UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE CHI-CHI'S INC **CASE NUMBER 03-13063**

ADMINISTRATIVE PROOF OF CLAIM

1 This proof is made for the Claimant named below by the undersigned individual who does business at Fifth Floor, Pembroke One Building, 281 Independence Blvd , Virginia Beach, Virginia, and who also states that he is duly authorized to make this claim on behalf of the Claimant

2 The post office address of the Claimant and the address to which all notices to this Claimant should be addressed is

TURNBARR ASSOCIATES
101 W Main Street, Suite 900
Norfolk, Virginia 23510-1653

3 Subsequent to the time of filing of the petition initiating this case, Debtor has accrued use and occupancy charges through the date of Rejection of Lease on 2/29/04, in the sum of Twelve Thousand Seven Hundred Seventy Two and 23/100 Dollars ($12,772 23) (Post-Petition/Administrative Rent) This sum is a continuing liability entitled to priority under Sub-Section 503(b)(1)(A) of the Bankruptcy Code by reason of the use and occupation of the premises by Debtor during the pendency of this Bankruptcy matter

4 A of the Lease is attached hereto as Exhibit "A"

5 An itemization of the elements of Debtor's liability to Claimant is attached hereto as Exhibit "B"

6 No judgment has been rendered on this claim

7 The amount of all payments has been credited and deducted for the purpose of making this Proof of Claim

8 This claim is not subject to any set-off or counter-claim

9 No security interest is held for this claim

10 This claim is a PRIORITY CLAIM

DATED 6/3/04

Signed
James T Cromwell, Esquire
State Bar Association No 36084
SYKES, BOURDON, AHERN & LEVY P C
Pembroke One Building, Fifth Floor
Virginia Beach, Virginia 23462-2989
(757) 499-8971

FILED
JUN 04 2004
BMC
Chi Chis Inc
01125

LAND LEASE

THIS LAND LEASE ("Lease") is made and entered into this 5th day of July, 1985 by and between Turnbarr Associates, % Goodman Segar Hogan, Inc 900 World Trade Center, Norfolk, VA 23510 a Virginia Corporation ("Lessor") and CCMR of Virginia, Inc , a Delaware corporation at 10002 Shelbyville Road, Post Office Box 32338, Louisville, Kentucky 40232 ("Lessee")

WITNESSETH

ARTICLE 1 Demised Premises Lessor hereby leases and lets to Lessee, and Lessee hereby takes and hires from Lessor upon and subject to the terms, conditions, covenants and provisions hereof, that certain restaurant (as defined in Article 7) Building Pad piece or parcel of land, and any improvements and appurtenances located thereon situated in the City of Newport News, County of State of Virginia, and more particularly described on Exhibit "A" attached hereto and made a part hereof, (hereinafter sometimes referred to as the "Demised Premises" or "Premises"). Lessor hereby grants Lessee for the term of this Lease and any extensions thereof certain non-exclusive easements for pedestrian and vehicular ingress, egress and parking as more specifically provided in Article 24 hereof see article 2 of [illegible]

ARTICLE 2 Term.

(a) The term of this Lease shall commence upon the earlier of (i) One Hundred Fifty (150) days after Lessee obtains all applicable and necessary permits and approvals to construct and operate a typical Chi-Chi's Mexican Restaurante (hereinafter "Restaurant" and further defined in Article 7 hereof) provided Lessor has timely completed Lessor's work as provided in Article 17 hereof or (ii) the day the Restaurant opens for business ("Commencement Date") and shall continue for a period of twenty (20) years beginning on the Commencement Date, subject to the extension rights of Lessee pursuant to Article 28 hereof.

(b) Promptly after the occurrence of the foregoing date, Lessor and Lessee shall complete Article 2 of the Lease by establishing the same by a letter confirmed by an appropriate supplement to this Lease which the parties hereby agree to execute In the event that the Commencement Date is not the first day of a calendar month, the Commencement Date shall be the first day of the first month following that date that would have otherwise been the Commencement Date and the Lease Year shall be appropriately pro-rated.

ARTICLE 3 Rent

(a) Lessee covenants and agrees to pay Lessor for the Demised Premises and improvements, without previous demand therefor, a total net annual rent which shall be an amount equal to Forty Two Thousand Dollars ($42,000 00) cumulatively increasing by fifteen percent (15%) on the sixth, eleventh and sixteenth anniversary of the Commencement Date (the "Basic Rent") and in addition, Lessee shall pay to Lessor as hereinafter provided Two percent (2%) of Lessee's "Gross Sales", as hereinafter defined in excess of Two Million Eight Hundred Thousand Dollars ($2,800,000 00) per annum ("Percentage Rent"). The Percentage Rent Breakpoint shall be increased proportionately with each increase in the Basic Rent throughout the term of this lease and any extensions thereof. Rent for any partial Lease Year shall be prorated, including any provision required for the determination of the Commencement Date

(b) "Gross Sales" means the actual sales prices of all goods, wares and merchandise sold, leased, licensed or delivered and the actual charges for all services performed by Lessee in, at, from, or arising out of the use of the Demised Premises, whether for wholesale or retail, and whether for cash or credit, including the value of all consideration other than money received Gross Sales shall include, without limitation, sales and services. (i) made or performed by mail, telephone, or similar type orders, and (ii) which Lessee or any subtenant, licensee, concessionaire (to the extent of revenues paid to Lessee) or other person in the normal and customary course of its business, would credit or attribute to its operations at the Demised Premises or any part thereof

The following shall not be included in Gross Sales (i) any exchange of merchandise between stores of Lessee where such exchange is made solely for the convenient operation of Lessee's business and not for the purpose of consummating a sale made in, at or from the Demised Premises, or for the purpose of depriving Lessor of the benefit of a sale which would otherwise be made in or at the Demised Premises, (ii) returns to suppliers, shippers or manufacturers, (iii) cash, credit or in kind refunds to customers on transactions (not to exceed the actual net amount for such item returned which was previously included in Gross Sales), (iv) sales of trade fixtures, machinery and equipment after use thereof in the conduct of Lessee's business, (v) amounts collected and paid by Lessee to any governmental authority for any sales, excise or similar tax, (vi) amounts paid to credit card companies (such as American Express, VISA or Mastercard) as commissions on credit card sales, to the extent such sales were actually included in Lessee's Gross Sales, (vii) the amount of any discount (including promotions) given to customers or employees as represented by a

coupon or other promotional item, to the extent such sales were actually included to Lessee's Gross Sales, (viii) tips to employees, (ix) the amount of gift certificates purchased on the Demised Premises but not redeemed thereat, (x) coat and hat check revenues, (xi) revenues derived by Lessee from vending machines at the Demised Premises not in excess of three percent (3%) of Gross Sales, and (xii) employee and management meals consumed on the Premises

On the first day of each and every month, Lessee shall pay to Lessor, in advance, without offset or deduction (except as herein specifically provided to the contrary), and without previous demand therefor, one-twelfth of the Basic Rent applicable for that Lease Year

(c) Within ninety (90) days after the end of each year and within ninety (90) days after the expiration or other termination of this Lease, Lessee shall deliver to Lessor a statement of Gross Sales for the preceding year, which shall be signed and certified by an officer of Lessee as complete and accurate Such statement shall be accompanied by the amount of Percentage Rent due and payable, if any, for the preceding Lease Year, determined as set forth in Paragraph 3(a) If Lessee shall fail to deliver the foregoing documentation within the time required then, in addition to any other rights of Lessor, unless Lessee shall provide such documentation within fifteen (15) days from Lessor's notice, Lessor shall have the right thereafter to employ, at Lessee's expense, an independent certified public accountant to examine such books and records as may be necessary to determine the amount of Lessee's Gross Sales for such month or year, as the case may be

