

COPY

LEASE

THIS INDENTURE OF Lease, (herein called "Lease"), made and entered into as of 28th day of April, 1995, by and between MILWAUKEE COUNTY, a municipal corporation of the State of Wisconsin, as represented by the Department of Parks, Recreation and Culture (Parks Department) as lessor (herein called "Lessor"), and MARY-BART, L.L.C., a Wisconsin corporation, as lessee (herein called "Lessee");

WITNESSETH

1. DEMISED PREMISES. Lessor does hereby lease, let and demise unto Lessee, and Lessee does hereby lease and rent that portion of building ("Building") located at what is commonly known as Lake Park situated in the City of Milwaukee, County of Milwaukee, State of Wisconsin, to wit: the entire second floor of the Building (comprised of approximately 6,700 square feet) as shown on Exhibit A attached hereto and made a part hereof and on that certain parcel of real estate as shown on Exhibit B attached hereto and hereby made a part of the Lease, with all easements, licenses, rights, privileges, hereditaments and appurtenances thereunto belonging, all collectively referred to as the "Premises."

2. TERM. The Lease shall be for an initial term of ten (10) years ("the Initial Term") beginning on the Term Commencement Date (as defined below), the target date for which is July 1, 1995, subject to extension and earlier termination as hereinafter provided. For purposes hereof, the Term Commencement Date shall mean the first day of the month following the date upon which Lessee has substantially completed all of the alterations and tenant improvements described in Paragraph 11 hereof, so as to be able to open the Premises to the public and thereby commence its business operations. Notwithstanding the foregoing or anything in the Lease to the contrary, the Term Commencement Date shall be no later than September 1, 1995, unless otherwise agreed to in writing by the Lessor. The Initial Term shall expire at the end of the last day of the last month of the Initial Term. For purposes hereof, the term "Preoccupancy Commencement Date" shall mean the date upon which the Lease has been executed by both Lessor and Lessee.

3. EXTENDED TERM(S). Lessee shall have the option to extend the term of the Lease for two (2) consecutive five (5) year periods (each an "Extended Term"). Such option shall be exercised by written notice to Lessor given at least nine (9) months prior to the expiration of the Initial Term or the applicable Extended Term, provided, however, that Lessee is not in default in the performance of any of the covenants or conditions herein contained at the time of giving said notice or during the time thereafter of the Extended Term. Each Extended Term shall continue, except as set forth in Paragraph 4 (b) herein, on the same covenants, agreements, terms, provisions and conditions as are applicable to the Initial Term. The phrase "term of the Lease" shall mean the Initial Term and any Extended Term which may become effective.

4. RENT.

(a) Rental Payments

Effective as of the Term Commencement Date, Lessee shall pay, as rent for the use and occupancy of the Premises, Lessor, c/o Director, Milwaukee County Department of Parks, Recreation and Culture, 9480 Watertown Plank Road, Wauwatosa, Wisconsin 53226, or at such other place Lessor shall direct by written notice to Lessee, an annual base rent amount plus a share of certain facility and restaurant revenues generated by Lessee from the Premises based upon gross sales calculated on a calendar year basis, as follows:

GROSS SALES

\$0 - \$1,499,999

\$1,500,000 +

ANNUAL RENT

\$33,500 per year.

5.00/sq. ft. A

\$33,500 per year plus a facility reinvestment premium beginning with the fourth year of the Term of the Lease of three (3) percent of Gross Sales in excess of \$1,499,999 from restaurant activities as well as Revenue derived from Rentals and Catering (as such terms are hereinafter defined).

The foregoing rent shall be payable quarterly in arrears as follows: A payment of one-fourth the annual base rental (which shall be prorated during the first year and last year of the Initial Term and the last year of any Extended Term) shall be made on or before each December 31, March 31, June 30 and September 30 of each year during the term of the Lease, commencing with September 30, 1995, and shall be made to Lessor, together with payment of any additional facility reinvestment premium due hereunder for the immediately preceding calendar year, payment of which shall be made to Lessor on or before April 30 of each year, based upon the calendar year revenue calculations prepared by Lessee's independent accounting firm; which accounting firm shall be satisfactory to Lessor. Lessor shall, commencing at the start of the fourth year and at its expense, have the right to audit Lessee's books and records including but not limited to cash register tapes, deposit receipts and like records relating to gross sales revenues derived from Lessee's use of the Premises, as further set forth in Paragraph 25 (j). Lessee hereby acknowledges and agrees to be bound by Milwaukee County Ordinance 56.32 which provides for the imposition of penalties and interest for delinquent rental payments, a copy of which is attached as Exhibit C.

