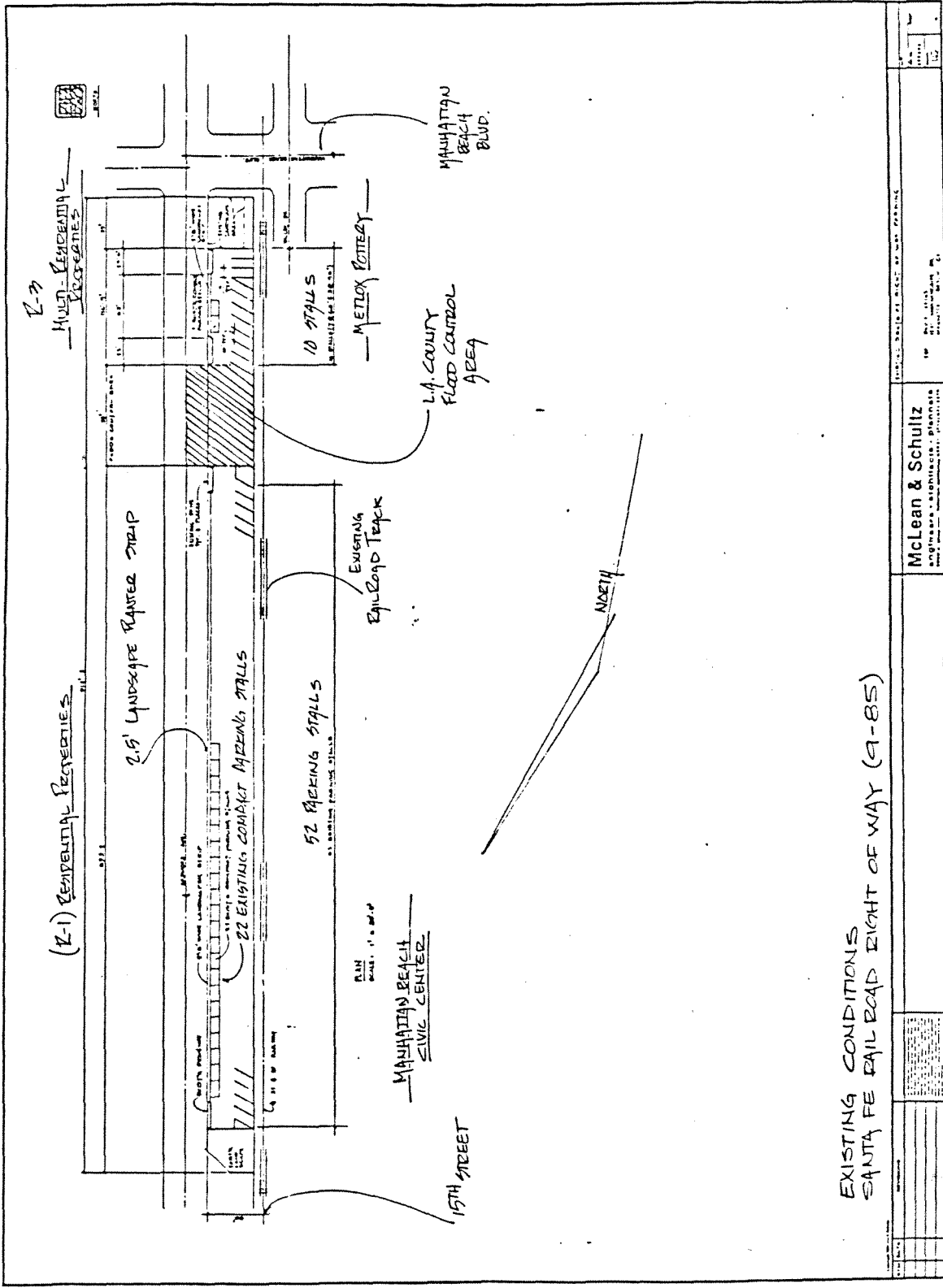


VALLEY DR.

MANHATTAN BEACH CIVIC CENTER

METROX POTTERY





(K-1) RESIDENTIAL PROPERTIES

(K-2) MULTIFAMILY PROPERTIES

EXISTING CONDITIONS  
SANTA FE RAILROAD RIGHT OF WAY (A-85)

McLean & Schultz		ENGINEERS ARCHITECTS PLANNERS	
1000 WEST 10TH STREET, SUITE 100		MANHATTAN BEACH, CALIFORNIA 90263	
DATE	PROJECT	SCALE	BY

Contract No. **CL 56214B**

RETURN TO

Secretary, The A.T. &amp; S.F. RY. CO. Topeka

11002211-20

## ASSIGNMENT CONTRACT

THIS AGREEMENT, Made as of the 25th day of January 1985, between THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a Delaware corporation (hereinafter called "Santa Fe"), METLOX MANUFACTURING COMPANY, a California corporation (hereinafter whether one party or more called "Assignor"), and MORNINGSIDE INVESTMENTS, a California limited partnership (hereinafter whether one party or more called "Assignee").

R E C I T A L S:

Santa Fe and Assignor are now parties to a contract dated June 16, 1952, Santa Fe's Secretary's Contract No. 56214, relating to a site for driveway and auto parking area at Manhattan Beach, County of Los Angeles, State of California, said contract, together with any and all modifications, supplements and amendments thereto, whether or not referred to above, being hereinafter called the "Original Contract".

The parties have now agreed to the assignment to Assignee of all of the interest of Assignor in the Original Contract, upon the terms and conditions hereinafter set forth.

A G R E E M E N T:

FOR VALUE RECEIVED, Assignor hereby assigns to Assignee all of Assignor's interest in the Original Contract.

IN CONSIDERATION of such assignment and the consent thereto of Santa Fe herein contained, Assignee hereby accepts said assignment and assumes and agrees to observe and discharge all of the conditions and obligations in the Original Contract which are by the terms thereof to be observed and kept by Assignor, and Assignee further agrees not to assign the Original Contract or any right or interest therein, nor sublet the property or any part thereof embraced in the Original Contract, without the written consent of Santa Fe in each instance.

IN CONSIDERATION of the premises and of the covenants of Assignee herein contained, and the faithful performance of the same, Santa Fe consents to the assignment by Assignor to Assignee of all of Assignor's interest in the Original Contract. As further consideration for Santa Fe's consent, Assignor shall pay to Santa Fe the sum of One Hundred Fifty and No/100 Dollars (\$150.00).

IT IS MUTUALLY UNDERSTOOD AND AGREED that in the event either Assignor or Assignee, or both, consist of two or more parties, all the covenants and agreements herein shall be the joint and several covenants and agreements of such parties.

Any notice to be given by the Santa Fe to the Assignee under the Original Contract, as hereby assigned, shall be deemed to be properly served if the same be delivered to the Assignee, or if left with any of the agents, servants or employes of Assignee, or if deposited in the Post Office, postpaid, addressed to Assignee at 1201 Morningside Drive, Manhattan Beach, California 90266.

This Agreement shall be effective as of February 1, 1985.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, in triplicate, as of the day and year first above written.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

By *W. D. Bentley*  
W. D. BENTLEY  
Manager Real Estate and Contracts

METLOX MANUFACTURING COMPANY

By *Kenneth Avery*  
KENNETH E. AVERY, President

MORNINGSIDE INVESTMENTS

By *DAVID ARIAS*  
DAVID ARIAS, General Partner

*DAVID ARIAS*  
DAVID ARIAS

SUPPLEMENTAL AGREEMENT, made as of this 30th  
day of August, 1963, between  
THE ATCHISON, TOPEKA AND SANTA FE  
RAILWAY COMPANY, a Kansas corporation,  
hereinafter referred to as "Santa Fe", and  
METLOX MANUFACTURING COMPANY, a California  
corporation  
hereinafter, whether one party or more, referred to as "Second  
Party".

RECITALS:

Santa Fe and Second Party are now parties to a contract dated June 16, 1952,  
Santa Fe's Secretary's Contract No. 56211, together with any and all modifications, sup-  
plements and amendments thereto, being hereinafter referred to as "Original Contract", under  
which Second Party pays Santa Fe a compensation of \$ 810.00 per year for the use of  
a portion of Santa Fe property at or near Manhattan Beach, Los Angeles County, California  
as a site for driveway and automobile parking.

The parties desire to modify the Original Contract as hereinafter provided.

AGREEMENT:

It is mutually agreed that effective October 15, 1963  
the compensation section of the Original Contract is hereby changed to read, as follows:  
"Second Party shall pay to Santa Fe on or before the first day of each period of one year  
during the continuance of this contract as compensation for the use of the Premises for  
such period the sum of One Thousand Eighty and No/100 ----- Dollars  
(\$ 1,080.00). Santa Fe may revise the amount of such annual compensation  
after the end of each five (5) year period during which this contract may remain in ef-  
fect, and without affecting the right of either party hereto to terminate this contract at  
any time as may be provided elsewhere herein."

IN WITNESS WHEREOF, the parties hereto have executed this Supplemental Agreement  
in duplicate as of the day and year first above written.

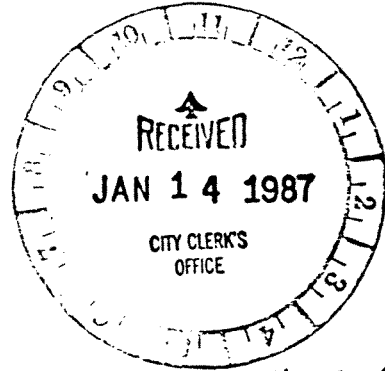
THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

By [Signature]  
Its Assistant to General Manager

METLOX MANUFACTURING COMPANY

[Signature]  
(Second Party)

1 WYMAN, BAUTZER, CHRISTENSEN,  
2 KUCHEL & SILBERT  
3 A Partnership including Professional  
4 Corporations  
5 4100 MacArthur Boulevard  
6 Newport Beach, California 92660  
7  
8 (714) 253-4700  
9  
10 Attorneys for Meals America, Inc.



#87-91

CITY OF MANHATTEN BEACH

11 In the Matter of the Claim of: )  
12 MEALS AMERICA, INC., a California ) CLAIM AGAINST PUBLIC ENTITY  
13 corporation, )  
14 Claimant, )  
15 vs. )  
16 CITY OF MANHATTEN BEACH, CARL K. )  
17 NEWTON, LARRY DOUGHARTY, CHARLES )  
18 ROBERT HOLMES and DOES 1 THROUGH )  
19 25, INCLUSIVE, )  
20 Defendants. )

21 MEALS AMERICA, INC. ("MEALS") hereby presents this claim to  
22 the CITY OF MANHATTEN BEACH ("CITY") pursuant to section 910 of  
23 the California Government Code.

- 24 1. MEALS, a California corporation, is the claimant and  
25 its address is 550 East Terrace, Fresno, California 92704.  
26 2. MEALS desires all notices concerning this claim to be  
27 sent care of David A. Robinson, Esq., Wyman, Bautzer,  
28 Christensen, Kuchel & Silbert, 4100 MacArthur Boulevard, Newport  
Beach, California 92660.

1 Claim for Negligent Interference With Contract

2 3. On or about October 7, 1986, MEALS was injured by the  
3 CITY, City Attorney CARL K. NEWTON ("NEWTON"), Councilman  
4 CHARLES ROBERT HOLMES ("HOLMES"), Councilman LARRY DOUGHARTY  
5 ("DOUGHARTY"), and Does 1 through 25, inclusive, and each of  
6 them, through their intentional and/or negligent interference  
7 with that certain contract or lease agreement dated August 7,  
8 1984 ("lease") between MEALS and MORNINGSIDE INVESTMENTS, INC.  
9 ("MORNINGSIDE"). See Exhibit "A" attached hereto and incor-  
10 porated herein.

11 4. The lease, among other things, required MORNINGSIDE to  
12 obtain all necessary CITY consent, approval, permits and/or  
13 variances for the operation of a restaurant by MEALS on that cer-  
14 tain real property commonly known and referred to as 401  
15 Manhattan Beach Boulevard, Manhattan Beach, California  
16 ("restaurant"). MEALS is informed and believes, and thereon  
17 alleges, that the CITY knew and/or should have known of the  
18 existence of the lease on or before its approval of a variance  
19 relating to the restaurant in mid-1985 and, on or before such  
20 time, the CITY knew or should have known that MORNINGSIDE had  
21 agreed to, and had repeatedly acknowledged its duty to, maintain  
22 30 off-site parking spaces for the exclusive use and enjoyment  
23 of the restaurant and MEALS' patrons as a condition precedent to  
24 the CITY's issuance of a conditional use permit and variance for  
25 the construction and operation of the restaurant.

26 / / /

27 / / /

28 / / /

1           5.     The CITY, HOLMES, NEWTON and DOUGHARTY, and each of  
2 them, knew the lease existed and, at some time prior to  
3 October, 1986, entered into a secret plan or conspiracy with  
4 MORNINGSIDE pursuant to which they conspired to materially  
5 induce, aid and assist MORNINGSIDE breach its duty to maintain  
6 the above-described off-site parking spaces.

7           6.     The lease between MEALS and MORNINGSIDE was in fact  
8 breached where, among other things, MORNINGSIDE failed to main-  
9 tain the above-described 30 off-site parking spaces for the  
10 exclusive use and enjoyment of the restaurant and MEALS'  
11 patrons, resulting in substantial economic injury to MEALS as  
12 hereinafter set forth.

13           7.     This breach was proximately caused by the wrongful and  
14 unreasonable refusal by the CITY, HOLMES, NEWTON and DOUGHARTY  
15 to grant MEALS timely permission to open its restaurant during  
16 the CITY's October 7, 1986 City Council meeting.