(d) Lessee shall record all sales and other transactions in a cash register or cash registers having a cumulative total. Lessor agrees that NCR Model 2160 (or comparable Model in the future) which Lessee presently uses, is acceptable Lessee will keep and preserve at the demised Premises or its main corporate offices in the United States for at least two (2) years, an original or duplicate books and records which shall disclose all information required to determine Gross Sales including (i) federal, state and local sales tax returns, (ii) daily dated cash register tapes, including tapes from temporary registers, (iii) settlement report sheets and summaries or transactions, if any with subtenants, concessionaires or licensees, (iv) daily and/or weekly transaction reports, if any, (v) all other sales records, if any, which Lessee normally utilizes or retains relating to Lessee's sales, and (vi) the records specified in (i) through (vi) for each subtenant, assignee, concessionaire or licensee, except vending machine licenses and concessionaires

(e) Once during each Lease Year, after at least three (3) business days advance notice to Lessee, Lessor and/or Lessor's agent or accountants shall have the right to make any examination or audit of Lessee's books and records which Lessor may desire to verify or ascertain Gross Sales If such audit shall disclose a liability in any year for rental in excess of three percent (3%) of the rental theretofore paid by Lessee for such period then Lessee shall in addition to paying the excess, shall pay the cost of such audit Lessee shall promptly pay such excess.

(f) As used in this Lease, the term "Rent" shall be deemed to include the Basic Rent and the Percentage Rent, if any, payable by Lessee to Lessor hereunder As used herein, the term "Lease Year" shall mean the twelve (12) month period commencing with the Commencement Date, as provided in Article 2 hereof, and each succeeding twelve (12) month period thereafter, unless Lessor and Lessee mutually agree, in writing to a different twelve (12) month period.

ARTICLE 4 Rent To Be Net To Lessor It is the intention of Lessor and Lessee that the rent herein specified shall be net to Lessor in each year during the term hereof and that, except as otherwise specifically provided in this Lease to the contrary, all costs, expenses and obligations of every kind directly or indirectly relating to the Demised Premises which may arise or become due during the term of this Lease or any extension thereof shall be paid by Lessee and that Lessor shall be and is hereby indemnified by Lessee from and against all such costs, expenses and obligations

ARTICLE 5 Use of Premises

(a) The Demised Premises shall be used solely for the conduct of a general restaurant business, unless Lessor consents to another use, which consent shall not be unreasonably withheld

(b) Lessee agrees to cause the Demised Premises to be open for business at least during substantially the same business hours and on the same days (Christmas, Thanksgiving and material adverse weather conditions excepted) as a majority of Lessee's other restaurant facilities in the Tidewater Area which operate under the same trade name, unless Lessee determines in good faith that there is a legitimate business purpose for operating the Demised Premises for a lesser amount of hours, however, Lessee is required not to operate the Restaurant for hours less than 11 30 A.M to 12 00 midnight Monday through Sunday.

(c) Lessee shall staff the Demised Premises in Lessee's good faith business judgment with sufficient, competent and, if

required by law, licensed employees for the purpose of operating Lessee's business on the Demised Premises.

(d) Lessee will at its expense (i) maintain the Demised Premises in a clean, orderly and sanitary condition and free of rodents, vermin and other pests, (ii) keep any garbage, trash, rubbish or other refuse in secure containers until removed; and (iii) have such garbage, trash, rubbish and refuse removed as needed, on a regular basis

ARTICLE 6. Taxes and Utility Expenses

(a) (1) Lessee shall, during the term of this Lease, as additional rent, pay and discharge punctually, as and when the same shall become due and payable, all taxes, special and general assessments, water rents, rates and charges, sewer rents and other governmental impositions and charges of every kind and nature whatsoever, extraordinary as well as ordinary accruing during the term of this Lease ("Taxes"), together with all interest and penalties thereon, under or by virtue of all present or future laws, ordinances, requirements, orders, directives, rules or regulations of the Federal, State, County, Town and City Governments and of all governmental authorities whatsoever In addition, Lessee shall pay all sewer rents and charges for water, steam, heat, gas, hot water, electricity, light and power, and other service or services, furnished to the Demised Premises or the occupants thereof during the term of this Lease ("Utility Expense")

(2) Lessor shall make proper arrangements for the direct submission of real estate tax and assessment bills to Lessee promptly after the Commencement Date. Lessee shall have the exclusive right to contest any Taxes relating to the Demised Premises. In the event any or all of the Utilities are unavailable at the property line of the Demised Premises, Lessor shall, at its own cost and expense, bring the utilities to the pad of the Restaurant on the Demised Premises

(3) Lessee shall be deemed to have complied with the covenants of this Paragraph (a) if payment of such Taxes shall have been made whether within any period allowed by law or by the governmental authority imposing the same during which payment is permitted without penalty or interest or before the same shall become a lien upon the Demised Premises, and Lessee shall produce and exhibit to Lessor satisfactory evidence of such payment, if Lessor shall demand the same in writing

(b) Except as provided in Paragraph 6(a) to the contrary, all Taxes which shall become payable during each calendar year in which the term of this Lease commences or terminates, shall be

apportioned pro-rata between Lessor and Lessee as of the Commencement Date or termination date, as the case may be, in accordance with the respective portions of such year during which such term shall be in effect

(c) Nothing herein or in this Lease otherwise contained shall require or be construed to require Lessee to pay any rent, inheritance, estate, gift, franchise or income taxes that are or may be imposed upon Lessor, its successors or assigns

ARTICLE 7 Improvements, Repairs, Operations, Additions, and Replacements.

(a) Lessee shall use Lessee's best efforts to complete at the earliest practicable date, at Lessee's sole cost and expense, construction of a restaurant building with a gross building area of at least Eight Thousand Two Hundred Fifty (8,250) square feet upon the Demised Premises, together with all appropriate appurtenances to a first-class restaurant building and together with appropriate landscaping, sidewalks, (Lessor to provide parking for at least Two Hundred Ten (210) standard size American cars) and initially operated as a typical Chi-Chi's Mexican Restaurante ("Restaurant"). Lessor grants Lessee the right to demolish, remodel, remove, alter or sell any personal property located on the Premises Lessee shall have the right during the term of this Lease to alter or otherwise change in any material respect any approved plans or specifications with respect to the interior of the building to be constructed and/or interior signs and to materially alter, modify, demolish or change the exterior of any improvements hereafter erected upon or made to the Demised Premises (including design and/or materials) with the prior written approval, of Lessor which approval shall not be unreasonably withheld, and without compensation or additional rental to Lessor Lessee shall submit to Lessor a protypical set of plans for the Restaurant and Lessee agrees that the exterior Restaurant to be constructed shall not materially deviate from those plans.

(b) Lessee shall, at all times during the term of this Lease, and at its own cost and expense, operate, keep and maintain or cause to be operated, kept and maintained in first-class repair and first-class condition (ordinary wear and tear excepted), the Restaurant and improvements at any time erected on or made to the Demised Premises (including parking areas and landscaping), and shall prevent unnecessary waste, damage or injury thereto Without limiting the foregoing, Lessor shall not be required to furnish any services or facilities or to make any improvements, repairs, or alterations in or to the Demised Premises during the term of this Lease.