Lessor and Lessee intend that the annual rental of \$33,500 shall be sufficient to cover the costs of base rent, exterior maintenance, security at current Park Department levels and water and sewer costs. This rental amount excludes the costs of heating and cooling the Premises, providing the Premises with electricity and telephone service, providing interior maintenance and security for the Building and providing (in accordance with a protocol to be agreed to by Lessee and Lessor) preventive maintenance and cleaning of all mechanical systems, all of which will be the sole responsibility of the Lessee. Notwithstanding any term to the contrary in this Lease, Lessee's duties as set forth in this subsection shall in no way modify, amend, limit, or restrict Lessor's obligations as set forth in paragraph 8 (b) hereof.

Lessor will use its best efforts to ensure that the facility reinvestment premium is paid into an interest-bearing account and utilized as a Lake Park Pavilion improvement and maintenance fund ("Lake Park Pavilion Trust Fund"). The Lake Park Pavilion Trust Fund will be used to enhance exterior and interior Building and immediate area improvements, repairs and upgrades, as presented by the Lessor and reviewed by the Lessee. The immediate area includes the Building, the parking lot, and the park environs within 100 feet of the Building and parking lot.

(b) Rental Adjustment(s). With respect to the annual base rental payment in the amount of \$33,500 per year (the "Pure Rent Base Amount") to be paid by Lessee as set forth in Paragraph 4 (a) hereinabove, Lessor and Lessee hereby agree that the amount shall be increased

during the term of the Lease as hereinafter set forth. Commencing with January 1 of the sixth (6th) calendar year of the term of the Lease, the Pure Base Rent shall be increased by fifty percent (50%) of the percentage increase, if any, in the "cost of living index" between the month in which the Term Commencement Date occurs, and the month of November immediately preceding the calendar year for which the computation is being made (or the next later month for which such index is available). The Pure Rent Base Amount, as adjusted, shall be payable for the remaining five (5) years of Initial Term in the manner provided for in Paragraph 4 (a) above.

The "cost of living index" shall be the index number for the last day for which computation has been made in the column for "All Terms" in the table entitled "Consumer Price Index - Milwaukee - All Items" for Urban Wage Earners and Clerical Workers as presently published in the Monthly Labor Review of the Bureau of Labor Statistics of the United States Department of Labor. In the event the Bureau ceases publishing the index number for the City of Milwaukee, the comparable index figure for the United States shall be used in lieu thereof. In the event the Bureau ceases publishing the Consumer Price Index, or materially changes the methods of its computation, components, base year, consumers whose experiences are included therein, or other features thereof, Lessor and Lessee shall accept comparable statistics on the purchasing power of the consumer dollar, as published at the time of such discontinuation or change, by the Bureau, another governmental agency or unit, or a responsible financial periodical of recognized authority, to be then chosen by Lessor. In the event the Bureau publishes more than one Consumer Price Index, the index shall be chosen by Lessor.

In the event Lessee exercises one or both of the options to extend provided for in Paragraph 3 above, the Pure Rent Base Amount shall be further adjusted in accordance with the formula set forth above commencing with the eleventh (11th) calendar year of the term of the Lease and, if applicable, the sixteenth (16th) calendar year of the term of the Lease.

By way of example, but not limitation of the foregoing if the "cost of living index" increased by 25% between the Term Commencement Date and November of the fifth (5th) calendar year of the term of the Lease, the Pure Rent Base Amount payable for each of the sixth (6th) through tenth (10th) calendar years of the term of the Lease would be \$37,687.50 (\$33,500 x 1.125%).

In the event the "cost of living index" thereafter increased by 50% between December of the fifth (5th) calendar year of the term of the Lease and November of the tenth (10th) calendar year of the term of the Lease, the Pure Rent Base Amount payable for each of the eleventh (11th) through fifteenth (15th) calendar years of the term of the Lease would be \$47,109.38 (\$37,687.50 x 1.25%).