17                   Claim for Interference With Prospective

18                                   Economic Advantage

19           8.     MEALS incorporates by reference paragraphs 3 through  
20 7, inclusive, as though fully set forth.

21           9.     The CITY, HOLMES, NEWTON and DOUGHARTY, and each of  
22 them, with full knowledge of the lease between MEALS and  
23 MORNINGSIDE, intentionally or negligently, without justifica-  
24 tion, induced and assisted MORNINGSIDE breach its contractual  
25 duty to maintain 30 off-site parking spaces for the exclusive  
26 use and benefit of the restaurant and MEALS' patrons.

27     / / /

28     / / /

1           10. But for this inteference with the prospective economic  
2 advantage of MEALS, substantial economic injury would have been  
3 avoided as MEALS would have otherwise been granted permission  
4 to open its restaurant immediately following the October 7, 1986  
5 City Council meeting.

6                           Claim for Conspiracy to Interfere With  
7                           Existing Contractual Relations

8           11. MEALS incorporates by reference paragraphs 3 through  
9 7, inclusive, as though fully set forth.

10           12. The CITY, HOLMES, DOUGHARTY and NEWTON, and each of  
11 them, knew of MEALS' existing contractual relationship with  
12 MORNINGSIDE.

13           13. The CITY, HOLMES, DOUGHARTY and NEWTON, and each of  
14 them, intentionally and without justification secretly agreed and  
15 conspired to interfere with this contractual relationship.

16           14. The CITY, HOLMES, NEWTON and DOUGHARTY, and each of  
17 them, did the acts herein alleged pursuant to, and in  
18 furtherance of, this secret conspiracy and agreement and thereby  
19 caused substantial economic injury and damage to MEALS as  
20 hereinafter set forth.

21                           Claim for Fraud and/or Negligent Misrepresentation

22           15. MEALS incorporates herein by reference paragraphs 3  
23 through 7, inclusive, as though fully set forth.

24           16. Between September 1, 1986 and October 7, 1986, the  
25 CITY, HOLMES, DOUGHARTY and NEWTON, and each of them, repre-  
26 sented to MEALS that:

27           / / /

28           / / /

1 (a) The CITY had determined that MEALS had met all  
2 requirements necessary to be allowed to open its restaurant,  
3 save that of procuring 30 off-site parking spaces;

4 (b) Although the CITY was pending acquisition of  
5 title to the above-described 30 off-site parking spaces, the  
6 City would not control the future use or disposition of the  
7 parking area as it had already agreed to lease the same back to  
8 Atchison, Topeka & Santa Fe Railway Company ("Santa Fe");

9 (c) The CITY had no knowledge of who had the right to  
10 occupy or possess the above-described 30 off-site parking  
11 spaces prior to its acquisition of the same;

12 (d) The CITY had no right to require David Arias',  
13 dba MORNINGSIDE, to maintain and improve the above-described 30  
14 off-site parking spaces for the exclusive use and benefit of the  
15 restaurant and MEALS' patrons; and

16 (e) The CITY had no right to grant MEALS permission  
17 to open its restaurant absent MEALS' presentation of a new,  
18 signed lease agreement with either MORNINGSIDE or a third party  
19 for the exclusive use and possession of 30 off-site parking spa-  
20 ces.

21 17. These representations were false and the CITY, HOLMES,  
22 NEWTON and DOUGHARTY, and each of them, knew or should have  
23 known them to be false. The true facts were:

24 (a) MEALS had no legal, equitable or contractual duty  
25 to procure 30 off-site parking spaces for the exclusive use of  
26 the restaurant or its patrons where, as the CITY has expressly  
27 acknowledged in the past, MORNINGSIDE alone had such a duty;

28 / / /

1 (b) The CITY had not agreed to lease the subject off-  
2 site parking area to Santa Fe, but rather Santa Fe had merely  
3 reserved an option to lease the same back from the CITY, an  
4 option which prior to October 7, 1986 Santa Fe had publicly  
5 announced it would not exercise, leaving the CITY alone in  
6 control of the future use of and disposition of the subject off-  
7 site parking area;

8 (c) The CITY in fact had knowledge of who had the  
9 right to occupy and possess the subject off-site parking area  
10 prior to its acquisition of the same, as such knowledge is  
11 conclusively evidenced in the CITY's former resolutions  
12 and official actions concerning construction and development of  
13 the restaurant;

14 (d) The CITY had the legal right to require David  
15 Arias, dba MORNINGSIDE, to maintain and improve the above-  
16 described 30 off-site parking spaces pursuant to a recorded  
17 covenant with the CITY dated October 21, 1985; and

18 (e) The CITY had both the legal right and duty to  
19 grant MEALS permission to open its restaurant absent presen-  
20 tation of a new signed lease with MORNINGSIDE or a third  
21 party during its October 7, 1986 City Council meeting.

22 18. These false representations were intended to and  
23 did deceive MEALS. MEALS and its legal counsel relied upon  
24 these representations and, as a direct and proximate cause,  
25 sustained substantial economic injury as alleged herein-  
26 below.

27 / / /

28 / / /

LAW OFFICES  
WYMAN, BAUTZER, CHRISTENSEN, KUCHEL & SILBERT  
A Partnership including Professional Corporations  
4100 MACARTHUR BLVD.  
NEWPORT BEACH, CALIFORNIA 92660  
(714) 760-9300

Claim for Estoppel

1  
2 19. MEALS incorporates by reference paragraphs 15 through  
3 18, inclusive, as though fully set forth.

4 20. MEALS reasonably and foreseeably relied upon certain  
5 acts and representations by the CITY prior to September, 1986,  
6 pursuant to which MEALS received assurance that MORNINGSIDE had  
7 already provided the CITY with sufficient evidence of  
8 MORNINGSIDE's procurement of 30 off-site parking spaces for the  
9 exclusive and benefit of the restaurant and MEALS' patrons.

10 21. MEALS has sustained substantial economic injury as a  
11 result of its detrimental reliance on those acts and represen-  
12 tations.

13 22. Therefore, the CITY is and should hereinafter be deemed  
14 permanently estopped from requiring MEALS to furnish any addi-  
15 tional proof of off-site parking for the benefit of the  
16 restaurant.

Claim for Conspiracy to Defraud

17  
18 23. MEALS incorporates by reference paragraphs 15 through  
19 18, inclusive, as though fully set forth.

20 24. The CITY, HOLMES, DOUGHARTY and NEWTON, and each of  
21 them, agreed and conspired with MORNINGSIDE to defraud MEALS by  
22 wrongfully placing MEALS in a position where it would be forced  
23 to pay MORNINGSIDE exorbitant rent for off-site parking which  
24 MORNINGSIDE was already contractually obligated to procure and  
25 maintain for MEALS' benefit.

26 25. In furtherance of this conspiracy the CITY, HOLMES,  
27 NEWTON and DOUGHARTY, and each of them, made the representations

28 / / /

1 referred to above and then demanded that MEALS execute a new  
2 lease with MORNINGSIDE.

3 26. As a direct and proximate result of this plan and  
4 conspiracy MEALS has sustained substantial economic injury as  
5 alleged hereinbelow.

6 Claim for Violation of Title 42 U.S.C. Section 1983

7 27. MEALS incorporates herein by reference paragraphs 3  
8 through 26, inclusive, as though fully set forth.

9 28. The CITY, HOLMES, DOUGHARTY and NEWTON, and each of  
10 them, have, under color of governmental authority, violated the  
11 rights guaranteed to MEALS under the Fifth and Fourteenth  
12 Amendments to the Constitution of the United States of America  
13 by, among other things, altering the circumstances under with  
14 which the CITY would allow MEALS to make use of the disputed  
15 off-site parking area, by taking such action without notice to  
16 or an opportunity to be heard by MEALS, by taking such action  
17 without informing MEALS that the CITY owned or proposed to  
18 acquire control over the disputed off-site parking area, and by  
19 materially misrepresenting the CITY's intent as to the future  
20 use and disposition of the disputed off-site parking area.

21 29. These acts resulted in a wrongful and unjustified for-  
22 feiture by MEALS in that it was unable to open its restaurant in  
23 a timely manner, and was forced to enter into an alternative  
24 off-site parking agreement with a third party.

25 Damages

26 30. As a result of the foregoing, MEALS demands the  
27 following damages:

28 / / /

LAW OFFICES  
WYMAN, BAUTZER, CHRISTENSEN, KUCHEL & SILBERT  
A Partnership including Professional Corporations  
4100 MACARTHUR BLVD.  
NEWPORT BEACH, CALIFORNIA 92660  
(714) 760-9300

1 (a) \$50,000 for loss of business because of the  
2 inability of MEALS to open its restaurant as scheduled;

3 (b) \$600,000 for additional expense to be incurred  
4 over the life of MEALS' lease in finding and upgrading addi-  
5 tional parking spaces to meet city code;

6 (c) \$1,000,000 for punitive damages as all acts  
7 alleged above were committed with oppression, fraud and malice  
8 in that the CITY, HOLMES, NEWTON and DOUGHARTY knew or should  
9 have known that their acts would injure MEALS; and

10 (d) payment of all MEALS' attorneys' fees for the  
11 abovestated multiple violations of 42 U.S.C. § 1983.

12 DATED: January 14, 1987

13 WYMAN, BAUTZER, CHRISTENSEN, KUCHEL  
14 & SILBERT  
15 David A. Robinson  
16 Richard J. Grabowski

17 By:   
18 David A. Robinson  
19 Attorneys for MEALS AMERICA, INC.

20 # 87-91

21 cc: CA  
22 CM  
23 Risk Mgr.  
24 Holmes +  
25 Dougherty  
26 Com. dev.

27  
28 (3)9RJG3:1/14/87mw

Peter Ristoni  
1110 Manhattan Ave.  
Manhattan Beach, Ca. 90260

Orig: Wilkers  
Copies: File  
Trang  
SAL  
CITY

January 22, 1967

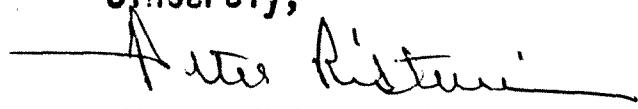
City of Manhattan Beach  
1455 Highland Ave.  
Manhattan Beach, Ca. 90265

To Whom It May Concern,

At the end of ~~November~~ <sup>DECEMBER</sup> Mr. Fansler, Pres. of Wilkers II came to see me and we mutually agreed that he would no longer need the parking spaces he was renting from me at 1011 Valley Drive, Manhattan Beach.

Since Mr. Fansler no longer paid any rent from that time forward we no longer had any further business dealings.

Sincerely,



Peter Ristoni

c.c. Mr. Fansler, Pres. Wilkers II

RECEIVED

JAN 22 1967

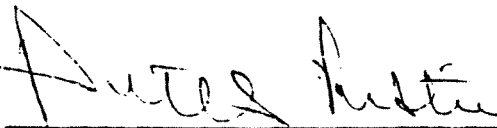
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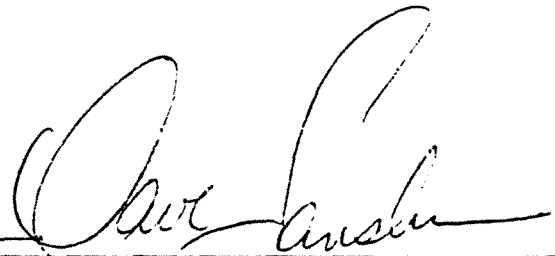
PARKING LOT LEASE AGREEMENT

This lease agreement, executed in duplicate at Manhattan Beach, Ca., by and between David P. Fansler, Jr. President Wiliker's II, (lessee), and Peter Kistani (lessor).

Lessee shall lease property for parking in the lot known as 1011 Valley Drive, Manhattan Beach, Ca., The amount of rent is Seven Hundred Dollars (\$700.00) per month. The first and last months rent in the amount of One Thousand Four Hundred Dollars (\$1400.00) shall be paid upon signing this agreement. Lease to be on month to month basis. Termination can be made by either party with 30 days written notice.

Lessee shall indemnify and hold harmless lessor from and against any and all claims arising out of lessee's use of the parking lot.

  
Peter Kistani, lessor

  
David P. Fansler, Jr., lessee  
resident

October 23, 1986  
Dated

12111111  
JAN 22 1987  
101.....

PHOTO-COPY




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CITY HALL • 1400 HIGHLAND AVENUE • MANHATTAN BEACH, CALIFORNIA • 90266

January 27, 1987

Mr. Dave Fansler  
 Wiliker's Restaurant  
 401 Manhattan Beach Boulevard  
 Manhattan Beach, California 90266

Subject: Compliance with the Temporary Certificate of Occupancy, Commercial Planned Development Permit and Conditional Use Permit for the Property Located at 401 Manhattan Beach Boulevard (Wiliker's Restaurant)

Dear Mr. Fansler:

As you are aware, the Temporary Certificate of Occupancy (T.C.O.) was originally granted on October 24, 1986, with the condition that you would maintain the equivalency of 30 off-site parking spaces on the property addressed as 1011 Valley Drive.

The City has recently been informed, and subsequently received confirmation in writing, that as of December, 1986, you no longer lease the required off-site parking spaces.

Approval of the temporary alternative location for the parking facilities was necessary to comply with condition numbers one (1) and eleven (11) of Resolution No. PC 83-35 (Final Commercial Planned Development Permit) and condition number one (1) of Resolution No. 4071 (Conditional Use Permit), as well as the T.C.O.