(c) Until the expiration or sooner termination of this Lease, title to any building or buildings or improvements situated or erected on the Demised Premises and the building equipment and other items installed thereon and any permitted alteration, change or addition thereto shall remain vested solely in Lessee, and Lessee alone shall be entitled to deduct all investment tax credit and depreciation relating to the Demised Premises on Lessee's income tax returns for any such building or buildings, building equipment and/or other items, improvements, additions, changes or alterations, Upon request of Lessee, Lessor shall execute such Internal Revenue Service forms and other necessary or appropriate documents provided by Lessee to Lessor as are necessary to permit Lessee to receive the benefits of any applicable investment tax credit

(d) On the last day or sooner termination of the term of this Lease, Lessee shall quit and surrender the Demised Premises, and the buildings and permanent improvements then thereon, reasonably clean and in good condition and repair (ordinary wear and tear and damage by casualty to the extent Lessor has received insurance proceeds on account thereof, Lessee's trade fixtures, furnishings, removable equipment and removable machinery excepted) Lessee agrees to repair any and all material damage to the Demised Premises and the building to be constructed thereon by Lessee caused by or attributable to the removal by Lessee of its personal property, including Lessee's trade fixtures, furnishings, removable equipment and/or machinery Lessee shall be under no obligation to demolish the building constructed by Lessee on the Demised Premises

ARTICLE 8. Requirements of Public Authority

(a) During the term of this Lease, Lessee shall, at its own cost and expense, promptly observe and substantially comply in good faith with all present and future laws, ordinances, requirements, riders, directives, rules and regulations of the Federal, State, County and City Governments and of all other governmental authorities affecting the Demised Premises or appurtenances thereto or any part thereof whether the same are in force at the commencement of the term of this Lease or may in the future be passed, enacted or directed, and Lessee shall pay all costs, expenses, liabilities, losses, damages, fines, penalties, claims and demands, that may in any manner arise out of or be imposed because of the failure of Lessee to comply with the covenants of this Article 8.

(b) Lessee shall have the right to contest by appropriate legal proceedings diligently conducted in good faith, in the name of the Lessee, or Lessor (if legally required in the opinion of Lessee's independent counsel), or both, without cost or expense to

Lessor, the validity or application of any law, ordinance, rule, regulation or requirement of the nature referred to in Paragraph 8(a) and, provided any such law, ordinance, order, rule, regulation or compliance therewith may legally be delayed pending the prosecution of any such proceeding, then Lessee may delay compliance therewith until the final determination of such proceeding In addition Lessee agrees to indemnify and hold Lessor harmless from any and all damages and costs, including reasonable attorney fees, resulting from Lessee contesting as provided within this Article 8(b).

ARTICLE 9 Covenant Against Liens If any mechanic's lien or other lien, charge or order for the payment of money shall be filed against any portion of the Demised Premises, then Lessee shall, at its own cost and expense, promptly contest and diligently pursue the amount or validity of same or cause the same to be discharged of record or bonded to Lessor's reasonable satisfaction within twenty (20) days after Lessee receives written notice of the filing thereof, provided, however, that if the lienor commences foreclosure proceedings then Lessee shall, within five (5) days after demand, cause the same to be discharged of record or bonded to Lessor's reasonable satisfaction Lessee shall indemnify and save harmless Lessor against and from all costs, liabilities, suits, penalties, claims and demands resulting from any lien or foreclosure action commenced hereunder.

ARTICLE 10 Access to Premises Lessor or Lessor's agents and designees shall have the right to enter upon the areas of the Demised Premises open to Lessee's customers during regular business hours (and in the other areas, after reasonable notice and subject to Lessee's reasonable requirements) to examine same and to exhibit the Demised Premises to prospective purchasers and prospective tenants, but in the case of prospective tenants only during the last six (6) months of the term of this Lease Lessor agrees not to take or permit any of Lessor's agents or designees to take any photographs of Lessee's kitchen or storage area or to make any notes, sketches, illustrations or drawings while in such areas unless Lessee shall have consented thereto in writing

ARTICLE 11 Assignment and Subletting

Except as hereinafter set forth to the contrary, Lessee will not assign or in any manner transfer this Lease, in whole or in part, nor sublet all or any part of the Demised Premises, without, in each instance, first obtaining the written consent of Lessor, which consent shall not be unreasonably withheld The within prohibition against transfer without the Lessor's prior written consent excludes any subletting or assignment which occurs as a result of a merger, consolidation, combination or corporate reorganization, or an assignment to a subsidiary, franchisee,

affiliate or parent company of Lessee. Lessor agrees to notify Lessee of Lessor's decision as to whether or not to consent to a proposed transfer, assignment or subletting within ten (10) days after Lessor receives notice of Lessee's request for such consent together with such other information and documentation reasonably required by Lessor with respect thereto to substantiate the fact that the proposed transaction would fulfill the conditions herein set forth. The consent by Lessor to any assignment, subletting or other transfer above described shall not constitute a waiver of the requirement for such consent to any subsequent assignment, subletting or other transfer Any assignment, subletting or other transfer, even with the consent of Lessor, shall not relieve Lessee from primary liability for the payment of rent or from the primary obligation to keep and be bound by the terms, conditions and covenants of this Lease

ARTICLE 12 Indemnity

(a) Except as provided in Paragarph 12(b) to the contrary, Lessee shall indemnify and save harmless Lessor from and against any and all liability, damage, penalties or judgments arising from injury to person or property sustained by anyone in and about the Demised Premises Lessee shall, at its own cost and expense, defend any and all suits or actions which may be brought against Lessor or in which Lessor may be impleaded with others upon any such above mentioned matter, claim or claims

(b) Except for Lessor's affirmative acts, omissions or negligence or the affirmative acts, omissions or negligence of Lessor's officers, agents, representatives, servants, employees or contractors, Lessor shall not be responsible or liable for any damage or injury to any property, fixtures, buildings or other improvements, or to any person or persons, at any time on the Demised Premises, including any damage or injury to Lessee or to any of the Lessee's officers, agents, servants, employees, contractors, customers or sublessees

ARTICLE 13 Insurance.

(a) Lessee shall provide or cause to be provided at its expense, and keep in force during the term of this Lease, general liability insurance in a good and solvent insurance company or companies licensed to do business in the State of , selected by Lessee, in the amount of at least One Million Dollars ($1,000,000) with respect to injury or death to one or more persons or damage to property Such policy or policies shall include Lessor and each mortgagee of Lessor and Lessee as insureds Lessee agrees to deliver certificates of such insurance to Lessor as of the Commencement Date and thereafter at least ten (10) days prior to the expiration of any such policy. Such

insurance shall be noncancellable without at least ten (10) days written notice to Lessor and to each mortgagee.