5. USE OF BUILDING.

(a) Use of Premises. Lessee may use the Premises for a full-service, year-round restaurant and related rental or catering activities, and, subject to Lessor's prior written approval, any other lawful purpose or purposes. This use as a restaurant will include the serving of alcoholic beverages and the provision of musical entertainment on the Premises. Lessee will make its best effort to offer a seasonal luncheon carry-out service. Lessee shall make Premises or a part of the Premises available for rental use by the public during business or non-business hours under reasonable conditions established by the Lessee and reviewed by the Lessor.

(b) Use of First Floor of Building. The entire first floor meeting room of the Building, as shown on Exhibit A attached hereto, shall remain open and available to the public from 8 a.m. until 5:00 p.m. on a daily basis, including the restrooms located on either end of this space. In addition, during the golfing season, access to the first floor restrooms will remain

available beyond 5 p.m. hour to accommodate evening golfers and lawn bowlers.

However, Lessor hereby warrants and represents that during the term of the Lease, unless otherwise consented to by Lessee, said consent not to be unreasonably or unlawfully withheld, said first floor space shall not be included by Lessor as a rental space available to the general public for public meetings, assemblies and like events. Public use of the first floor space, shall at all times also be subject to the requirements and restrictions in Milwaukee County General Ordinances Sections 47.02 and 47.16, and to all other rules, regulations, policies, and procedures applicable to buildings and space owned by the Lessor and open for general use by the public. Lessor further represents it will use its best effort to promptly respond and enforce reported violations of the above-referenced ordinances, policies, procedures, rules and regulations. Said ordinances are all attached hereto as Exhibit C.

Because Lessor will be maintaining the entire Building as noted in 8(d), Lessee shall grant the Lessor permission to occupy the maintenance and utility rooms at the north end of the first floor in order for Lessee to store necessary building maintenance materials. These rooms include four small storage areas and one electrical room. Lessor may also use these rooms to store mechanical support equipment, such as compressors, in these locations. Lessors use of these rooms shall be available under the full terms and conditions of the lease.

6. TAXES. Lessee agrees to pay personal property taxes due and owing with respect to any improvements made to, installed or located upon its Premises. If, during the term of the Lease, any special assessment is levied against the Building, then Lessor and Lessee shall be responsible for payments of such special assessment which becomes due and owing during the term of the Lease in such proportion as the square footage of the Premises bears to the square footage of the Building ("The Proportionate Share"). Nothing herein contained shall prevent Lessor and/or Lessee from protesting the validity or amount of any such assessment or from taking such action as may be required or permitted by law for enforcing and effecting such protest. In this connection, Lessor and/or Lessee may withhold the payment of any such protested assessments provided Lessor and/or Lessee proceed with such protest according to law and provide satisfactory security.

7. UTILITIES; LICENSES; FEES. Lessor agrees to pay, when due, all charges and costs for water, sewer, gas, heat, air conditioning, electricity and any and all other utilities or services from time to time during the term of the Lease furnished to or consumed by Lessee in or upon the Premises, (except for telephone charges and installation costs, which shall be the responsibility of Lessee). Lessor shall then bill Lessee for the costs of natural gas, heat, air conditioning and electricity on a quarterly basis, based on a sub-metering of the actual cost of these expenses. Lessee will at its sole expense, provide for the installation of a separate metering system for these expenses, with the exception of heating expenses, for which Lessor will bill the Lessee on a proportionate basis, as determined by Lessee's share of the total heated space in the Building.

Lessee, at its expense, shall acquire and pay for all permits or licenses which may be required for Lessee's business, and also to pay, when due, all occupation taxes and any other charges of a similar nature which may at any time be levied against the Premises by reason of Lessee's use and occupancy thereof.

8. REPAIRS AND MAINTENANCE; JANITORIAL; SECURITY.

(a) Repairs and Maintenance. Lessor has included \$150,000 in the Lessor's 1995 Capital Improvement Fund to complete exterior repairs to the Building, and the expenditure of those funds were approved by the County Board and County Executive. The exterior repairs will include a complete repair or replacement of the Building's second floor exterior windows, repair of

the wooden pillars on the west side of the Building, repair of all exterior stucco and wood surfaces, repair or replacement of all gutters and downspouts, and painting of the entire exterior. The repairs are intended to be completed by June 1, 1995. In the event the repairs, as listed above, are not completed to the extent Lessee is materially impeded or prohibited from opening for business and the Lessee has completed all of its interior repairs, modifications, and installations, the Lessee's first year Rental Payment will be reduced by \$600 per day upon written notice of same to Lessor. Any balance of the \$150,000 remaining in the Building's Capital Improvement Fund is intended to be used towards other improvements to the Building or its environs, with the Lessee reviewing and approving plans for those additional improvements or repairs, said consent not to be unreasonably withheld.