To resolve this matter of noncompliance with the Temporary Certificate of Occupancy and Planning approvals, it is necessary that you contact the undersigned in the immediate future to discuss this matter.

Sincerely,

TRANG Q. HUYNH (WYNN), P.E.  
 Building Division Administrator

TQH:AJ

Attachments:

TCO Letter dated 10/24/86 and Lease Agreement

cc: City Manager  
 Terry Stambler-Wolfe  
 Steven Lefever  
 Robert Whiteford

CITY OF MANHATTAN BEACH  
COMMUNITY DEVELOPMENT DEPARTMENT MEMORANDUM

87/0120.21

January 20, 1987

TO: Honorable Mayor and Members of City Council  
THROUGH: David J. Thompson, City Manager  
FROM: Terry Stambler-Wolfe, Director of Community Development  
SUBJECT: Request from Wiliker's to Extend the Temporary Certificate of Occupancy for Another Ninety Days (January 22, 1987, 5:00 p.m. to April 22, 1987, 5:00 p.m.)

BACKGROUND

Mr. David Fansler, operator of Wiliker's Restaurant, has requested that his Temporary Certificate of Occupancy (T.C.O.) be extended for ninety days, as indicated in the attached letter (Exhibit A). The City Council will recall that Mr. Fansler was permitted to obtain a T.C.O. without the total amount of required parking for the restaurant since he obtained additional spaces on a temporary lease basis. The temporary spaces were intended to be utilized for a ninety-day time period so that Mr. Fansler could make arrangements for permanent parking facilities. To ensure completion of this requirement, Mr. Fansler was required to post a bond for the ninety days. Information pertaining to the T.C.O. is attached to this report as Exhibit B.

Inasmuch as the T.C.O. for the restaurant will expire on January 22, 1987, Mr. Fansler has requested the extension of time. Since his request does not include a status report and revised schedule for completion, it would be of assistance to the City if this information was provided. In addition, it is recommended that Mr. Fansler provide a commitment for the use of the temporary parking facility.

RECOMMENDATION

It is recommended that the Temporary Certificate of Occupancy be extended until February 18, 1987, at 5:00, to allow time for the applicant to provide additional information to the City Council. It is further recommended that this extension be conditioned as follows:

1. The Lease Agreement for the temporary parking facility remain in effect.
2. The bond posted with the City of Manhattan Beach shall remain in effect.
3. The applicant shall make a good faith effort to utilize the temporary parking facility.
4. The applicant shall pursue actively the application presently before the Board of Appeals for Handicapped Accommodations.
5. The applicant shall obtain approval by the County Health Department.

Additionally, it is recommended that this request be continued to the City Council Meeting of February 17, 1987, to allow time for the applicant to provide the requested information.

TSW:AJ

Attachments

- Exhibit A - Wiliker's Request for T.C.O. Extension
- Exhibit B - Wiliker's T.C.O. Information



*Trang Q. Huynh*  
PHONE: 543-5621  
2

---

CITY HALL - 1400 HIGHLAND AVENUE - MANHATTAN BEACH, CALIFORNIA - 9026

January 9, 1987

Mr. Dave Fansler  
Wiliker's Restaurant  
401 Manhattan Beach Boulevard  
Manhattan Beach, California 90266

Subject: Expiration of Temporary Certificate of Occupancy issued 10/24/86

Dear Mr. Fansler:

This is to notify you that the Temporary Certificate of Occupancy for Wiliker's will expire on January 22, 1987, at 5:00 p.m.

Based on the conditions listed in the Temporary Certificate of Occupancy, there are still outstanding problems which must be resolved prior to the expiration date:

1. Final approval by the County Health Department.
2. Resolution of the parking arrangements to the satisfaction of the Community Development Department.
3. Resolution of the Handicap issues. Pursuant to your request of Thursday, January 8, 1987, the Board of Appeals for Handicapped Accommodations has agreed to continue the hearing on your appeal until Wednesday, January 14, 1987, at 7:30 p.m.

It should be noted that prior to our granting a permanent Certificate of Occupancy, all affected Departments of the City will conduct a final review of all requirements for this project. Final approval of all Departments is required.

Very truly yours,

TRANG Q. HUYNH (WYNN), P.E.  
Building Division Administrator

TQH:AJ

cc: Terry Stambler-Wolfe  
Robert Whiteford  
Steven Lefever  
City Manager

EXHIBIT B



CITY HALL • 1400 HIGHLAND AVENUE • MANHATTAN BEACH, CALIFORNIA • 9026

October 24, 1986

Mr. Dave Fansler  
Wiliker's Restaurant  
401 Manhattan Beach Boulevard  
Manhattan Beach, California 90266

Subject: Temporary Certificate of Occupancy, Wiliker's Restaurant,  
401 Manhattan Beach Boulevard

Based upon the conditions listed below, this letter will serve as an approval of a T.C.O. (Temporary Certificate of Occupancy) for a period of ninety (90 days) from the last date of signature. This T.C.O. is issued due to very special circumstances regarding the parking requirements and is only to be regarded as an interim solution for a maximum period of ninety (90) days.

This T.C.O. will not become effective until acknowledged and the conditions listed below are approved or submitted to the City by a representative of Wiliker's Restaurant.

Conditions

1. Conditional approval, in writing, from the County Health Department.
2. Approval by the City of Manhattan Beach of a Lease Agreement for the Temporary Parking Area.
3. Approval by the City of Manhattan Beach of a Bond, or other security, in the amount of \$30,000.00 in the event permanent parking is not made available within ninety (90) days.
4. Application to the Handicap Appeals Board on the issue of Handicap toilet seat height and access to work stations. Decision of the Board is final and any modifications required by the Board must be accomplished at its direction.
5. Final approval from Fire Department.

APPROVAL Trang G. Huynh, P.E. Date 10/24/86  
 Trang G. Huynh (Wynn), P.E.,  
 Building Division Administrator

ACCEPTANCE Dave Fansler Date 10/24/86  
 Dave Fansler  
 Wiliker's Restaurant

Attachments

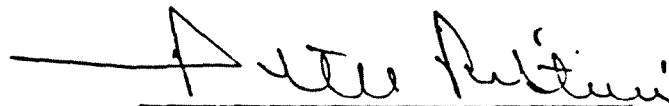
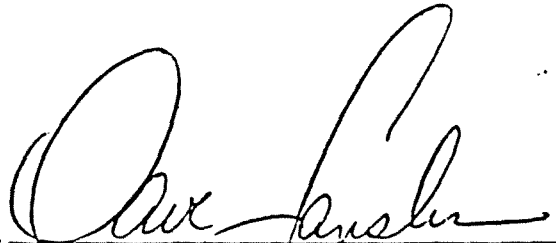
- Exhibit 1 - Lease Agreement for Temporary Parking Area
- Exhibit 2 - Bond for Improvements to Temporary Parking Area
- Exhibit 3 - Application for Handicap Appeals Board

PARKING LOT LEASE AGREEMENT

This lease agreement, executed in duplicate at Manhattan Beach, Ca., by and between David P. Fansler, Jr. President Wiliker's II, (lessee), and Peter Ristani (lessor).

Lessee shall lease property for parking in the lot known as 1011 Valley Drive, Manhattan Beach, Ca.,. The amount of rent is Seven Hundred Dollars (\$700.00) per month. The first and last months rent in the amount of One Thousand Four Hundred Dollars (\$1400.00) shall be paid upon signing this agreement. Lease to be on month to month basis. Termination can be made by either party with 30 days written notice.

Lessee shall indemnify and hold harmless lessor from and against any and all claims arising out of lessee's use of the parking lot.

	
<u>Peter Ristani, lessor</u>	<u>David P. Fansler, Jr., lessee</u> President

October 23, 1986  
Dated

Bond No. 6452022  
Premium: \$648.00

PERMITTEE'S BOND FOR THE IMPROVEMENT OF  
A PARKING AREA AS A CONDITION OF  
THE TEMPORARY CERTIFICATE OF OCCUPANCY  
FOR THE WILIKER'S RESTAURANT

KNOW ALL MEN BY THESE PRESENTS:

That we, Wiliker's II  
(Address: 401 Manhattan Beach Blvd., Manhattan Beach, CA),  
90266  
as Principal, and Fireman's Fund Insurance Company,

a Corporation, incorporated, organized, and existing under the laws of the State of California, and authorized to execute bonds and undertakings and to do a general surety business in the State of California, as Surety, are jointly and severally held and firmly bound unto the City of Manhattan Beach, a municipal corporation, located in the County of Los Angeles, State of California, in the full and just sum of Thirty Thousand (\$30,000.00) Dollars, lawful money of the United States of America, for the payment of which sum, well and truly to be made, we bind ourselves and our respective heirs, executors, administrators, representatives, successors and assigns, jointly and severally, firmly by these presents:

THE CONDITION OF THIS OBLIGATION IS SUCH, That:

WHEREAS, the alternative parking facility (the unpaved parcel on the south side of Safeway, owned by Pete Ristani) is to be paved to City specifications if a permanent parking facility is not obtained within ninety (90) days from the date of issuance of a Temporary Certificate of Occupancy for the restaurant known as Wiliker's, unless the ninety (90) day period has been extended by the City.

WHEREAS, if permanent parking is not made available, the City could utilize the funds for improvements of the site.

WHEREAS, as a condition precedent to the issuance of the Temporary Certificate

GENERAL  
POWER OF  
ATTORNEY

FIREMAN'S FUND INSURANCE COMPANY

KNOW ALL MEN BY THESE PRESENTS: That FIREMAN'S FUND INSURANCE COMPANY, a Corporation duly organized and existing under the laws of the State of California, and having its principal office in the City and County of San Francisco, in said State, has made, constituted and appointed and does by these presents make, constitute and appoint

-----MICHAEL F. YOUNG-----

its true and lawful Attorney-in-Fact, with full power and authority hereby conferred in its name, place and stead, to execute, seal, acknowledge and deliver any and all bonds, undertakings, recognizances or other written obligations in the nature thereof

and to bind the Corporation thereby as fully and to the same extent as if such bonds were signed by the President, sealed with the corporate seal of the Corporation and duly attested by its Secretary, hereby ratifying and confirming all that the said Attorney-in-Fact may do in the premises.

This power of attorney is granted pursuant to Article VIII, Section 30 and 31 of By-laws of FIREMAN'S FUND INSURANCE COMPANY now in full force and effect.

\*Article VIII. Appointment and Authority of Resident Assistant Secretaries and Attorney-in-Fact and Agents to accept Legal Process and Make Announcements

Section 30. Appointment. The Chairman of the Board of Directors, the President, the Vice-Presidents or any other person authorized by the Board of Directors, the Chairman of the Board of Directors, the President or the Vice-Presidents may, from time to time, appoint a Resident Assistant Secretary and Attorney-in-Fact to represent and act for and on behalf of the Corporation and Agents to accept legal process and make appearances for and on behalf of the Corporation.

Section 31. Authority. The authority of such Resident Assistant Secretaries, Attorney-in-Fact and Agents shall be as prescribed in the instrument evidencing their appointment, and any such appointment and its authority granted hereunder may be revoked at any time by the Board of Directors or any person empowered to make such appointment.

This power of attorney is signed and sealed under and by the authority of the following Resolution adopted by the Board of Directors of FIREMAN'S FUND INSURANCE COMPANY at a meeting duly called and held on the 15th day of July, 1960, and said Resolution has not been amended or repealed:

"RESOLVED, that the signature of any Vice-President, Assistant Secretary, and Resident Assistant Secretary of this Corporation, and the seal of this Corporation may be affixed or printed on any power of attorney, on any ratification of any power of attorney, or on any certificate relating thereto, by facsimile, and any power of attorney, any revocation of any power of attorney, or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Corporation."

IN WITNESS WHEREOF, FIREMAN'S FUND INSURANCE COMPANY has caused these presents to be signed by its Vice-President,

and its corporate seal to be hereunto affixed this 26th day of June, 1979



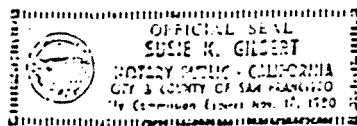
FIREMAN'S FUND INSURANCE COMPANY

By William H. Laubar  
VICE-PRESIDENT

STATE OF CALIFORNIA,  
CITY AND COUNTY OF SAN FRANCISCO

On this 26th day of June, 1979, before me personally came William H. Laubar to me known, who, being by me duly sworn, did depose and say that he is Vice-President of FIREMAN'S FUND INSURANCE COMPANY, the Corporation described in and which executed the above instrument; that he knows the seal of said Corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said Corporation and that he signed his name thereto by like order.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year herein first above written.



Susie K. Gilbert  
Notary Public

CERTIFICATE

STATE OF CALIFORNIA,  
CITY AND COUNTY OF SAN FRANCISCO

I, the undersigned, Assistant Secretary of FIREMAN'S FUND INSURANCE COMPANY, a California Corporation, DO HEREBY CERTIFY that the foregoing and attached POWER OF ATTORNEY remains in full force and has not been revoked, and furthermore that Article VIII, Sections 30 and 31 of the By-laws of the Corporation, and the resolution of the Board of Directors set forth in the Power of Attorney, are now in force.

Signed and Executed in the City and County of San Francisco, California, this 23rd day of October, 1979



William H. Laubar

of Occupancy, the Principal is required to furnish a bond in the sum above named to said City, conditioned as hereinafter set forth;

NOW, THEREFORE, if the said principal fully, faithfully and truly observes and abides by each and all of the terms and conditions as set forth within ninety (90) days or as extended from the date of issuance of the Temporary Certificate of Occupancy, then this obligation shall be void, and the bond could be returned, otherwise it shall remain in full force, virtue and effect.