(b) During the term of this Lease, Lessee shall cause all buildings and improvements erected by Lessee on the Demised Premises at any time to be insured for the benefit of Lessor and Lessee and their respective mortgagees, as their interests may appear, against loss or damage by fire, extended coverage and all other perils commonly included in the term "all risk", in the amount of at least eighty percent (80%) of full replacement cost value (excluding foundation, sidewalks and parking areas) All proceeds payable at any time and from time to time by an insurance company under such policies shall be used by Lessee soley and exclusively to repair, restore and/or replace any improvements upon or to the Demised Premises so as to restore insofar as is reasonably possible the structure, function and appearance of such improvements

(c) Any insurance required to be provided by Lessee pursuant to this Lease may be provided by blanket insurance covering the Demised Premises and other locations of Lessee provided such blanket insurance complies with all of the other requirements of this Lease with respect to the insurance involved

ARTICLE 14 Waiver of Subrogation To the extent covered by insurance, Lessor and Lessee each hereby waive all claims, causes of action and rights of recovery against the other, and their respective agents, officers and employees, for any damage to or destruction of property which shall occur on or about the Demised Premises and shall result from any of the perils insurable under any and all policies of insurance maintained by Lessor and Lessee, regardless of cause, including the negligence and intentional wrongdoing of either party and their respective agents, officers, and employees, provided, however, that this waiver shall be null and void to the extent that any such insurance shall be invalidated by reason of this waiver. The parties hereto agree that their policies will include such waiver clause or endorsement so long as the same shall be obtainable without extra cost, or if extra cost shall be charged therefor, so long as the other party pays such extra cost If cost shall be chargeable therefor, each party shall advise the other thereof and of the amount of the extra cost, and the other party, at its election, may pay the same, but shall not be obligated to do so

ARTICLE 15 Damage or Destruction In the event that, at any time during the term of this lease, the buildings and improvements on the Demised Premises shall be destroyed or damaged in whole or in part by fire or other cause, then unless Lessor otherwise agrees in writing, Lessee shall restore, repair, replace, or rebuild the buildings or improvements on the Demised

Premises so damaged. Notwithstanding the foregoing, if the buildings or other improvemnents on the Demised Premises shall be materially damaged or destroyed by fire or other cause during the last five (5) years of the term of this Lease or at any time during any extended term as provided in Article 28 hereof, and if Lessee has maintained the insurance required to be carried by Lessee pursuant to Article 13 hereof, then Lessee shall have the right, upon notice to Lessor within thirty (30) days after the date of such damage or destruction, not to restore or repair the buildings or improvements so damaged, and instead (a) Lessor shall receive a sum equal to the full amount of all insurance payable on account of such damage or destruction (excluding any portion specifically allocated to Lessee's trade fixtures or contents), (b) Lessee shall pay to Lessor the difference between the amount of such insurance and the cost of restoring or repairing such damage (including the amount of any deductible in respect of such insurance), and (c) Lessee shall cause all mortgages and other liens of record affecting Lessee's interest in the Demised Premises and/or any improvements thereto or thereon to be fully paid and discharged of record, whereupon this Lease shall terminate

ARTICLE 16 Eminent Domain See paragraph 1 of letter dtd 2-24-77

(a) If the whole or part of the building and improvements constituting a part of the Demised Premises shall be taken or any public or quasi-public use under any statute or by right of eminent domain or by private purchase in lieu thereof, then this Lease shall automatically terminate as of the date that possession has been taken In the event of a partial taking (or purchase) of the non-exclusive 210 car parking and improvements constituting a part of the Demised Premises and Lessor is unable to provide adjacent additional sufficient parking to restore Lessee's non-exclusive 210 car parking the direct result of which is that Lessee, cannot in Lessee's reasonable judgment continue to operate its business from the Demised Premises in the manner and to the extent conducted prior to such taking, then and in such event Lessee shall have the right, but not the obligation, to terminate this Lease by giving thirty (30) days prior written notice of such termination to Lessor on or prior to the date of such taking (or purchase), and upon the giving of such notice of termination, the term of this Lease shall expire and come to an end as of the date of such taking or notice, with the same force and effect as if said day had been originally fixed herein as the expiration date of the term of this Lease. Subject to Paragraph 16(b), in the event the Lease shall terminate or shall be terminated, Lessor shall receive all proceeds relating to such taking (or purchase) and the rental shall, if and when necessary, be adjusted to the date of the taking (or purchase) and neither party shall have any further rights or liabilities hereunder

(b) In the event of a taking (or purchase), at any time during the term of this Lease, resulting in the termination of this Lease pursuant to the provisions of Paragraph 16(a), the parties hereto agree to cooperate in applying for and in prosecuting any claim for such taking and further agree that the aggregate net award after deducting all expenses and costs, including attorney's fees, incurred in connection therewith, payable to both Lessor and Lessee in accordance with their respective interests. If the award does not provide an allocation of he amount thereof according to Lessor's and Lessee's respective interests, and if Lessor and Lessee do not reach agreement with respect to the proper allocation within sixty (60) days after the amount of the award is determined absent such allocation in the award, then either party shall have the right to submit the determination of he allocation to binding arbitration in accordance with Article 40 hereof.

(c) In the event of a partial taking (or purchase) not resulting in the termination of this Lease, pursuant to the provisions of Paragraph 16(a), Lessor shall, to the extent of proceeds of the taking made available to Lessor, make all repairs to the parking improvements on the Demised Premises affected by such taking (or purchase) the the extent necessary to restore the same to a complete first-class architectural unit (to the extent permitted, however, taking into consideration the amount of land remaining after any such taking or purchase) All compensation available or paid to Lessor upon such partial taking (or purchase) in excess of the amount thereof needed by Lessee to repair and restore the buildings and improvements shall be distributed in the manner provided in Paragraph 16(b) In the event that Lessor is unable to provide Lessee with Two Hundred Ten (210) standard size American car parking spaces Lessee shall have the right to terminate as hereinbefore provided in paragraph 16(b)

ARTICLE 17 Lessor's Work

(a) Lessor at its sole cost and expense shall 1) extend water and sewer lines to the edge of pavement as indicated in red on the attached Exhibit "B", 2) make provisions for storm drainage of the site as required by the City of Newport News, 3) construct all curb cuts, site lighting fixtures, parking improvements including paving, curbing, striping and appurtenances thereto to lessees plans and specifications, and 4) fill and compact the restaurant building pad in accordance with Leesees plans and specifications

Lessor shall complete all Lessor's site work within thirty (30) days after Lessee notifies Lessor that all Permits have been obtained.* The period of time required by Lessor to complete Lessor's site work** shall extend the period of time that determine the Commencemnt Date as defined in Article 2 hereof.

*Lessor acknowledges that Lessee's ability to obtain its permits is dependent upon Lessor's timely completion and approval of Lessor's plans and specifications for the adjacent shopping center.

**or obtain approval of Lessor's plans and specifications

In the event Lessor fails to complete Lessor's site work as provided herein Lessee shall have the option to complete Lessor's site work and recapture all costs and expenses in the manner provided in Article 17 hereof or terminate this Lease without any liability whatsoever and retain all rigths under law or in equity

See at [illegible] 9-[illegible], 77

b) Financial Certification Within thirty (30) days after the execution hereof, Lessor shalll provide Lessee with a certification, executed by an officer of Lessor's mortgagee(s) indicating that the Lessor has a commitment for construction and permanent financing sufficient in amount and time period for Lessor's contemplated shopping center including Lessee's improvements and that such certification shall provide a ten(10) day notice provision to Lessee in the event of mortgagee(s) cancellation. Any such certificate may be relied upon by the Lessee and any other person, firm or corporation to whom the same may be exhibited or delivered, and the contents of such certificate shall be binding on the party executing same Lessee covenants and agrees to maintain in confidence any information inadvertently received by Lessee pertaining to Lessor's net worth.

In the event that Lessor fails to provide such certificate within the thirty (30) day period, Lessee may terminate this Lease at its option any time prior to Lessee's construction commencement If during the Permitting Period as hereinafter defined in Article 27, Lessee has reasonable grounds for insecurity, as defined in Section 2-609 of the Uniform Commercial Code, pertaining to Lessor's capability to timely finish and finance Lessor's work or purchase Lessee's improvements as contemplated herein, then Lessee may demand any reasonable assurance from Lessor or Lessor's mortgagee(s) If Lessor or its mortgagee(s) do not provide or are unwilling to provide reasonable assurance, Lessee may, at its option, terminate this Lease without any liability whatsoever.