(b) Lessor covenants and agrees that it will keep the Premises, including the adjacent park and parking lot, in a reasonably safe and serviceable condition according to current 1995 Parks Department standards and make the necessary repairs to the plumbing, heating, and air conditioning systems, leaking of water, gas or waste pipes, maintain adequate heat to prevent freezing of pipes, and shall otherwise perform all necessary repairs, replacements and maintenance to the Building, including necessary cosmetic repairs to the Building's, which shall include chipping paint, rotted wood, or cracking stucco, as follows: (i) structural repairs and replacements, including maintenance to the roof, exterior walls, and foundation; (ii) repairs or replacements which are necessitated by the willful or negligent act or omission of Lessor, its agents, employees, invitees or representatives; (iii) repairs or replacements which are necessitated by reason of fire or other natural casualty, which events are governed by Paragraph 14 below; (iv) repairs or replacements which are necessitated by reason of a defect in the condition of the Building which existed prior to the Preoccupancy Commencement Date of the Lease; and (v) repairs or replacements which are necessitated by reason of a breach of any warranty or representation of Lessor contained in the Lease or by reason of Lessor's failure to perform or observe any term, covenant or condition to be performed or observed by Lessor pursuant to the Lease. Lessor agrees to perform all repairs, maintenance and replacements of the type enumerated in subparagraphs (i) through (v) of this Paragraph 8 as expeditiously as is possible. In the event the Lessor cannot repair or maintain an item enumerated in subparagraphs (i) through (v) above, which directly impacts the condition of the Premises and Lessee's intended use, Lessee may, after notice to Lessor to perform same and reasonable time for Lessor to do so, make said repair or maintenance and Lessor shall reimburse Lessee for the reasonable costs of said repair or maintenance. In the event of an emergency repair which prevents such notification, Lessee shall notify Lessor of said repair as soon as is possible.

Lessor has provided Lessee with a detailed inspection report, attached as Exhibit D, from the Milwaukee County Department of Public Works, showing condition of current plumbing, heating, air conditioning and other mechanical systems of the Building and Premises. Lessor warrants and represents that it has no knowledge of additional defects in the plumbing, heating, air conditioning and other mechanical systems except as set forth in such report. Lessor further warrants and represents that it has no notice or knowledge of any existing material defects in the Building or the components of the Premises, including but not limited to the roof, walls, foundation and floors. The Lessor has also requested an environmental inspection of the Building. In the event that this inspection reveals that environmental remediation is required, Lessor agrees to pay necessary abatement costs from its' Capital Improvement Funds cited in 8(a) above, given approval to do so from the Department of Public Works.

(c) Notwithstanding anything to the contrary hereinabove set forth, Lessee shall be responsible for the maintenance and repair of its improvements, trade fixtures, equipment and mechanical systems including such periodic janitorial and preventative maintenance of its

improvements, trade fixtures and equipment, as Lessee may require. Lessee further agrees to comply with such reasonable rules and regulations as Lessor may establish from time to time for the operation and maintenance of the Building.

(d) Janitorial. Lessee shall, at its own expense, provide, or cause to be provided, routine cleaning of and janitorial services to the entire Building (not limited to the Premises) in a commercially reasonable manner throughout the term of the Lease.

(e). Security. Lessor shall provide, or cause to be provided, routine periodic checks of the exterior areas to the Building, including the common areas of the Building and the parking lot, according to 1995 Parks Department standards. Lessee shall be responsible for any special security needs which it may desire to utilize in connection with its use and occupancy of the Premises.

9. INDEMNITY AND SUBROGATION.

(a) The Lessee and Lessor ("Indemnifying Party") agree to the fullest extent permitted by law, to indemnify, defend and hold each other harmless, and their agents, officers, and employees, from and against all loss or expense including costs and attorney's fees by reason of liability for damages including suits at law or in equity, caused by any wrongful, intentional, or negligent act or omission of the Indemnifying Party or its agents which may arise out of or are connected with the activities covered by the Lease; Provided that the party seeking indemnification (an "Indemnitee") notify the other party (an "Indemnitor") in writing of the existence of such loss, liability, claim, injury, damage or expense immediately after the Indemnitee has obtained actual knowledge that such a loss liability, claim, injury, damage or expense is threatened or pending, and further provided that the Indemnitee afford to the Indemnitor the right, but not the obligation, to assume the defense of such loss, liability, claim, injury, damage, costs and expenses, including reasonable attorneys' fees connected therewith or resulting therefrom.