This bond shall not be subject to cancellation except upon termination of the obligation which it secures.

In the event any suit, action or proceeding is instituted to recover on this bond or obligation, said Surety will pay, and does hereby agree to pay, as attorney's fees for said City, such sum as the Court in any such suit, action or proceedings, may adjudge reasonable.

Executed, sealed and dated at Fresno, California, this 23rd day of October 1986

Neals America, Inc.

By: [Signature]  
David Fansler

Fireman's Fund Insurance Company

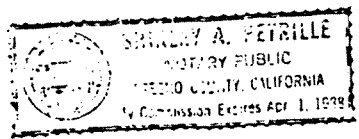
By: [Signature]  
Michael F. Young, Attorney in Fact

ATTORNEY IN FACT ACKNOWLEDGMENT

STATE OF CALIFORNIA  
County of Fresno } ss.

On this 23rd day of October, in the year 1986, before me, a Notary Public in and for said Fresno County, State of California, residing therein, duly commissioned and sworn, personally appeared Michael F. Young  personally known to me,  proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument as the attorney in fact of Fireman's Fund Insurance Company and acknowledged to me that  he  she subscribed the name of Fireman's Fund Insurance Company thereto as surety, and  this  her own name as attorney in fact.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year stated in this certificate above.




[Signature]  
Notary Public  
My commission expires \_\_\_\_\_

CITY OF MANHATTAN BEACH  
COMMUNITY DEVELOPMENT DEPARTMENT MEMORANDUM

November 26, 1986

TO: David J. Thompson, City Manager

FROM: Terry Stambler-Wolfe, Director of Community Development 

SUBJECT: Conformance With City Approvals and Use of Public Parking Facilities by a Private Commercial Valet Service, for the Business Located at 401 Manhattan Beach Boulevard (Wiliker's)

Pursuant to the direction of the City Council, at its meeting of November 18, 1986, the owner of Wiliker's Restaurant, Mr. Dave Fansler of Meals America, Inc., has been notified of the City's concerns relative to the lack of use of existing required off-site parking spaces, (see attached letter dated November 25, 1986).

The City has conducted random driveby inspections during both evening and afternoon peak hours, and confirmed complaints regarding the non-use of the off-site parking facilities. On several occasions before November 17, 1986, it was noted that the gates to the parking area were closed and locked. As a result of a recent inspection on November 18, 1986, it was noted that the lot was empty, but the gates were open and the area accessible to vehicles. No vehicles other than two construction trucks were in the lot area at the time of the inspection.

With regard to the valet parking service, the Community Development, Public Works and Finance Departments were consulted by Mr. Fansler several months ago to determine if there was any prohibition against use of the public spaces by a private, commercial valet service. It was determined that no ordinances exist prohibiting use of the public space by a commercial parking service. However, the Public Works Department has prohibited the use of the public streets as a queuing point for the paid valet service. This activity was determined to be a commercial use of public property.

Should the City Council wish to regulate or prohibit the use of public parking spaces by a valet service, a new ordinance must be prepared to accomplish this objective.

TSW:SAL:md




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CITY HALL - 1400 HIGHLAND AVENUE - MANHATTAN BEACH, CALIFORNIA - 90266

November 25, 1986

Mr. David Fansler  
 Meals America, Inc.  
 550 East Terrace  
 Fresno, California 93704

Re: Compliance With the Final Commercial Planned Development Permit,  
 Resolution No. PC 83-35, Conditional Use Permit, Resolution No. 4071,  
 Zone Variance, Resolution No. 85-33 and Temporary Certificate of  
 Occupancy, Dated October 24, 1986

Dear Mr. Fansler:

As you are aware from our conversation, the City of Manhattan Beach has received and confirmed complaints regarding the non-use of your required off-premise parking facilities. Specifically, it has been observed that the off-premise parking facility has been chained off and not available for use. The continued maintenance and the use of this facility, currently located at 1011 Valley Drive, is required for the restaurant to remain in conformance with your Final Commercial Planned Development and Conditional Use Permit, Zone Variance and Temporary Certificate of Occupancy.

It is expected that the 16 on site parking spaces and the off-site facilities will be fully utilized by your required valet service and employees before you use available off-site public parking spaces. If you have not already done so, please instruct your employees and/or valet service to utilize the on and off-site spaces before they utilize the surrounding public parking facilities.

Failure to comply with the conditions of approval could result in the termination of the Temporary Certificate of Occupancy. In order to preclude this possibility, please contact the undersigned should you have any questions or require further clarification.

Sincerely,

TERRY STAMBLER-WOLFE  
 Director of Community Development

By STEVEN A. LEFEVER  
 Planning Administrator

TSW:SAL:md



November 10, 1986

## DOWNTOWN MANHATTAN BEACH BUSINESS AND PROFESSIONAL ASSOCIATION

1142 MANHATTAN AVE./ C.P. 41/ MANHATTAN BEACH, CA 90266

City Council Members  
City of Manhattan Beach  
1400 Highland Avenue  
Manhattan Beach, California 90266

Dear Council Members:

It has come to our attention that David Fansler, the operator of Wiliker's restaurant, is valet parking into City controlled parking spaces. This is in direct contradiction to testimony given by a representative of Wiliker's at the August 4, 1986 meeting of the Board of Parking Place Commissioners, (see enclosure). At that meeting, a resolution concerning that issue was voted upon as follows:

"ON SECOND BY MR. VAN AMBURGH OF MR. KING'S EARLIER MOTION AND UNANIMOUSLY CARRIED, THE BOARD DENIED APPROVAL OF THE PROPOSAL FOR USE OF CITY CONTROLLED PARKING SPACES."

The position of the Downtown Manhattan Beach Business & Professional Association is that the City parking structures and City parking lots were developed to serve all businesses within the Downtown. It is not wished that a possible advantage be given to one business at the expense of the remaining businesses, especially when there are assessments on the various businesses and properties within the Downtown which enabled the creation and continued maintenance of those parking spaces.

We ask that the resolution passed unanimously by the Board of Parking Place Commissioners be ratified by the City Council, and this encroachment upon the equitable right of other Downtown businesses cease.

Sincerely,

Frances Partridge  
Vice President

CITY OF MANHATTAN BEACH  
BOARD OF PARKING PLACE COMMISSIONERS  
REGULAR MEETING  
AUGUST 4, 1986  
8:05 A.M.  
MINUTES

The regular meeting of the Board of Parking Place Commissioners of the City of Manhattan Beach, California, was held on August 4, 1986, commencing at 8:05 a.m. in the Conference Room of the City Hall of said city. In the absence of Win Underhill, Recording Secretary, Carolyn Biederman took the minutes.

ROLL CALL:

Present: Commissioners King, Van Amburgh, Chairman Rhind  
Absent: None  
Others: Merle F. Lundberg, Director of Finance; Sherry Morelan, Business Office Supervisor; George and Bonnie Beckerson, Weston's  
Jewelers;  
Nick Gisler, MBS Development; Trudi Smart, Chamber of Commerce

APPROVAL OF MINUTES

The Minutes of July 7, 1986 were approved as recorded by unanimous consent.

GENERAL

86/0707.2-1 Proposal for Use of City Controlled VPD  
Downtown Spaces for Williker's  
Restaurant Located at 401 Manhattan Beach  
Boulevard

BPPC 8-4-86

Mr. King thanked the staff for their report on this proposal. He stated that staff's recommendation was that since all spaces are open to the public, no specific permission should be granted for use of public parking. Mr. Rhind read a letter from the Downtown Business and Professional Association to the Board of Parking Place Commissioners. (See attached). The Association is strongly opposed to the proposal to permit valet parking because it gives an unfair advantage to one business over others.

Mr. King made a motion to deny the proposal for valet parking using City-owned structures. Mr. Rhind requested discussion before entertaining a second. Mr. Gisler stated that he was bringing the proposal to the Board in an attempt to solve, in advance, any problems that may arise over parking for Williker's. He stated that Williker's is in the process of selecting a professional valet service who will handle the valet parking using the middle deck of Lot 3 first, the end of street parking next and City Hall parking lot last. The valets would be responsible for feeding the meters where necessary. The service would also be aware that there are specific times when parking is not permitted due to public meetings at City Hall.

George and Bonnie Beckerson stated that they are opposed to the proposal because their patrons would have more difficulty finding parking in the area. Nick Gisler stated that a meeting was planned with the Downtown Business and Professional Association members to better explain the proposal. Trudi Smart asked if the valet service would be available to the public for parking use other than Williker's. Mr. Gisler said the service would be available to all.

ON SECOND BY MR. VAN AMBURGH OF MR. KING'S EARLIER MOTION AND UNANIMOUSLY CARRIED, THE BOARD DENIED APPROVAL OF THE PROPOSAL FOR USE OF CITY CONTROLLED PARKING SPACES.

Mr. Gisler stated that he was sorry that the Board did not move to avoid parking problems in advance. He added that Williker's would not be using City controlled parking spaces without the Board's approval. Mr. Lundberg stated that Williker's could try to contract parking spaces from surrounding businesses.

Mr. Van Amburgh stated that he feels something needs to be done about permitting new high volume businesses to open without provisions being made for parking spaces. Mr. King stated that the Board of Parking Place Commissioners would have to try to find ways to solve the parking problems in the downtown area.

There being no further business to come before the Board, the meeting was adjourned by unanimous consent at 8:40 a.m.

John Rhind  
Chairman

Carl Newton

PHONE: 545-5621



CITY HALL - 1400 HIGHLAND AVENUE - MANHATTAN BEACH, CALIFORNIA - 90266

RECEIVED

October 24, 1986

OCT 24 1986

Mr. Dave Fansler  
Wiliker's Restaurant  
401 Manhattan Beach Boulevard  
Manhattan Beach, California 90266

Subject: Temporary Certificate of Occupancy, Wiliker's Restaurant,  
401 Manhattan Beach Boulevard

Based upon the conditions listed below, this letter will serve as an approval of a T.C.O. (Temporary Certificate of Occupancy) for a period of ninety (90 days) from the last date of signature. This T.C.O. is issued due to very special circumstances regarding the parking requirements and is only to be regarded as an interim solution for a maximum period of ninety (90) days.

This T.C.O. will not become effective until acknowledged and the conditions listed below are approved or submitted to the City by a representative of Wiliker's Restaurant.

Conditions

1. Conditional approval, in writing, from the County Health Department.
2. Approval by the City of Manhattan Beach of a Lease Agreement for the Temporary Parking Area.
3. Approval by the City of Manhattan Beach of a Bond, or other security, in the amount of \$30,000.00 in the event permanent parking is not made available within ninety (90) days.
4. Application to the Handicap Appeals Board on the issue of Handicap toilet seat height and access to work stations. Decision of the Board is final and any modifications required by the Board must be accomplished at its direction.
5. Final approval from Fire Department.

APPROVAL Trang D. Huynh, P.E. Date 10/24/86  
 Trang D. Huynh (Wynn), P.E.  
 Building Division Administrator

ACCEPTANCE Dave Fansler Date 10/24/86  
 Dave Fansler  
 Wiliker's Restaurant

Attachments

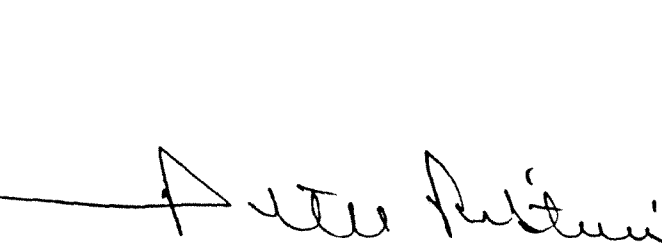
- Exhibit 1 - Lease Agreement for Temporary Parking Area
- Exhibit 2 - Bond for Improvements to Temporary Parking Area
- Exhibit 3 - Application for Handicap Appeals Board

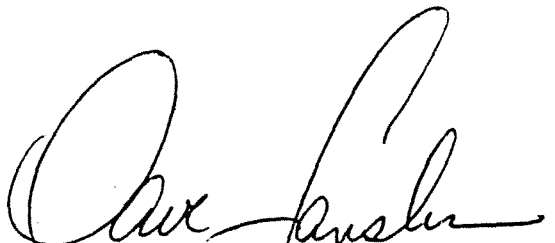
PARKING LOT LEASE AGREEMENT

This lease agreement, executed in duplicate at Manhattan Beach, Ca., by and between David P. Fansler, Jr. President Wiliker's II, (lessee), and Peter Ristani (lessor).

Lessee shall lease property for parking in the lot known as 1011 Valley Drive, Manhattan Beach, Ca., The amount of rent is Seven Hundred Dollars (\$700.00) per month. The first and last months rent in the amount of One Thousand Four Hundred Dollars (\$1400.00) shall be paid upon signing this agreement. Lease to be on month to month basis. Termination can be made by either party with 30 days written notice.

Lessee shall indemnify and hold harmless lessor from and against any and all claims arising out of lessee's use of the parking lot.