If during the course of Lessee's construction or prior to Lessor purchasing Lessee's improvements Lessee has reasonable grounds for insecurity, as defined in Section 2-609 of the Uniform Commercial Code, pertaining to Lessor's capability purchase Lessee's improvements Lessee or Lessor's ability to complete the contemplated shopping center may demand any reasonable assurance from Lessor and Lessor's mortgagee(s) If Lessor or Lessor's mortgagee(s) fail to or are unwilling to provide reasonable assurance Lessee shall, in addition to any other rights it has under law or in equity, may delay payment on any and all rent, percentage rent or additional rent, as provided herein, until such time that Lessee, Lessor and Lessor's mortgagee(s) reach a mutually satisfactory agreement as to Lessor's obligation to purchase Lessee's improvements and finish the contemplated shopping center

Last 2 paragraphs 17 (B) deleted from lease per letter agreement dtd 2-[illegible]-77

ARTICLE 18 Leasehold Mortgages Lessee and every permitted successor and assign of Lessee is hereby given the right by Lessor to mortgage or assign its interest in this Lease, or any part or parts thereof, under one or more leasehold mortgage(s) ("Mortgages") and assign this Lease as security for such Mortgage(s) upon the condition that all rights acquired under such Mortgage(s) shall be subject to each and all of the covenants, conditions and restrictions set forth in this Lease, and to all rights and interest of Lessor herein If Lessee and/or Lessee's permitted successors and assigns shall mortgage this leasehold, or any part or parts thereof, and if the holder(s) of such Mortgage(s) shall send to Lessor a true copy thereof, together with written notice specifying the name and address of the Mortgagee and the pertinent recording date with respect to such Mortgage(s), then the Lessor agrees that so long as any such Mortgage(s) shall remain unsatisfied of record or until written notice of satisfaction is given by the holder(s) to Lessor, the following provisions shall apply

(a) Lessor shall, upon serving Lessee with any notice of default, simultaneously serve a copy of such notice upon the holder(s) of such Mortgage(s) The Mortgagee(s) shall thereupon have the same period plus an additional ten (10) days, after service of such notice upon it, to remedy or cause to be remedied the defaults complained of, and Lessor shall accept such performance by or at the instigation or such Mortgage(s) as if the same had been done by Lessee

(b) Anything herein contained notwithstanding while such Leasehold Mortgage(s) remain(s) unsatisfied of record, or until Lessor, if any default shall occur which, pursuant to any provision of this Lease, entitles Lessor to terminate this Lease, and if before the expiration of ten (10) days from the date of service of notice of termination upon such Leasehold Mortgagee(s) shall have notified Lessor of its desire to nullify such notice and shall have paid to Lessor all rent and additional rent and other payments herein provided for, and then in default, and shall have complied with all of the requirements of this Lease, if any are then in default, then in such event Lessor shall not be entitled to terminate this Lease and any notice of termination theretofore given shall be void and of no effect

(c) Lessor agrees that the name of the Mortgagee(s) may be added to the "Loss Payable Endorsement" of any and all insurance policies required to be carried by Lessee hereunder on condition that that insurance proceeds are to be applied in the manner specified in this Lease and that the Mortgage(s) or collateral document shall so provide

(d) Lessor agrees that in the event of termination of this Lease by reason of any default by Lessee other than for nonpayment of rent or additional rent and other payments herein provided for, that Lessor will enter into a new Lease of the Demised Premises with appurtenant easement rights and nondisturbance agreements with the Mortgagee(s) or its nominee(s) for the remainder of the term, effective as of the date of such termination, at the rent and additional rent and upon the terms, provisions, covenants and agreements as herein contained and subject only to the same conditions of title as this Lease is subject to on the date of the execution hereof, and to the rights, if any, of any parties then in possession of any part of the Demised Premises, provided

(1) Said Mortgagee(s) or its nominee(s) shall make written request upon Lessor for such new Lease at least fifteen (15) days prior to the date of such termination and such written request is accompanied by payment to Lessor of sums then due to Lessor under this Lease.

(2) Said Mortgagee(s) or its nominee(s) shall pay to Lessor at the time of the execution and delivery of said new Lease, any and all sums owed by Lessee

(3) Said Mortgagee(s) or its nominee(s) shall perform and observe all covenants herein contained on Lessee's part to be performed and shall further remedy any other conditions which Lessee under the terminated Lease was obligated to perform under the terms of this Lease, and upon execution and delivery of such new Lease, any subleases which may have theretofore been assigned and transferred by Lessee to Lessor as security under this Lease, shall thereupon be deemed to be held by Lessor as security for the performance of all of the obligations of Lessee under the new Lease

(4) The Lessee under such new Lease shall have the same right, title and interest in and to the buildings and improvements on the Demised Premises as Lessee had under the terminated Lease.

(e) Nothing herein contained shall require the Mortgagee(s) or its nominee(s) to cure any default of Lessee referred to in Article 19 hereof

(f) The proceeds from any insurance policies or arising from a condemnation are to be held by an Leasehold Mortgagee(s) and distributed pursuant to the provisions of this Lease

(g) The term "Mortgage", whenever used herein, shall include whatever security instruments are used in the locale of the Demised Premises, such as, without limitation, deeds of trust, security deeds and conditional deeds, as well as financing

statements, security agreements and other documentation required pursuant to the Uniform Commercial Code The term "Mortgage", whenever used herein, shall also include any instruments required in connection with a sale-leaseback transaction

(h) Nothing herein contained shall be construed as limiting Lessee's right to finance and/or refinance Lessee's trade fixtures, inventory and/or equipment

ARTICLE 19 Defaults

(a) In the event (i) Lessee shall fail to pay any installment of Basic Rent or Percentage Rent when the same shall be due and payable and such failure shall continue for a period of five (5) days after the giving of notice thereof by Lessor or (ii) Lessee shall fail to perform any of the other covenants, conditions and agreements herein contained on Lessee's part to be kept or performed and such failure shall continue without cure for a period of thirty (30) days after notice by Lessor specifying in detail the nature of such failure, then in addition to and not in lieu of any other rights or remedies available to Lessor at law or in equity, Lessor may, at its option, elect to terminate the Lease and upon the date of such termination, the term and estate hereby vested in Lessee shall cease and any and all other right, title and interest of Lessee hereunder shall likewise cease without further notice or lapse of time, as fully and with like effect as if the entire term of this Lease had elapsed, but Lessee shall continue to be liable to Lessor as provided by the laws and decisions of the State of Virginia.

(b) Anything herein contained notwithstanding while such Leasehold Mortgage(s) remain(s) unsatisfied of record, and if any default shall occur which, pursuant to any provision of this Lease, entitles Lessor to terminate this Lease, and if before the expiration of ten (10) days from the date of service of notice of termination upon such Leasehold Mortgagee(s) and a Leasehold Mortgagee does notify Lessor of its desire to nullify such notice and shall have paid to Lessor all Basic Rent and Percentage Rent and other payments herein provided for, and then in default, and shall have complied with all of the requirements of this Lease, if any are then in default, then in such event Lessor shall not be entitled to terminate this Lease and any notice of termination theretofore given shall be void and of no effect.