(b) Lessee shall bear all such costs for owned, leased, or controlled personal property, leasehold improvements and betterments, and business interruption as is applicable to protect the assets and interests of Lessee and County. Lessee will evidence proof of financial responsibility for these costs by a certificate of insurance approved by Lessor. Lessor and Lessee hereby waive and release all right of recovery against each other by way of subrogation of otherwise for any insured loss by fire, extended coverage of other property coverage existing for the benefit of Lessor and Lessee as respects the Premises except that Lessor's waiver and release shall exclude its initial \$50,000 deductible. Such subrogation waivers shall apply to any property insurers and if required by insurers, notice of this waiver shall be given the insurers and said waiver obtained.

10. INSURANCE. Lessee agrees to evidence and maintain proof of financial responsibility to cover costs as may arise from claims of tort, statutes and benefits under Workers' Compensation laws and/or vicarious liability arising from employees. Such evidence shall include insurance coverage for Workers' Compensation claims as required by the State of Wisconsin, including employer's liability and business insurance covering general liability and automobile coverage in the following minimum amounts:

<u>Type of Coverage</u>	<u>Minimum Limits</u>
Wisconsin Workers' Compensation or Proof of All States Coverage Employer's Liability	Statutory \$100,000/\$500,000/\$100,000

Comprehensive General Liability	
Bodily Injury and Property Damage (Incl. personal injury, fire, legal and contractual and products/completed operations)	\$1,000,000 per occurrence \$5,000,000 general aggregate
Automobile Liability	
Bodily Injury and Property Damage (Incl. all autos owned, non-owned and/or hired)	\$500,000
Uninsured Motorists	Per Wisconsin requirements

The County shall be named as additional insured, as its interests may appear, and be afforded a thirty day (30) written notice of cancellation of non-renewal. A certificate indicating the above coverages shall be submitted for review and approval by the County for the duration of this agreement. Coverages shall be placed with an insurance company approved by the State of Wisconsin and rated "A" per Best's Key Rating Guide. Additional information as to policy form, retroactive date, discovery provisions and applicable retentions, shall be submitted to the County, if requested, to obtain approval of insurance requirements. Any deviations, including use of purchasing groups, risk retention groups, etc. or requests for waiver from the above requirements shall be submitted in writing to the County for approval prior to the commencement of activities under this agreement.

11. ALTERATIONS AND IMPROVEMENTS. Lessee may, at its sole expense, subsequent to the achievement of "Financing Goal" (as hereinafter defined) and satisfaction or waiver of the contingency set forth in Paragraph 17(d) hereof, make whatever alterations and additions to the Premises and construct whatever improvements on the Premises as Lessee deems necessary or desirable in the conduct of its activities as a restaurant or other permitted uses on the Premises; provided, however, that Lessee shall first submit the plans and specifications for such improvements together with the name of Lessee's proposed contractor to both the Milwaukee County Director of Parks, Recreation and Culture and to the Director of the Department of Public Works for Lessor's approval, which approval shall not be unreasonably withheld or delayed and which shall be deemed to be approved if no written objection thereto is given to Lessee by Lessor within thirty (30) business days following Lessee's submission of such plans and specifications and proposed contractor to Lessor. In addition, Lessee shall, prior to commencing any alterations, additions and improvements, obtain all necessary permits and licenses from the appropriate governmental authorities. *Lessee shall commence construction of said improvements described in the approved plans and specifications as soon as reasonably practicable following Lessor's approval and shall have a period of one hundred eighty (180) days thereafter to complete the tenant improvements contemplated hereby (subject to extension by reason of force majeure). All of said work shall be completed in a first-class manner and consistent with the standards established for other work in the Building. Lessor shall have the right to inspect the work at reasonable times provided it does not interfere with Lessee's construction of such alterations and tenant improvements. Upon completion of such alterations, improvements and installation of furniture and fixtures, the Term Commencement Date shall be deemed to have begun on the first day of the month following such completion. As described in Paragraph 2, the target for the Term Commencement Date is July 1, 1995, but in no event later than September 1, 1995. Any and all alterations, additions and additional improvements shall be made in compliance with all statutes, laws, ordinances, rules and regulations of any governmental authority having jurisdiction of the Premises, including, but not limited to, Lessor's Minority/Women Business Enterprise Program as further set forth in paragraph 25 herein and in coordination with Lessor's Disadvantaged Business