  
Peter Ristani, lessor

  
David P. Fansler, Jr., lessee  
President

October 23, 1986  
Dated

SHOPPING CENTER LEASE

NAME OF CENTER Wilikers Restuarant & Bar

For Reference purposes only

1. PARTIES. This Lease, dated as of this 7th day of August, 1984, is made by and between Morningside Investments, a limited partnership (herein called "Landlord") and Meals America, Inc. (herein called "Tenant")

2. PREMISES. Lndlord does hereby lease to Tenant and Tenant hereby leases from Landlord that certain space (herein called "Premises"), having dimensions of approximately ----- feet in frontage by ----- feet in depth and containing approximately See Attachment square feet of floor area. The location and dimensions of said Premises are delineated on Exhibit "A" attached hereto and incorporated by reference herein. Said Premises are located in the City of Manhattan Beach County of Los Angeles, State of California

This Lease is subject to the terms, covenants and conditions herein set forth and the Tenant covenants as a material part of the consideration for this Lease to keep and perform each and all of said terms, covenants and conditions by it to be kept and performed.

3. USE. Tenant shall use the Premises for restuarant, inclusive of full liquor license. and shall not use or permit the Premises to be used for any other purpose without the prior written consent of Landlord.

4. MINIMUM RENT. annual  
4.A. Tenant agrees to pay to Landlord as Minimum Rent, without notice or demand, the ~~XXXXXX~~ sum of \$204,000. payable in twelve (12) equally monthly installments, payable in advance of each month. Dollars,

In advance, on or before the first day of each and every successive calendar month during the term hereof, except the first month's rent shall be paid upon the execution hereof. The rental shall commence (check applicable box):

On the ----- day of -----, 1984, if the premises are being leased in its "as-is" condition or subject to such incidental work as is to be performed by Landlord prior to said date (this work, if any, to be set forth in the attached Exhibit B and in this letter, even if the rental shall commence on said date only if Landlord shall have completed said work).

50 days after substantial completion of Landlord's Work as set forth in Exhibit B attached hereto and incorporated herein by reference, or when the Tenant opens for business, whichever is sooner. Landlord agrees that it will, at its sole cost and expense as soon as is reasonably possible after the execution of this Lease, commence and pursue to completion the improvements to be erected by Landlord to the extent shown on the attached Exhibit B labelled "Description of Landlord's Work and Tenant's Work". The term "substantial completion of the Premises" is defined as the date on which Landlord or its Architect notifies Tenant in writing that the Premises are substantially complete to the extent of Landlord's Work specified in Exhibit B hereof, with the exception of such work as Landlord cannot complete until Tenant performs necessary portions of its work. Tenant shall commence the installation of fixtures, equipment, and any of Tenant's Work as set forth in said Exhibit B, promptly upon substantial completion of Landlord's Work in the Premises and shall diligently prosecute such installation to completion, and shall open the Premises for business not later than the expiration of said 30 day period.

Rent for any period which is for less than one (1) month shall be a prorated portion of the monthly installment herein based upon a thirty (30) day month. Said rental shall be paid to Landlord, without deduction or offset, in lawful money of the United States of America and at such place as Landlord may from time to time designate in writing.

4.B. THE MINIMUM RENTAL as set forth in 4(A) above shall be increased per attachment to the ~~Consumer Price Index - U.S. City Average~~ All Urban Consumers (Index) as published by the United States Department of Labor's Bureau of Labor Statistics. ~~Increases over the base period Index. The base period Index shall be the Index for the calendar month which is four months prior to the month in which rentals commence. The base period Index shall be compared with the Index for the same calendar month for each subsequent year (comparison month). If the Index for any comparison month is higher than the base period Index, then the minimum rental for the next year shall be increased by the identical percentage commencing with the next rental commencement month. In no event shall the Minimum Rental be less than that set forth in 4(A) above. (By way of illustration only, if Tenant commenced paying rent in June of 1977, then the base period Index is that for February 1977 (assume 176.3) and that Index shall be compared to the Index for February 1978 (assume 185.8), and because the Index for February 1978 is 5.39% higher, the minimum rental commencing June, 1978, shall be 5.39% higher, likewise the Index for February 1979 shall be compared with the Index for February 1977).~~

Should the Bureau discontinue the publication of the above Index, or publish same less frequently, or alter same in some other manner, then Landlord shall adopt a substitute index or substitute procedure which reasonably reflects and monitors consumer prices.

5. TERM. The lease term shall be twenty (20) full calendar years, plus options, see attachment. The parties hereto acknowledge that certain obligations under various articles hereof may commence prior to the lease term, i.e. construction, hold harmless, liability insurance, etc.; and the parties agree to be bound by these articles prior to commencement of the lease term.

6. SECURITY DEPOSIT. Concurrently with Tenant's execution of this Lease, Tenant has deposited with Landlord a sum ~~of \$204,000~~ SECURITY DEPOSIT, see attachment ~~the first two months' rent.~~ Said sum shall be held by Landlord as security for the faithful performance by Tenant of all the terms, covenants, and conditions of this Lease to be kept and performed by Tenant during the term hereof. If Tenant defaults with respect to any provision of this Lease, including, but not limited to the provisions relating to the payment of rent, Landlord may (but shall not be required to) use, apply or retain all or any part of this security deposit for the payment of any rent or any other sum in default, or for the payment of any amount which Landlord may spend or become obligated to spend by reason of Tenant's default, or to compensate Landlord for any other loss or damage which Landlord may suffer by reason of Tenant's default. If any portion of said deposit is so used or applied Tenant shall, within five (5) days after written demand therefor, deposit cash with Landlord in an amount sufficient to restore the security deposit to its original amount and Tenant's failure to do so shall be a default under this Lease. Landlord shall not be required to keep this security deposit separate from its general funds, and Tenant shall not be entitled to interest on such deposit. If Tenant shall fully and faithfully perform every provision of this Lease to be performed by it, the security deposit or any balance thereof shall be returned to Tenant (or, at Landlord's option, to the last assignee of Tenant's interest hereunder) within ten (10) days following expiration of the Lease term. In the event of termination of Landlord's interest in this Lease, Landlord shall transfer said deposit to Landlord's successor in interest.

'EXHIBIT A

JA DE

7. ADDITIONAL CHARGES.

7.A. Percentage Rent.

I. In addition to the Minimum Rent to be paid by Tenant pursuant to Article 4, Tenant shall pay to Landlord at the time and in the manner herein specified additional rent in an amount equal to ---6--- % of the amount of Tenant's gross sales made in, upon or from the Premises during each calendar year of the Lease term, less the aggregate amount of the Minimum Rent previously paid by Tenant for said calendar year.

II. Within thirty (30) days after the end of each calendar month following commencement of rents, Tenant shall furnish to Landlord a statement in writing, certified by Tenant to be correct, showing the total gross sales made in, upon, or from the Premises during the preceding calendar month, and shall accompany each such statement with a payment to Landlord equal to said hereinabove stated percentage of the total monthly gross sales made in, upon, or from the Premises during each calendar month, less the Minimum Rent for such prior calendar month, if previously paid. Said statement and payment shall be made with the succeeding month's regular rental payment. Within thirty (30) days after the end of each calendar year of the term hereof, Tenant shall furnish to Landlord a statement in writing, certified to be correct, showing the total gross sales by months made in, upon, or from the Premises during the preceding calendar year, at which time an adjustment shall be made between Landlord and Tenant to the end that the total percentage rent paid for each such calendar year shall be a sum equal to said hereinabove stated percentages of the total gross sales made in, upon, or from the Premises during each calendar year of the term hereof, less the Minimum Rent pursuant to Article 4 for each such calendar year, if previously paid, so that the percentage rent, although payable monthly, shall be computed and adjusted on an annual basis.

III. The term "gross sales" as used in this Lease shall include the entire gross receipts of every kind and nature from sales and services made in, upon, or from the Premises, whether upon credit or for cash, in every department operating in the Premises, whether operated by the Tenant or by a subtenant or subtenants, or by a concessionaire or concessionaires, excepting therefrom any rebates and/or refunds to customers and the amount of all sales tax receipts which has to be accounted for by Tenant to any government, or any governmental agency. Sales upon credit shall be deemed cash sales and shall be included in the gross sales for the period which the merchandise is delivered to the customer, whether or not title to the merchandise passes with delivery.

IV. The Tenant shall keep full, complete and proper books, records and accounts of its daily gross sales, both for cash and on credit, of each separate department, subtenant, and concessionaire operated at any time in the Premises. The Landlord and its agents and employees shall have the right at any and all times, during the regular business hours, to examine and inspect all of the books and records of the Tenant, including any sales tax reports pertaining to the business of the Tenant conducted in, upon or from the Premises, for the purpose of investigating and verifying the accuracy of any statement of gross sales. The Landlord may once in any calendar year cause an audit of the business of Tenant to be made by an accountant of Landlord's selection and if the statement of gross sales previously made to Landlord shall be found to be inaccurate, then and in that event, there shall be an adjustment and one party shall pay to the other on demand such sums as may be necessary to settle in full the accurate amount of said percentage rent that should have been paid for the period or periods covered by such inaccurate statement or statements. Tenant shall keep all said records for three (3) years. If said audit shall disclose an inaccuracy in favor of Tenant of greater than a two (2%) percent error with respect to the amount of gross sales reported by Tenant for the period of said report, then the Tenant shall immediately pay to Landlord the cost of such audit; otherwise, the cost of such audit shall be paid by Landlord. If such audit shall disclose any willful or substantial inaccuracies this Lease may thereupon be cancelled and terminated, at the option of Landlord.

7.B. Adjustments.

I. In addition to the Minimum Rent provided in Article 4 hereinabove, and commencing at the same time as any rental commences under this Lease Tenant shall pay to Landlord the following items, herein called Adjustments:

(a) All real estate taxes and insurance premiums on the Premises, including land, building, and improvements thereon. Said real estate taxes shall include all real estate taxes and assessments that are levied upon and/or assessed against the Premises, including any taxes which may be levied on rents. Said insurance shall include all insurance premiums for fire, extended coverage, liability, and any other insurance that Landlord deems necessary on the Premises. Said taxes and insurance premiums for purpose of this provision shall be reasonably apportioned in accordance with the total floor area of the Premises as it relates to the total floor area of the Shopping Center which is from time to time completed as of the first day of each calendar quarter, (provided, however, that if any tenants in said building or buildings pay taxes directly to any taxing authority or carry their own insurance, as may be provided in their leases, their square footage shall not be deemed a part of the floor area).

(b) That percent of the total cost of the following items as Tenant's total floor area bears to the total floor area of the Shopping Center which is from time to time completed as of the first day of each calendar quarter.

(i) All real estate taxes, including assessments, all insurance costs, and all costs to maintain, repair, and replace common areas, parking lots, sidewalks, driveways, and other areas used in common by the tenants of the Shopping Center.

(ii) All costs to supervise and administer said common areas, parking lots, sidewalks, driveways, and other areas used in common by the tenants or occupants of the Shopping Center. Said costs shall include such fees as may be paid to a third party in connection with same and shall in any event include a fee to Landlord to supervise and administer same in an amount equal to ten (10%) percent of the total costs of (i) above.

(iii) Any parking charges, utilities surcharges, or any other costs levied, assessed or imposed by, or at the direction of, or resulting from statutes or regulations, or interpretations thereof, promulgated by any governmental authority in connection with the use or occupancy of the premises or the parking facilities serving the premises.

II. Upon commencement of rental Landlord shall submit to Tenant a statement of the anticipated monthly Adjustments for the period between such commencement and the following January and Tenant shall pay these Adjustments on a monthly basis concurrently with the payment of the Rent. Tenant shall continue to make said monthly payments until notified by Landlord of a change thereof. By March 1 of each year Landlord shall endeavor to give Tenant a statement showing the total Adjustments for the Shopping Center for the prior calendar year and Tenant's allocable share thereof, prorated from the commencement of rental. In the event the total of the monthly payments which Tenant has made for the prior calendar year be less than the Tenant's actual share of such Adjustments then Tenant shall pay the difference in a lump sum within ten days after receipt of such statement from Landlord and shall concurrently pay the difference in monthly payments made in the then calendar year and the amount of monthly payments which are then calculated as monthly Adjustments based on the prior year's experience. Any over-payment by Tenant shall be credited towards the monthly Adjustments next coming due. The actual Adjustments for the prior year shall be used for purposes of calculating the anticipated monthly Adjustments for the then current year with actual determination of such Adjustments after each calendar year as above provided; excepting that in any year in which resurfacing is contemplated Landlord shall be permitted to include the anticipated cost of same as part of the estimated monthly Adjustments. Even though the term has expired and Tenant has vacated the premises, when the final determination is made of Tenant's share of said Adjustments for the year in which this Lease terminates, Tenant shall immediately pay any increase due over the estimated Adjustments previously paid and, conversely, any overpayment made shall be immediately rebated by Landlord to Tenant. Failure of Landlord to submit statements as called for herein shall not be deemed to be a waiver of Tenant's requirement to pay sums as herein provided.

8. USES PROHIBITED. Tenant shall not do or permit anything to be done in or about the Premises nor bring or keep anything therein which is not within the permitted use of the premises which will in any way increase the existing rate of or affect any fire or other insurance upon the Building or any of its contents, or cause a cancellation of any insurance policy covering said Building or any part thereof or any of its contents. Tenant shall not do or permit anything to be done in or about the Premises which will in any way obstruct or interfere with the rights of other tenants or occupants of the Building or injure or annoy them or use or allow the Premises to be used for any improper, immoral, unlawful or objectionable purpose; nor shall Tenant cause, maintain or permit any nuisance in, on or about the Premises. Tenant shall not commit or allow to be committed any waste in or upon the Premises.