(c) Notwithstanding anything to the contrary contained in this Article 19, in the event that any default(s) of Lessee shall be cured in any manner hereinabove provided, such default(s) shall be deemed never to have occurred and Lessee's rights hereunder shall continue unaffected by such default(s)

(d) Upon any termination of the term of this Lease pursuant to Paragraph 19(a), or at any time thereafter, Lessor may, in addition to and not in lieu of any other rights or remedies Lessor shall have at law or in equity, reenter the Demised Premises and recover possession thereof and may dispossess any or all occupants of the Demised Premises in the manner prescribed in the statute relating to summary proceedings, or similar statutes, but Lessee in such case shall remain liable to Lessor as provided by the laws and decisions of the State of Virginia.

ARTICLE 20 Performance by Lessor In addition to and not in lieu of the rights of Lessor pursuant to Article 19 hereof, any act or payment required to be performed or paid by Lessee pursuant to the terms of this Lease which is not performed or paid within the applicable grace period (if any) may be performed or paid by Lessor at Lessee's sole cost and expense after the giving by Lessor of at least fifteen (15) days prior notice of lessor's intent to perform such act or make such payment on behalf of Lessee unless Lessee fully performs such act or makes such payment within such fifteen (15) day period, and Lessee agrees that, on demand, Lessee shall reimburse Lessor for the entire cost and expense thereof

ARTICLE 21 Quiet Enjoyment Lessee, upon paying the rent and additional rent and all other sums and charges to be paid by it as herein provided, and observing and keeping in all material respects all covenants, warranties, agreements and conditions of this Lease on its part to be kept, shall quietly have and enjoy the Demised Premises during the term of this Lease, without hindrance or molestation by anyone lawfully claiming under or through Lessor and that Lessor shall indemnify Lessee from and against any such claims Lessor further agrees to use its best efforts to assure that other tenants of Lessor who lease real estate and/or improvements in or on the shopping center of which the Demised Premises is a part maintain such adjoining property and improvements in first-class condition and repair

ARTICLE 22. Waivers

(a) Failure of Lessor or Lessee to complain of any act or omission on the part of the other party shall not be deemed to be a waiver by said party of any of its rights hereunder. No waiver by Lessor or Lessee at any time, express or implied, of any breach of any provision of this Lease shall be deemed a waiver of a breach of any other provision of this Lease or consent to any subsequent breach of the same or any other provision. No acceptance by Lessor of any partial payment shall constitute an accord or satisfaction but shall only be deemed a partial payment on account

(b) Except with respect to any judgment lien, Lessor hereby waives any so-called "landlord's lien" against the improvements, fixtures, equipment and inventory of Lessee with respect to the Demised Premises.

ARTICLE 23 Limitation of Liability Notwithstanding anything to the contrary herein provided, it is specifically understood and agreed that there shall be absolutely no personal liability on the part of Lessor or any successor in interest of Lessor, whether any such successor in interest shall be a corporation, or an individual, joint, venture, tenancy in common, firm or partnership, general or limited, or on the part of the members of such firm, partnership or joint venture with respect to any of the terms, covenants and conditions of this Lease and Lessee shall look solely to the equity of Lessor or such successor in interest in the Demised Premises for the satisfaction of each and every remedy of Lessee in the event of any breach by Lessor or by such successor in interest of any of the terms, covenants and conditions of this Lease to be performed by lessor, such exculpation of personal liability to be absolute and without any exception whatsoever Lessor agrees that if Lessee obtains a monetary judgment in court against the Lessor, which judgment Lessor does not successfully appeal, then Lessee shall have the right to offset the amount of such judgment together with Lessee's actual reasonable costs and expenses (including reasonable attorney's fees) against the Basic Rent and Percentage Rent, if any, next payable by Lessee hereunder until the amount of such judgment has been completely offset

ARTICLE 24 Easement Property The cross-hatched on Exhibit "B" hereto is identified as the "Easement Property". The Lessee is to be granted various easements rights pursuant to Article 1 hereof over the Easement Property Lessor grants Lessee and its permitted assigns, transferees and successors, non-exclusive vehicular and pedestrian ingress and egress easements over the Easement Property In addition, Lessor grants Lessee its permitted assigns, transferees and successors non-exclusive parking easements over the Easement Property Lessor covenants and agrees not to construct any structures on the 210 car non-exclusive parking area located on Exhibit B nor impede or inhibit Lessee, its agents, assigns, successors, customers or business investors use of the Easement Property except Lessee acknowledges that in the event Lessee opens for business prior to completion of the contemplated Shopping Center Lessee's business may be disrupted by Lessor's construction Lessor agrees to make its best efforts to minimize any disruption of Lessee's business. Lessor further agrees to obtain a non-disturbance agreement from Lessor's mortgagee, any future mortgagee of Lessor who now or hereafter has a mortgage encumbering the Easement Property or any part thereof and any other person reasonably designated by Lessee

as being necessary so that Lessee's nonexclusive rights to use the Easement Property for ingress, egress and parking are not disturbed by reason of any mortgage foreclosure as set forth in Article 18 or by foreclosure initiated by a mortgage of Lessor Lessee agrees that, subject to Lessor obtaining nondisturbance agreements as aforesaid, Lessee's rights to the Easement Property may be subordinated by Lessor to the lien of any mortgagee. Nothing herein contained shall be construed as prohibiting Lessor from constructing any structures or other improvements on any property of Lessor other than the Demised Premises or the Easement Property provided that such structures or other improvements do not materially adversely affect the traffic flow to the Demised Premises and do not materially adversely affect parking, as determined by Lessor in its reasonable discretion

ARTICLE 25 Use Restrictions So long as Lessee or its assigns operates or plans to operate a Mexican restaurant operation on the Demised Premises or until the date twenty-five (25) years from the date hereof (if such period is shorter), Lessor agrees not to use within a five (5) mile radius of the Premises any property owned, leased or otherwise controlled by Lessor but not individual partners of Lessor for the conduct of any full-service sit-down Mexican or Mexican/American specialty restaurants serving alcoholic beverages of any kind, and Lessor agrees to (i) place such restriction in all leases and deeds or conveyance of any such property and (ii) execute an instrument in recordable form confirming the existence of such restriction

See article 1 of First Amendment dtd 2-

ARTICLE 26 Soil Tests Immediately upon execution, Lessee shall have the right to enter upon the Demised Premises and make such soil test borings and other engineering tests and studies as it may deem necessary or desirable, all at its sole expense Lessee agrees to indemnify, defend and hold harmless Lessor from and against all loss, costs, damage, expense or liability Lessor may incur arising wholly or in part out of any such soil borings or engineering studies If, in the reasonable opinion of Lessee, such soil test borings, topographical maps and other engineerings studies indicate that the soil and property characteristics of the Demised Premises do not indicate a capability of supporting structures suitable for the construction and operation of Lessee's restaurant or are otherwise unsatisfactory to Lessee, then Lessee shall have the right, within sixty (60) days after receipt of the survey as provided in 27 (i) to give written notice to Lessor terminating this Lease, in which event the rights and obligations of the parties hereto (other than any rights or obligations which have accrued prior to such termination) shall thereupon cease In the event Lessee shall terminate this Lease pursuant to this

Article, copies of all such soil test reports and engineering information shall be delivered to Lessor at no cost

ARTICLE 27. Conditions. Lessee and Lessor agree that the obligations of the parties hereto are subject to the satisfaction of the following contingencies and conditions in the manner and within the time limits herein specified, and if not so satisfied or waived by Lessee this Lease shall, at the option of either party, be terminated. Notwithstanding the foregoing, Lessee may, at its option, waive any of the conditions or contingencies set forth in this Article. In the event Lessee does not give Lessor written notice of the non-satisfaction of any conditions set forth herein within the time period herein specified such condition automatically shall be deemed satisfied or waived by Lessee.

(a) Permits Lessee shall have obtained, within Ninety (90) days after the Execution Date ("Permitting Period"), all "Permits" (as hereinafter defined) based on plans and specifications submitted by Lessee for construction and operation of a typical Chi-Chi's Mexican Restaurant upon the Demised Premises Lessee agrees to diligently pursue in good faith the obtaining all of the Permits. If Lessee in due diligence is unable to obtain all Permits prior to the termination of the Permitting Period, Lessee shall, upon separate prior written notice to Lessor, have two additional thirty (30) day periods to obtain the Permits. "Permits" shall mean all of the governmental permits, licenses and authorizations required for the construction and operation (to the extent permits for operation are obtainable prior to construction) of Lessee's restaurant upon the Demised Premises, including, but in no way limited to, building permits, use permits, signage permits, site use approval, zoning certificates, environmental and land use permits, driveway, curb cut, approach road and access road approvals, safety and transportation board approvals, water, sewer and utility certifications, and a license authorizing Lessee to sell and serve on the Demised Premises seven (7) days per week all forms of alcoholic beverages

(b) Leasehold Commitment and Policy. If after Lessee's review of Lessor's existing Title Commitment Lessee finds it necessary Lessee shall promptly after execution hereof order and procure a Title Commitment from a title insurance company satisfactory to Lessee at Lesses's expense. At the Commencement Date, a title insurance policy shall be issued to Lessee insuring Lessee's leasehold interest in the Demised Premises and rights to the Easement Property in the state required by Paragraph (d) hereof subject to any changes resulting from any act or omission of Lessee Lessee shall pay for the cost of the premium for such title insurance

(c) Survey of Demised Premises Lessee agrees to obtain, within forty five (45) days after the Execution Date, an ALTA

boundary survey of the Demised Premises, with all improvements, easements (including utility easements), available utility services, encroachments, rights-of-ways and other matters of record pertaining to or affecting the Demised Premises plotted thereon, and showing the location of all streets, prepared and certified to Lessee by a land surveyor licensed by the State of Virginia.

(d) Objections to State of Title If title to the Demised Premises as set forth in the Title Commitment is not satisfactory to Lessee in its reasonable discretion, then Lessee shall given written notice to Lessor within twenty (20) business days after the date it receives the Title Commitment, but no later than sixty (60) days after the Execution Date, specifying its objections(s) the state of title to the Demised Premises. Lessor shall thereupon have a period of thirty (30) days in which to remedy the objection(s) or to induce the Title Company to issue an endorsement to the Title Commitment satisfactory to Lessee insuring over or removing such objection(s) If Lessee's objection(s) to title to the Demised Premises are not remedied by Lessor within such thirty (30) day period, then Lessee shall have the right, within thirty (30) days thereafter, but no later than One Hundred Twenty (120) days after the Execution Date, to give written notice to Lessor that Lessee waives such title defects or objection(s) and elects to proceed to lease the Demised Premises without any abatement of the rent and other obligations and to lease subject to such defects or objections, otherwise, this Lease shall be automatically cancelled and rescinded

(e) Utilities If Lessee in its reasonable discretion shall not have objected, within sixty (60) days after receipt of the survey described in Paragraph (c) above, to the availability and adequacy of the electricity, natural gas, water, sewer, telephone, and storm drainage facilities to serve the Demised Premises and the Restaurant (all of which shall be identified and located on a survey to be obtained to Lessee)

(f) Financial Certification and Partnership Resolution Deleted

(g) Non-Disturbance Agreements Within thirty (30) days after the date of this Lease, Lessor shall have obtained "Non-Disturbance Agreement meeting the requirements of Articles 18 and 24 hereof, respectively, from Lessor's current mortgagee or other holders of liens on the Demised Premises. Lessor agrees that, if it fails to satisfy the same and this Lease is terminated, Lessor agrees to reimburse Lessee for Lessee's actual out-of-pocket expenses in obtaining any permits and/or performing any tests or the like up to a maximum amount of Fifteen Thousand Dollars ($15,000 00)

ARTICLE 28 Lessee's Option to Extend Term. Provided that Lessee is not in default hereunder in any material respect either at the time of exercise or at the commencement of the extended term, Lessee shall have the right to extend the term of this Lease for four (4) successive terms, of five (5) years each, respectively, under the same terms, conditions and provisions as established herein for the primary term of this Lease Any option to extend the term of this Lease to be effecting must be exercised by Lessee by written notice to Lessor at least three (3) months prior to the Commencement Date of each extension. Each extension under the term of this Lease shall commence immediately upon the expiration of the preceding term, provided Lessee has exercised its option as to such extension

ARTICLE 29. Common Expenses. a) In addition to the rent and other charges payable by Lessee hereunder, Lessee shall reimburse Lessor quarterly for Lessee's prorata share of the cost of cleaning, repairing, replacing, maintaining and snow plowing of all parking areas, walkways, drives and means of ingress and egress of the property being considered a part of the Center other than the Demised Premises (the responsibility for such items as to the Demised Premises being solely Lessee's) In addition, Lessee shall reimburse Lessor, for Lessee's prorata share of Lessor's expense of security and of any comprehensive general liability insurance from time to time maintained by Lessor or any affiliate of Lessor pertaining to or in connection with the Center Lessee's prorata share of the foregoing costs and expenses shall be computed by multiplying the total amount of such costs and expenses by a fraction, the numerator of which shall be the square footage of the Demised Premises, and the denominator of which shall be the total number of leasable square footage of the Center Notwithstanding anything in this Lease to the contrary Lessee's contribution shall not exceed $ 50 per square foot of the Demised Premises per annum

b) Lessor and Lessee agree that Lessor's light stanchions and lighting equipment located on the two hundred ten (210) car non-exclusive parking area shall be metered directly to Lessee and Lessee agrees to illuminate, at least, this area at all times the Shopping Center is open

ARTICLE 30. Force Majeure In the event that Lessor or Lessee shall be delayed, hindered in or prevented from the performance of any act required hereunder by reason of strikes, lockouts, labor troubles, inability to procure materials, failure of power, riots, insurrection, material adverse site conditions, the act, failure to act or default of the other party, war, material adverse weather or any other reason, whether similar or dissimilar from the foregoing, beyond the reasonable control of the party who is seeking additional time for the performance of such act, then performance of such act shall be excused for the

period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

ARTICLE 31.- Notices Every notice, approval, consent or other communication authorized or required by this Lease shall not be effective unless same shall be in writing and personally delivered or sent postage prepaid by United States registered or certified mail, return receipt requested, or overnight delivery service directed to the other party at its address first mentioned in the Preamble of this Lease, or such other address as either party may designate by notice given from time to time in accordance with this Article 31. Any notice which is mailed, postage prepaid, shall be deemed given and received five (5) days after mailing unless the party sending such notice has proof of earlier receipt. The rent payable by Lessee hereunder shall be paid to Lessor at the same place where notice to Lessor is herein required to be directed.