9. COMPLIANCE WITH LAW. Tenant shall not use the Premises, or permit anything to be done in or about the Premises, which will in any way conflict with any law, statute, ordinance or governmental rule or regulation now in force or which may hereafter be enacted or promulgated. Tenant shall, at its sole cost and expense, promptly comply with all laws, statutes, ordinances and govern-

mental rules, regulations or requirements now in force or which may hereafter be in force and with the requirements of any board of fire underwriters or other similar bodies now or hereafter constituted relating to or affecting the condition, use or occupancy of the Premises, excluding structural changes not related to or affected by Tenant's improvements or acts. The judgment of any court of competent jurisdiction or the admission of Tenant in any action against Tenant, whether Landlord be a party thereto or not, that Tenant has violated any law, statute, ordinance or governmental rule, regulation or requirement, shall be conclusive of that fact as between the Landlord and Tenant.

10. ALTERATIONS AND ADDITIONS. Tenant shall not make or allow to be made any alterations, additions or improvements to or of the premises or any part thereof without first obtaining the written consent of Landlord and any alterations, additions or improvements to or of said Premises, including, but not limited to, wall covering, paneling and built-in cabinet work, but excepting movable furniture and trade fixtures, shall at once become a part of the realty and belong to the Landlord and shall be surrendered with the Premises. In the event Landlord consents to the making of any alterations, additions or improvements to the Premises by Tenant, the same shall be made by Tenant at Tenant's sole cost and expense. Upon the expiration or sooner termination of the term hereof, Tenant shall, upon written demand by Landlord, given at least thirty (30) days prior to the end of the term, at Tenant's sole cost and expense, forthwith and with all due diligence, remove any alterations, additions, or improvements made by Tenant, designated by Landlord to be removed, and Tenant shall, forthwith and with all due diligence, at its sole cost and expense, repair any damage to the premises caused by such removal.

11. REPAIRS.

11.A. By entry hereunder, Tenant shall be deemed to have accepted the Premises as being in good, sanitary order, condition and repair. Tenant shall, at Tenant's sole cost and expense, keep the Premises and every part thereof in good condition and repair (except as hereinafter provided with respect to Landlord's obligations) including without limitation, the maintenance, replacement and repair of any storefront, doors, window casements, glazing, plumbing, pipes, electrical wiring and conduits, heating and air conditioning system (when there is an air conditioning system). Tenant shall obtain a service contract for repairs and maintenance of said system, said maintenance contract to conform to the requirements under the warranty, if any, on said system. Tenant shall, upon the expiration or sooner termination of this Lease hereof, surrender the Premises to the Landlord in good condition, broom clean, ordinary wear and tear and damage from causes beyond the reasonable control of Tenant excepted. Any damage to adjacent premises caused by Tenant's use of the Premises shall be repaired at the sole cost and expense of Tenant.

11.B. Notwithstanding the provisions of Article 11.A. hereinabove, Landlord shall repair and maintain the structural portions of the Building, including the exterior walls and roof, unless such maintenance and repairs are caused in part or in whole by the act, neglect, fault or omission of any duty by the Tenant, its agents, servants, employees, invitees, or any damage caused by breaking and entering, in which case Tenant shall pay to Landlord the actual cost of such maintenance and repairs. Landlord shall not be liable for any failure to make such repairs or to perform any maintenance unless such failure shall persist for an unreasonable time after written notice of the need of such repairs or maintenance is given to Landlord by Tenant. Except as provided in Article 25 hereof, there shall be no abatement of rent and no liability of Landlord by reason of any injury to or interference with Tenant's business arising from the making of any repairs, alterations or improvements in or to any portion of the Building or the Premises or in or to fixtures, appurtenances and equipment therein. Tenant waives the right to make repairs at Landlord's expense under any law, statute or ordinance now or hereafter in effect.

~~12. LIENS. Tenant shall keep the Premises and the property in which the Premises are situated free from any liens arising out of any work performed, materials furnished or obligations incurred by or on behalf of Tenant. Landlord may require, at Landlord's sole option, that Tenant shall provide to Landlord, at Tenant's sole cost and expense, a lien and completion bond in an amount equal to one and one-half (1 1/2) times the estimated cost of any improvements, additions, or alterations in the premises which the Tenant desires to make, to insure Landlord against any liability for mechanics' and materialmen's liens and to insure completion of the work.~~

13. ASSIGNMENT AND SUBLETTING: Tenant shall not either voluntarily, or by operation of law, assign, transfer, mortgage, pledge, hypothecate or encumber this Lease or any interest therein, and shall not sublet the said Premises or any part thereof, or any right or privilege appurtenant thereto, or allow any other person (the employees, agents, servants and invitees of Tenant excepted) to occupy or use the said Premises, or any portion thereof, without first obtaining the written consent of Landlord, which consent shall not be unreasonably withheld. A consent to one assignment, subletting, occupation or use by any other person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation or use by another person. Consent to any such assignment or subletting shall in no way relieve Tenant of any liability under this Lease. Any such assignment or subletting without such consent shall be void, and shall, at the option of the Landlord, constitute a default under the terms of this Lease.

In the event that Landlord shall consent to a sublease or assignment hereunder, Tenant shall pay Landlord reasonable fees, not to exceed One Hundred and No/100ths (\$100.00) Dollars, incurred in connection with the processing of documents necessary to giving of such consent.

14. HOLD HARMLESS. Tenant shall indemnify and hold harmless Landlord against and from any and all claims arising from Tenant's use of the Premises or from the conduct of its business or from any activity, work, or other things done, permitted or suffered by the Tenant in or about the Premises, and shall further indemnify and hold harmless Landlord against and from any and all claims arising from any breach or default in the performance of any obligation on Tenant's part to be performed under the terms of this Lease, or arising from any act or negligence of the Tenant, or any officer, agent, employee, guest, or invitee of Tenant, and from all costs, attorney's fees, and liabilities incurred in or about the defense of any such claim or any action or proceeding brought thereon and in case any action or proceeding be brought against Landlord by reason of such claim, Tenant upon notice from Landlord shall defend the same at Tenant's expense by counsel reasonably satisfactory to Landlord. Tenant, as a material part of the consideration to Landlord, hereby assumes all risk of damage to property or injury to persons in, upon or about the Premises, from any cause other than Landlord's negligence; and Tenant hereby waives all claims in respect thereof against Landlord. Tenant shall give prompt notice to Landlord in case of casualty or accidents in the Premises.

Landlord or its agents shall not be liable for any loss or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water or rain which may leak from any part of the Building or from the pipes, appliances or plumbing works therein or from the roof, street or subsurface or from any other place resulting from dampness or any other cause whatsoever, unless caused by or due to the negligence of Landlord, its agents, servants or employees. Landlord or its agents shall not be liable for interference with the light, air, or for any latent defect in the Premises.

15. SUBROGATION. As long as their respective insurers so permit, Landlord and Tenant hereby mutually waive their respective rights of recovery against each other for any loss insured by fire, extended coverage and other property insurance policies existing for the benefit of the respective parties. Each party shall apply to their insurers to obtain said waivers. Each party shall obtain any special endorsements, if required by their insurer to evidence compliance with the aforementioned waiver.

16. LIABILITY INSURANCE. Tenant shall, at Tenant's expense, obtain and keep in force during the term of this Lease a policy of comprehensive public liability insurance insuring Landlord and Tenant against any liability arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be in the amount of not less than \$300,000.00 for injury or death of one person in any one accident or occurrence and in the amount of not less than \$500,000.00 for injury or death of more than one person in any one accident or occurrence. Such insurance shall further insure Landlord and Tenant against liability for property damage of at least \$50,000.00. The limit of any such insurance shall not, however, limit the liability of the Tenant hereunder. Tenant may provide this insurance under a blanket policy, provided that said insurance shall have a Landlord's protective liability endorsement attached thereto. If Tenant shall fail to procure and maintain said insurance, Landlord may, but shall not be required to, procure and maintain some, but at the expense of Tenant. Insurance required hereunder shall be in companies rated AIXII or better in "Best's Key Rating Guide". Tenant shall deliver to Landlord, prior to right of entry, copies of policies of liability insurance required herein or certificates evidencing the existence and amounts of such insurance with loss payable clauses satisfactory to Landlord. No policy shall be cancellable or subject to reduction of coverage. All such policies shall be written as primary policies not contributing with and not in excess of coverage which Landlord may carry.

17. UTILITIES. Tenant shall pay for water, gas, heat, light, power, sewer charge, telephone service and all other services and utilities supplied to the Premises, together with any taxes thereon. If any such services are not separately metered to Tenant, Tenant shall pay a reasonable proportion to be determined by Landlord of all charges jointly metered with other premises.
18. PERSONAL PROPERTY TAXES. Tenant shall pay, or cause to be paid, before delinquency any and all taxes levied or assessed and which become payable during the term hereof upon all Tenant's leasehold improvements, equipment, furniture, fixtures, and any other personal property located in the Premises. In the event any or all of the Tenant's leasehold improvements, equipment, furniture, fixtures and other personal property shall be assessed and taxed with the real property, Tenant shall pay to Landlord its share of such taxes within ten (10) days after delivery to Tenant by Landlord of a statement in writing setting forth the amount of such taxes applicable to Tenant's property.
19. RULES AND REGULATIONS. Tenant shall faithfully observe and comply with the rules and regulations that Landlord shall from time to time promulgate and/or modify. The rules and regulations shall be binding upon the Tenant upon delivery of a copy of them to Tenant. Landlord shall not be responsible to Tenant for the nonperformance of any said rules and regulations by any other tenants or occupants.
20. HOLDING OVER. If Tenant remains in possession of the Premises or any part thereof after the expiration of the term hereof with the express written consent of Landlord, such occupancy shall be a tenancy from month to month at a rental in the amount of the last Monthly Minimum Rent, plus all other charges payable hereunder, and upon all the terms hereof applicable to a month to month tenancy.
21. ENTRY BY LANDLORD. Landlord reserves, and shall at any and all times have, the right to enter the Premises to inspect the same, to submit said Premises to prospective purchasers or tenants, to post notices of non-responsibility, to repair the Premises and any portion of the Building of which the Premises are a part that Landlord may deem necessary or desirable, without abatement of rent, and may for that purpose erect scaffolding and other necessary structures where reasonably required by the character of the work to be performed, always providing that the entrance to the Premises shall not be unreasonably blocked thereby, and further providing that the business of the Tenant shall not be interfered with unreasonably. Tenant hereby waives any claim for damages or for any injury or inconvenience to or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the Premises, and any other loss occasioned thereby. For each of the aforesaid purposes, Landlord shall at all times have and retain a key with which to unlock all of the doors in, upon and about the Premises, excluding Tenant's vaults, safes and files, and Landlord shall have the right to use any and all means which Landlord may deem proper to open said doors in an emergency. In order to obtain entry to the Premises without liability to Tenant except for any failure to exercise due care for Tenant's property and any entry to the Premises obtained by Landlord by any of said means, or otherwise, shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an eviction of Tenant from the Premises or any portion thereof.
22. TENANT'S DEFAULT. The occurrence of any one or more of the following events shall constitute a default and breach of this Lease by Tenant.
- 22.A. The vacating or abandonment of the Premises by Tenant.
- 22.B. The failure by Tenant to make any payment of rent or any other payment required to be made by Tenant hereunder, as and when due, where such failure shall continue for a period of three (3) days after written notice thereof by Landlord to Tenant.
- 22.C. The failure by Tenant to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by the Tenant, other than described in Article 22.B. above, where such failure shall continue for a period of thirty (30) days after written notice thereof by Landlord to Tenant; provided, however, that if the nature of Tenant's default is such that more than thirty (30) days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion.
- 22.D. The making by Tenant of any general assignment or general arrangement for the benefit of creditors; or the filing by or against Tenant of a petition to have Tenant adjudged a bankrupt, or a petition or reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant, the same is dismissed within sixty (60) days); or the appointment of a trustee or a receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within thirty (30) days; or the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where such seizure is not discharged within thirty (30) days.
23. REMEDIES IN DEFAULT. In the event of any such default or breach by Tenant, Landlord may at any time thereafter, in his sole discretion, with or without notice or demand and without limiting Landlord in the exercise of a right or remedy which Landlord may have by reason of such default or breach:
- 23.A. Terminate Tenant's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Tenant shall immediately surrender possession of the Premises to Landlord. In such event Landlord shall be entitled to recover from Tenant all damages incurred by Landlord by reason of Tenant's default including, but not limited to, the cost of recovering possession of the Premises; expenses of reletting, including necessary renovation and alteration of the Premises; reasonable attorney's fees; the worth at the time of award by the court having jurisdiction thereof of the amount by which the unpaid rent and other charges and Adjustments called for herein for the balance of the term after the time of such award exceeds the amount of such loss for the same period that Tenant proves could be reasonably avoided; and that portion of any leasing commission paid by Landlord and applicable to the unexpired term of this Lease. Unpaid installments of rent or other sums shall bear interest from the date due at the maximum legal rate; or
- 23.B. Maintain Tenant's right to possession, in which case this Lease shall continue in effect whether or not Tenant shall have abandoned the Premises. In such event Landlord shall be entitled to enforce all of Landlord's rights and remedies under this Lease, including the right to recover the rent and any other charges and Adjustments as may become due hereunder; or
- 23.C. Pursue any other remedy now or hereafter available to Landlord under the laws or judicial decisions of the State in which the Premises are located.
24. DEFAULT BY LANDLORD. Landlord shall not be in default unless Landlord fails to perform obligations required of Landlord within a reasonable time, but in no event later than thirty (30) days after written notice by Tenant to Landlord and to the holder of any first mortgage or deed of trust covering the Premises whose name and address shall have theretofore been furnished to Tenant in writing, specifying wherein Landlord has failed to perform such obligation; provided, however, that if the nature of Landlord's obligation is such that more than thirty (30) days are required for performance then Landlord shall not be in default if Landlord commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion. In no event shall Tenant have the right to terminate this Lease as a result of Landlord's default and Tenant's remedies shall be limited to damages and/or an injunction.
25. RECONSTRUCTION. In the event the Premises are damaged by fire or other perils covered by extended coverage insurance, Landlord agrees to forthwith repair same, and this Lease shall remain in full force and effect, except that Tenant shall be entitled to a proportionate reduction of the Minimum Rent from the date of damage and while such repairs are being made, such proportionate reduction to be based upon the extent to which the damage and making of such repairs shall reasonably interfere with the business carried on by the Tenant in the Premises. If the damage is due to the fault or neglect of Tenant or its employees, there shall be no abatement of rent.
- In the event the Premises are damaged as a result of any cause other than the perils covered by fire and extended coverage insurance, then Landlord shall forthwith repair the same, provided the extent of the destruction be less than ten (10%) percent of the then full replacement cost of the Premises. In the event the destruction of the Premises is to an extent of ten (10%) percent or more of the full replacement cost then Landlord shall have the option: (1) to repair or restore such damage, this Lease continuing in full force and effect, but the Minimum Rent to be proportionately reduced as hereinabove in this article provided; or (2) give

notice to Tenant at any time within sixty (60) days after such damage, terminating this Lease as of the date specified in such notice, which date shall be no more than thirty (30) days after the giving of such notice. In the event of giving such notice, this Lease shall expire and all interest of the Tenant in the Premises shall terminate on the date so specified in such notice and the Minimum Rent reduced by a proportionate reduction, based upon the extent, if any, to which such damage interfered with the business carried by the Tenant in the Premises, shall be paid up to date of said such termination.

Notwithstanding anything to the contrary contained in this Article, Landlord shall not have any obligation whatsoever to repair, reconstruct or restore the Premises when the damage resulting from any casualty covered under this Article occurs during the last twenty-four months of the term of this Lease or any extension thereof.

Landlord shall not be required to repair any injury or damage by fire or other cause, or to make any repairs or replacements any leasehold improvements, fixtures, or other personal property of Tenant.

26. EMINENT DOMAIN. If more than twenty-five (25%) percent of the Premises shall be taken or appropriated by any public quasi-public authority under the power of eminent domain, either party hereto shall have the right, at its option, within sixty (60) days after said taking, to terminate this Lease upon thirty (30) days written notice. If either less than or more than 25% of the Premises are taken (and neither party elects to terminate as herein provided), the Minimum Rent thereafter to be paid shall equitably reduced. If any part of the Shopping Center other than the Premises may be so taken or appropriated, Landlord shall within sixty (60) days of said taking have the right at its option to terminate this Lease upon written notice to Tenant. In the event of a taking or appropriation whatsoever, Landlord shall be entitled to any and all awards and/or settlements which may be given a Tenant shall have no claim against Landlord for the value of any unexpired term of this Lease.

27. PARKING AND COMMON AREAS. Landlord covenants that upon completion of the Shopping Center an area approximate equal to the common and parking areas as shown on the attached Exhibit "A" shall be at all times available for the non-exclusive use of Tenant during the full term of this Lease or any extension of the term hereof, provided that the condemnation or other taking by any public authority, or sale in lieu of condemnation, of any or all of such common and parking areas shall not constitute a violation of this covenant. Landlord reserves the right to change the entrances, exits, traffic lanes and the boundaries and locations of such parking area or areas, provided, however, that anything to the contrary notwithstanding contained in this Article 27, such parking area or areas shall at all times be substantially equal or equivalent to that shown on the attached Exhibit "A".

27.A. Prior to the date of Tenant's opening for business in the Premises, Landlord shall cause said common and parking area or areas to be graded, surfaced, marked and landscaped at no expense to Tenant.

27.B. The Landlord shall keep said automobile parking and common areas in a neat, clean and orderly condition and shall repair any damage to the facilities thereof, but all expenses in connection with said automobile parking and common areas shall be charged and prorated in the manner as set forth in Article 7 hereof.

27.C. Tenant, for the use and benefit of Tenant, its agents, employees, customers, licensees and sub-tenants, shall have the non-exclusive right in common with Landlord, and other present and future owners, tenants and their agents, employees, customer licensees and sub-tenants, to use said common and parking areas during the entire term of this Lease, or any extension thereof, for ingress and egress, and automobile parking.

27.D. The Tenant, in the use of said common and parking areas, agrees to comply with such reasonable rules, regulations or charges for parking as the Landlord may adopt from time to time for the orderly and proper operation of said common and parking areas. Such rules may include but shall not be limited to the following: (1) The restricting of employee parking to a limited, designated area or areas; and (2) The regulation of the removal, storage and disposal of Tenant's refuse and other rubbish at the sole cost and expense of Tenant.

28. SIGNS. The Tenant may affix and maintain upon the glass panes and supports of the show windows and within twelve (12) inches of any window and upon the exterior walls of the Premises only such signs, advertising placards, names, insignia, trademark and descriptive material as shall have first received the written approval of the Landlord as to type, size, color, location, copy nature and display qualities. Anything to the contrary in this Lease notwithstanding, Tenant shall not affix any sign to the roof. Tenant shall, however, erect one sign on the front of the Premises not later than the date Tenant opens for business, in accordance with design to be prepared by Tenant and approved in writing by Landlord.

29. DISPLAYS. The Tenant may not display or sell merchandise or allow grocery carts or other similar devices within the control of Tenant to be stored or to remain outside the defined exterior walls and permanent doorways of the Premises. Tenant further agrees not to install any exterior lighting, amplifiers or similar devices or use in or about the Premises any advertising medium which may be heard or seen outside the Premises, such as flashing lights, searchlights, loudspeakers, phonographs or radio broadcasts.

30. AUCTIONS. Tenant shall not conduct or permit to be conducted any sale by auction in, upon or from the Premises whether said auction be voluntary, involuntary, pursuant to any assignment for the payment of creditors or pursuant to any bankruptcy or other insolvency proceeding.

31. HOURS OF BUSINESS. Subject to the provisions of Article 25 hereof, Tenant shall continuously during the entire term hereof conduct and carry on Tenant's business in the Premises and shall keep the Premises open for business and cause Tenant's business to be conducted therein during the usual business hours of each and every business day as is customary for businesses of like character in the city in which the Premises are located to be open for business; provided, however, that this provision shall not apply if the Premises should be closed and the business of Tenant temporarily discontinued therein on account of strikes, lockouts or similar causes beyond the reasonable control of Tenant. Tenant shall keep the Premises adequately stocked with merchandise, and with sufficient sales personnel to care for the patronage, and to conduct said business in accordance with sound business practice.

In the event of breach by the Tenant of any of the conditions contained in this Article, the Landlord shall have, in addition to any and all remedies herein provided, the right at its option to collect not only the Minimum Rent herein provided, but additional rent at the rate of one-thirtieth (1/30) of the Minimum Rent herein provided for each and every day that the Tenant shall fail to conduct its business as herein provided; said additional rent shall be deemed to be in lieu of any percentage rent that might have been earned during such period of the Tenant's failure to conduct its business as herein provided.

~~32. MERCHANTS' ASSOCIATION. If a majority of tenants in the Shopping Center shall determine that it is in the best interests of the Shopping Center, Tenant will become a member of, and participate fully in, and remain in good standing in the Merchants' Association (as soon as the same has been formed), organized for tenants occupying premises in the Shopping Center, and Tenant will abide by the regulations of such Association. Each member tenant shall have one (1) vote, and the Landlord shall also have one (1) vote, in the operation of said Association. The objects of such Association shall be to encourage its members to deal fairly and courteously with their customers, to encourage ethical business practices, and to assist the business of the tenants by sales promotion and center-wide advertising. The Tenant agrees to pay minimum dues to the Merchants' Association, provided however, that in the event shall the dues paid by Tenant in any fiscal year of said Association be in excess of twenty (20) cents per square foot of Premises leased to Tenant. Default in payment of dues shall be treated in similar manner to default in rent with like rights of Landlord at its option to the collection thereof on behalf of the Merchants' Association.~~

### 33. GENERAL PROVISIONS.

(i) Plats and Riders. Clauses, plats, riders and addendums, if any, affixed to this Lease are a part hereof.

(ii) Waiver. The waiver by Landlord of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of rent hereunder by Landlord shall not be deemed to be a waiver of any preceding default by Tenant of any term, covenant or condition of this Lease, other than the failure of the Tenant to pay the particular rental so accepted, regardless of Landlord's knowledge of such preceding default at the time of the acceptance of such rent.

(iii) Joint Obligation. If there be more than one Tenant the obligations hereunder imposed shall be joint and several.

(iv) Marginal Headings. The marginal headings and article titles to the articles of this Lease are not a part of the Lease and shall have no effect upon the construction or interpretation of any part hereof.

(v) Time. Time is of the essence of this Lease and each and all of its provisions in which performance is a factor.

NA D.F.

(vi) Successors and Assignments. The covenants and conditions herein contained, together with the provisions as to assignment, approval and bind the heirs, successors, administrators and assigns of the parties hereto.

(vii) Recordation. Neither Landlord nor Tenant shall record this Lease, but a short form memorandum hereof may be recorded at the request of Landlord.

(viii) Quiet Possession. Upon Tenant paying the rent reserved hereunder and observing and performing all of the covenant conditions and provisions on Tenant's part to be observed and performed hereunder, Tenant shall have quiet possession of the Premises for the entire term hereof, subject to all the provisions of this Lease.

(ix) Late Charges. Tenant hereby acknowledges that late payment by Tenant to Landlord of rent or other sum due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Landlord by terms of any mortgage or trust deed covering the Premises. Accordingly, if any installment of rent or any sum due from Tenant shall not be received by Landlord or Landlord's designee within ten (10) days after written notice that said amount is past due, the Tenant shall pay to Landlord a late charge equal to the maximum amount permitted by law (and in the absence of any governing law, ten percent of such overdue amount), plus any attorneys' fees incurred by Landlord by reason of Tenant's failure to pay rent and/or other charges when due hereunder. The parties hereby agree that such late charges represent a fair and reasonable estimate of the cost that Landlord will incur by reason of the late payment by Tenant. Acceptance of such late charges by the Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder.

(x) Prior Agreements. This Lease contains all of the agreements of the parties hereto with respect to any matter covered or mentioned in this Lease, and no prior agreements or understanding pertaining to any such matters shall be effective for any purpose. No provision of this Lease may be amended or added to except by an agreement in writing signed by the parties hereto or the respective successors in interest. This Lease shall not be effective or binding on any party until fully executed by both parties hereto.

(xi) Inability to Perform. This Lease and the obligations of the Tenant hereunder shall not be affected or impaired because the Landlord is unable to fulfill any of its obligations hereunder or is delayed in doing so, if such inability or delay is caused by reason of strike, labor troubles, acts of God, or any other cause beyond the reasonable control of the Landlord.

(xii) Partial Invalidity. Any provision of this Lease which shall prove to be invalid, void, or illegal shall in no way affect or invalidate any other provision hereof and such other provision shall remain in full force and effect.

(xiii) Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, whenever possible, be cumulative with all other remedies at law or in equity.

(xiv) Choice of Law. This Lease shall be governed by the laws of the State in which the Premises are located.

(xv) Attorneys' Fees. In the event of any action or proceeding brought by either party against the other under this Lease, the prevailing party shall be entitled to recover for the fees of its attorneys in such action or proceeding, including costs of appeal if any, in such amount as the court may adjudge reasonable as attorneys' fees. In addition, should it be necessary for Landlord to employ legal counsel to enforce any of the provisions herein contained, Tenant agrees to pay all attorneys' fees and court costs reasonably incurred.

(xvi) Sale of Premises by Landlord. In the event of any sale of the Premises by Landlord, Landlord shall be and is hereby entirely freed and relieved of all liability under any and all of its covenants and obligations contained in or derived from this Lease arising out of any act, occurrence or omission occurring after the consummation of such sale; and the purchaser, at such sale or at subsequent sale of the Premises shall be deemed, without any further agreement between the parties or their successors in interest or between the parties and any such purchaser, to have assumed and agreed to carry out any and all of the covenants and obligations of the Landlord under this Lease.

(xvii) Subordination, Attornment. Upon request of the Landlord, Tenant will in writing subordinate its rights hereunder to the lien of any mortgage or deed of trust, to any bank, insurance company or other lending institution, now or hereafter in force against the Premises, and to all advances made or hereafter to be made upon the security thereof.

In the event any proceedings are brought for foreclosure, or in the event of the exercise of the power of sale under any mortgage or deed of trust made by the Landlord covering the Premises, the Tenant shall attorn to the purchaser upon any such foreclosure sale and recognize such purchaser as the Landlord under this Lease.

The provisions of this Article to the contrary notwithstanding, and so long as Tenant is not in default hereunder, this Lease shall remain in full force and effect for the full term hereof.

(xviii) Notices. All notices and demands which may or are to be required or permitted to be given by either party on the other hereunder shall be in writing. All notices and demands by the Landlord to the Tenant shall be sent by United States Mail, postage prepaid, addressed to the Tenant at the Premises, and to the address hereinbelow, or to such other place as Tenant may from time to time designate in a notice to the Landlord. All notices and demands by the Tenant to the Landlord shall be sent by United States Mail, postage prepaid, addressed to the Landlord at the address set forth herein, and to such other person or place as the Landlord may from time to time designate in a notice to the Tenant.