ARTICLE 32 Certificates. Either party shall, without charge, at any time and from time to time hereafter, within ten (10) days after written request of the other, certify by written instrument duly executed and acknowledged to any mortgagee or purchaser, or proposed mortgagee or proposed purchaser, or any other person, firm or corporation specified in such request (a) as to whether this Lease has been supplemented or amended, and if so, the substance and manner of such supplement or amendment, (b) as to the validity and force and effect of this Lease, in accordance with its tenor as then constituted, (c) as to the existence of any default thereunder, (d) as to the existence of any offsets, counterclaims or defenses thereto on the part of such other party, (e) as to the commencement and expiration dates of the term of this Lease, and (f) as to any other matters as may reasonably be so requested. Any such certificate may be relied upon by the party requesting it and any other person, firm or corporation to whom the same may be exhibited or delivered, and the contents of such certificate shall be binding on the party executing same

ARTICLE 33 Governing Law This Lease and the performance thereof shall be governed, interpreted, construed and regulated by the laws of the State of Virginia

ARTICLE 34. Partial Invalidity If any terms, covenant, condition or provision of this Lease or the application thereof to any person or circumstances shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Lease or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition

and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law

ARTICLE 35 Short-Form Lease The parties will, at any time, at the request of either one, promptly execute duplicate originals of an instrument, in recordable form, which will constitute a short-form of Lease reasonably satisfactory to both parties and the party recording same shall pay the cost of recordation

ARTICLE 36. Interpretation Wherever herein the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders and vice versa, as the context shall require The section headings used herein are for reference and convenience only, and shall not enter into the interpretation hereof The term "Lessor", whenever used herein, shall mean only the owner at the time of Lessor's interest herein, and upon any sale or assignment of the interest of Lessor herein, its respective successors in interest and/or assigns shall, during the term of its ownership of its respective estate herein, be deemed to be Lessor

ARTICLE 37 Entire Agreement No oral or prior written matter shall have any force or effect. Lessee agrees that it is not relying on any representations or agreements other than those contained in this Lease This Agreement shall not be modified or cancelled except by writing subscribed by all parties.

ARTICLE 38 Real Estate Broker Lessor and Lessee mutually represent and acknowledge that no real estate brokers or salesmen have participated in this transaction other than Goodman Segar Hogan, Inc. all of whose fees and commission shall be paid by Lessor Lessor and Lessee shall indemnify and hold harmless the other against any claims for commission or "finder's fees" arising out of the acts or dealings of the party hereto from whom indemnification is sought

ARTICLE 39. Lessor's Representations In order to induce Lessee to enter into this Lease, Lessor makes the following covenants and representations

(a) Permits. To the best of Lessors knowledge Lessor knows of no reason why any of the Permits, as set forth in Article 27, would be denied to Lessee

(b) Condition of Premises Lessor knows of no patent or latent condition of or involving the Premises which could render it unsuitable for construction of a restaurant. Lessor has no actual knowledge of any foundations, pilings or footings located in or on the Demised Premises or any other condition affecting the

land comprising the Demised Premises which would make the constuction of Lessee's improvements thereon unusually expensive.

(c) Possession. At the commencement of the term of this Lease actual possession of the Demised Premises shall be delivered by Lessor to Lessee free of the tenancy, structure, parking lot light and/or light stanchion, occupancy or possession of any other person or entity.

(d) Zoning Lessor knows of no reason why the zoning classification encompassing the Demised Premises would not permit the operation of the Restaurant

(e) Confidentiality Lessor agrees that the reports and other data relating to Lessee's Gross Sales provided by Lessee to Lessor pursuant to Article 3 hereof and any information relating to Lessee's kitchen and storage areas shall not be disclosed by Lessor to others except on a strict "need to know" basis Without limited who may strictly "need to know", Lessee agrees that Lessor may disclose such information to Lessor's accountants and attorneys, prospective investors in Lessor, prospective purchasers of Lessor's interest, and/or current or prospective lenders, but in no event to prospective tenants

ARTICLE 40 Arbitration Deleted
ARTICLE 41 Purchase Right of First Refusal. Deleted.
ARTICLE 42 Lease Option. Deleted

ARTICLE 43 Parties Except as herein otherwise expressly provided, the covenants, conditions and agreements contained in this Lease shall bind and inure to the benefit of Lessor and Lessee and their respective successors and assigns

~~ARTICLE 44 Financing Assignment In order for Lessee to~~ finance the improvements and Restaurant building to be ~~located~~ on the Premises, as contemplated in Article 18 hereof ~~Lessee~~ shall be permitted to assign or transfer this Lease, ~~any~~ of its terms, the Leased Premises, or any part thereof, ~~or~~ permit the Leased Premises or any part thereof ~~to be~~ occupied by anyone other than Lessee without obtaining ~~Lessor~~'s prior written consent It is a condition of this ~~Lease~~ that Lessee shall be at all times during the term of ~~the~~ Lease, except as otherwise provided herein, primar~~ily~~ liable for the satisfactory performance of all duties ~~and obligations under the Lease~~

ARTICLE 45 Submission of Lease. Submission of this Lease does not constitute an offer to lease, this Lease shall become effective upon execution by both Lessor and Lessee The Commencement Date of this Lease shall be as hereinbefore provided.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands the day and year first above written

WITNESS

Thomas N Willcox III

Turnbarr Associates

By

Title Managing Partner

("Lessor")

WITNESS

Asst Counsel

CCMR of Virginia, Inc

By

Joseph P Smaha, President

("Lessee")

EXHIBIT A

The Premises are located on the Southwest corner of Jefferson Avenue and Denbigh Boulevard in the City of Newport News, Virginia The Premises are located in the proposed Denbigh Crossing Shopping Center as illustrated on Exhibit B Upon receipt of the survey required in the Lease Buyer and Seller agree to substitute the survey for this Exhibit A.

Chi Chi's
Denbigh Crossing Shopping Center
Proof of Claim Itemization
June 2, 2004

Pre-Petition		Administrative	
RET 7/1/03 - 10/8/03	$4,208 00	November Base Rent	$5,323 06
		RET 10/8/03 - 12/31/03	$3,534 72
		RET 1/1/04 - 2/29/04	$2,485 44
		CAM 1/1/04 - 2/29/04	$1,429 01
Total	**$4,208 00**	**Total**	**$12,772 23**

EXHIBIT
B

SYKES, BOURDON, AHERN & LEVY, P.C.
ATTORNEYS AND COUNSELORS AT LAW

PEMBROKE OFFICE PARK - BUILDING ONE
281 INDEPENDENCE BOULEVARD
FIFTH FLOOR
VIRGINIA BEACH VIRGINIA 23462 2989

TELEPHONE 757-499 8971
FACSIMILE 757 456-5445

JON M AHERN
SCOTT N ALPERIN
R EDWARD BOURDON JR
JAMES T CROMWELL
L STEVEN EMMERT
DAVID S HOLLAND
KIRK B LEVY
JENNIFER D ORAM SMITH
HOWARD R SYKES JR

June 3, 2004

NEXT DAY AIR

Bankruptcy Management Corporation
1330 East Franklin Avenue
El Segundo, CA 90245

Re Chi-Chi's, Inc
Bankruptcy # 03-13063-CGC

Dear Sir/Madam

Please find enclosed a Proof of Claim and an Administrative Proof of Claim in duplicate plus attachments with regard to the captioned bankruptcy on behalf of Turnbarr Associates, a Virginia Corp I have also enclosed an additional copy of the Proof of Claim and Administrative Proof of Claim together with a pre-stamped, self-addressed envelope so that I may have certified copies returned to me

Should you have any questions in this regard, please do not hesitate to call me Thank you for your kind cooperation in this matter

Very truly yours,

James T Cromwell

JTC dwv
Enclosures
cc Turnbarr Associates