To Landlord at: \_\_\_\_\_

To Tenant at: \_\_\_\_\_

(xix) Tenant's Statement. Tenant shall at any time and from time to time, upon not less than three days prior written notice from Landlord, execute, acknowledge and deliver to Landlord a statement in writing (a) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease as so modified is in full force and effect), and the date to which the rental and other charges are paid in advance, if any, and (b) acknowledging that there are not, to Tenant's knowledge, any uncured defaults on the part of the Landlord hereunder, or specifying such defaults if any are claimed, and (c) setting forth the date of commencement of rents and expiration of the term hereof. Any such statement may be relied upon by the prospective purchaser or encumbrancer of all or any portion of the real property of which the Premises are a part.

(xx) Authority of Tenant. If Tenant is a corporation, each individual executing this Lease on behalf of said corporation represents and warrants that he is duly authorized to execute and deliver this Lease on behalf of said corporation, in accordance with the bylaws of said corporation, and that this Lease is binding upon said corporation.

*This lease, along with its two pages of additional provisions, three pages of amendment, and Exhibit B to be initialed by tenant within 7 days is null and void unless executed by landlord by Aug 31, 1984*

Consult Your Attorney: If this Lease has been filled in it has been prepared for submission to your attorney for his approval. No representation or recommendation is made by Parker Commercial Brokerage Company or its agents or employees as to the legal sufficiency, legal effect, or tax consequences of this Lease.

Morningside Investments, a limited partnership

By: \_\_\_\_\_  
(Landlord)

Meats America, Inc.

By: \_\_\_\_\_  
(Tenant)

ATTACHED AND MADE APART OF LEASE FOR CERTAIN PROPERTY LOCATED AT:  
NWC MORNINGSIDE AND MANHATTAN BEACH BLVD., MANHATTAN BEACH, CA  
TENANT: MEALS AMERICA, INC.

LANDLORD: MORNINGSIDE INVESTMENTS, A LIMITED PARTNERSHIP

NOTWITHSTANDING ANY PROVISION CONTAINED IN THIS LEASE, THE ITEMS ON THIS ATTACHMENT SHALL PREVAIL:

2. PREMISES CONT'D: The footprint of the premises are to be as shown on Exhibit "A" attached hereto. The internal use of the floor area (mezzanine, etc.) may be used to the fullest degree possible by tenant.

4a. MINIMUM RENT CONT'D: Tenant shall issue first month's rental payment to landlord within sixty (60) days following landlord's substantial completion of exhibit "B", but in any respect prior to opening for business.

4b. MINIMUM RENT CONT'D: The minimum rental as set forth in 4(a) herein, shall be increased by fifteen percent (15%) at each five (5) year interval of the lease term, and option(s) thereafter.

5. TERM CONT'D: OPTION TO RENEW: Tenant shall have three (3) options to renew the term of the subject lease. The first two options shall be for a period of five (5) years each, the last option shall be for a period of four and half (4 1/2) years. Landlord shall notify tenant in writing (certified mail, return receipt requested), eight (8) months prior to the termination of primary lease term, or applicable option thereafter. Within sixty (60) days of tenant's receipt of such notice, tenant shall provide landlord with notice (certified mail, return receipt requested) of tenant's intention as to option.

6. SECURITY DEPOSIT CONT'D: Tenant herein has deposited a security deposit in the amount of \$26,500. Tenant has the right to deduct any percentage rentals paid to the landlord pursuant to paragraph 7(a) from security deposit herein, until such deposit has been exhausted.

ADDITIONAL CHARGES

ATTACHED AND MADE A PART OF LEASE FOR CERTAIN PROPERTY LOCATED AT:  
NWC OF MORNINGSIDE AND MANHATTAN BEACH BLVD., MANHATTAN BEACH, CA

TENANT: MEALS AMERICA, INC.

LANDLORD: MORNINGSIDE INVESTMENTS, A LIMITED PARTNERSHIP

NOTWITHSTANDING ANY PROVISION CONTAINED IN THIS LEASE, THE ITEMS ON THIS ATTACHMENT SHALL PREVAIL:

UTILITY CONNECTIONS: Landlord shall provide gas and utility connections to the boundry of the premises at no cost to tenant, and with capacities sufficient for tenant's intended use. *This includes governmental hook up fees, permits, and related costs.*  
PARKING LOT: Landlord to provide tenant, at landlord's expense, paving, striping, and lighting of parking lot.

NON COMPLETION OF BUILDING BY LANDLORD: If landlord is unable to turn building over to tenant for fixturation within nine (9) months from the full execution of this lease, then tenant shall have the option to cancel lease. In event of such cancellation, landlord shall return any advance rents and security deposit paid within ten (10) days of cancellation.

TERMINATION AGREEMENT: Tenant/Landlord shall have the right to terminate the lease agreement within ninety (90) days from the full execution date of lease should :

a. Tenant's Right to Cancel:

1. Tenant not be able to obtain all permits and licenses, either city or governmental, necessary for the construction and contemplated operation and use of a restuarant, including design.
2. Landlord not provide tenant with evidence satisfactory to, tenant, that landlord has secured a financial commitment to construct building.

b. Landlord's Right to Cancel:

1. Should landlord not receive evidence of financial responsibility of tenant satisfactory to all lender. Landlord agrees to so notify tenant in writing as soon as thereto as possible, when landlord lender has approved tenant's "financial responsibility."

Should lease be terminated pursuant to the agreement herein outlined as termination agreement, then any advance rents and/or security deposits shall be returned in full and both landlord and tenant shall be completely relinquished fof all responsibility to each other.

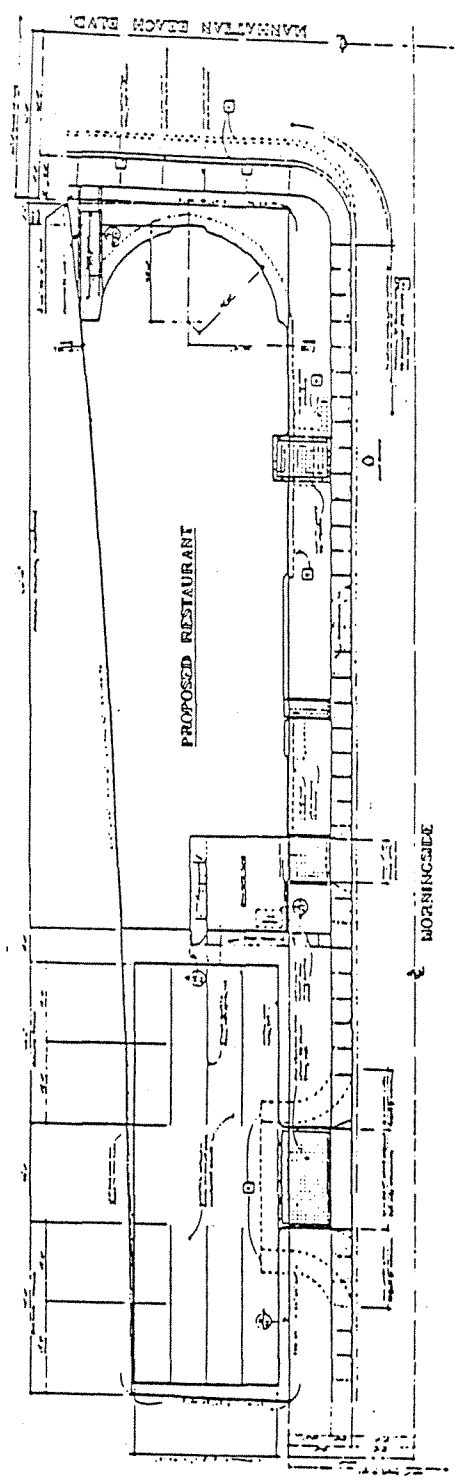
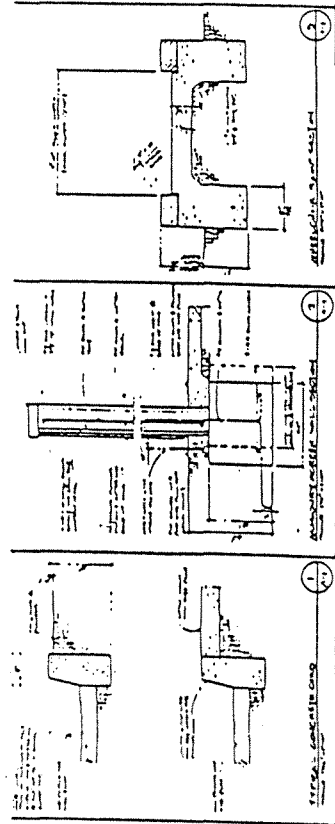
THIS LEASE HAS BEEN SUBMITTED BY THE LANDLORD, OR HIS REPRESENTATIVE, THROUGH THE REAL ESTATE OFFICE OF PARKER COMMERCIAL BROKERAGE COMPANY. ANY ALTERATIONS, OR FILLING IN OF LEASES, HAVE BEEN PREPARED FOR SUBMISSION TO YOUR ATTORNEY FOR APPROVAL.

ALL PARTIES ARE ADVISED AND ENCOURAGED BY PARKER COMMERCIAL BROKERAGE COMPANY TO CONTACT HIS OR HER ATTORNEY AS TO ANY QUESTIONS HE OR SHE MAY HAVE REGARDING THIS LEASE PRIOR TO EXECUTION OF SAME. NO WARRANTIES, RECOMMENDATIONS OR REPRESENTATIONS ARE MADE BY PARKER COMMERCIAL BROKERAGE COMPANY AS TO THE ACCURACY, THE LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE.

*I want to reserve the right of first refusal if landlord sells property by matching net price. On 10 day cash without 10 days of notice. Requested*

Tenant's Initials DF

Landlord's Initials JA



- NOTES**
- 1. SEE ARCHITECTURAL DRAWINGS
  - 2. SEE ARCHITECTURAL DRAWINGS
  - 3. SEE ARCHITECTURAL DRAWINGS
  - 4. SEE ARCHITECTURAL DRAWINGS
  - 5. SEE ARCHITECTURAL DRAWINGS

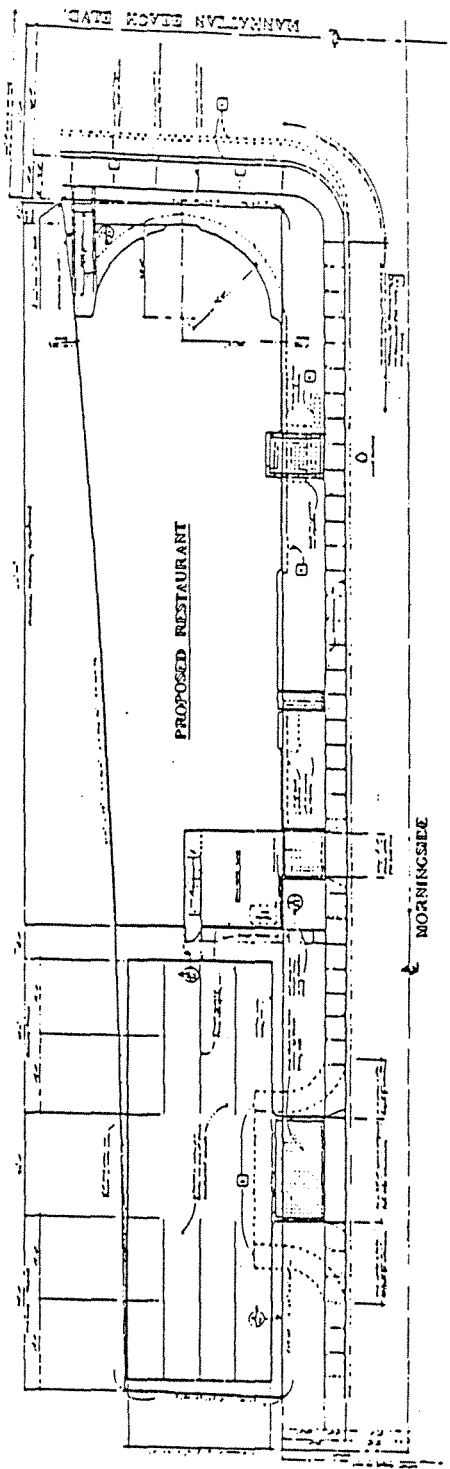
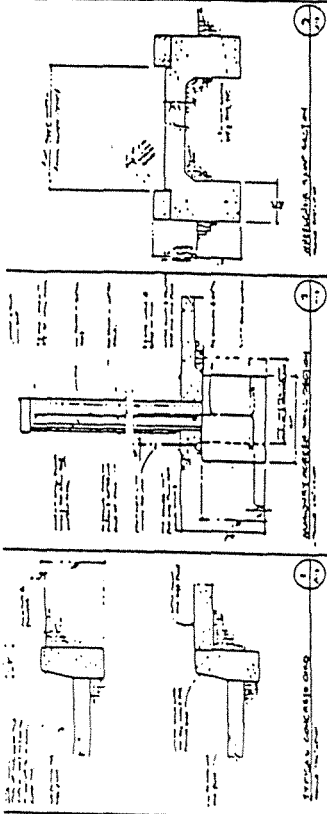


**SITE PLAN**

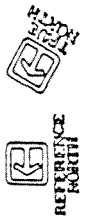
SCALE - 1" = 10'-0"

EXHIBIT A

JA D.F



- NOTES**
- 0
  - 0
  - 0
  - 0
  - 0
  - 0



SCALE - 1" = 10' - 0"

SITE PLAN

McLean & Schultz

EXHIBIT A

JA D.F.