Development Office. Lessee shall also indemnify and hold Lessor harmless from and against all statutory liens or claims or liens of any contractor, subcontractor, laborer or any other party which may arise in connection with any alteration, addition or improvement or building to the Premises. Any alteration, addition or Leasehold improvement installed on the Premises by Lessee shall become the property of the Lessor upon the expiration or termination of the Lease. In no event shall Lessee make any alterations or additions to the structure of the Building without the prior written consent of Lessor. Any request by Lessee for such structural alterations or additions shall also be submitted to the Lessor for consideration and appropriate action, if any.

12. TRADE FIXTURES OF LESSEE. At any time subsequent to the satisfaction or waiver of the Contingency set forth in Paragraph 17 herein, Lessee may furnish, install and maintain on the Premises any and all fixtures, equipment and other personal property useful in connection with Lessee's operation on the Premises. All such fixtures, furniture, equipment and other personal property installed in or located on the Premises upon expiration or the termination of the Lease shall be removed by Lessee, with Lessee repairing any damage to the Premises resulting from such removal. Lessor may, at its option and upon request of Lessee, purchase same for the remaining unamortized book value.

13. ASSIGNMENT AND SUBLETTING. Lessee may not assign the Lease and its right, title and interest hereunder or sublet the Premises without obtaining Lessor's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. No such assignment or subletting shall release Lessee from its obligations hereunder unless Lessee obtains the written consent of Lessor.

14. DAMAGE OR DESTRUCTION. If, during the term of the Lease, including any time after which Lessee may have given notice to terminate the Lease, the entire Premises or such portion thereof as shall render the remaining portion thereof unsuitable for the continued conduct of Lessee's activities therein, shall be damaged or destroyed more than 85% by fire or other casualty, Lessee shall have the right, for a period of forty-five (45) days thereafter, by giving written notice to Lessor, to terminate the Lease, in which event: (a) Lessor shall be entitled to retain all insurance proceeds payable by reason of and with respect to damage or destruction to the buildings and improvements constructed by Lessor on the Premises; and (b) Lessee shall be entitled to retain all insurance proceeds payable by reason of and with respect to damage or destruction to the improvements owned or constructed by Lessee on the Premises, and all insurance proceeds relating to Lessee's fixtures, equipment, and other personal property. If Lessee does not elect to terminate the Lease or if the damage or destruction to the Premises does not render the remaining portion thereof unsuitable for the continued conduct of Lessee's activities thereon, then the Lease shall continue in full force and effect, and Lessee shall, in accordance with the provisions set forth in Paragraph 11 hereof, promptly commence and pursue diligently to completion whatever repairs to the Premises are necessary to restore the Premises to the condition the same were in prior to such damage or destruction, and Lessee shall be entitled to all insurance proceeds relating to the casualty. All such repairs shall be performed promptly and in a good and workmanlike manner in accordance with all statutes, laws, ordinances, rules and regulations of any governmental authority having jurisdiction over the Premises. Commencing on the date of such damage or destruction and continuing during the period in which Lessee is repairing and restoring the Premises pursuant to this Paragraph, the rental payable by Lessee shall abate in proportion to the floor area of that Premises of which Lessee is deprived for the period in which Lessee is deprived of such area.

15. CONDEMNATION.

a. Total Taking. If, during the term of the Lease, the entire Premises shall be taken by any public or quasi-public authority under its power of condemnation of eminent domain (or is

sold under threat thereof), the Lease shall terminate as of the date possession shall be taken by the acquiring authority. If any part of the Premises shall be taken as to render the remainder thereof unsuitable for the continued conduct of Lessee's activities thereon, Lessee shall have the right to terminate the Lease on thirty (30) days notice to Lessor given ninety (90) days after the date of such taking. In the event that the Lease shall terminate or be terminated, the rental and all other amounts payable to Lessee hereunder shall, if and as necessary, be apportioned and prorated to the date possession is taken by the acquiring authority.

b. Partial Taking. If the portion of the premises taken by any public or quasi-public authority under its power of condemnation of eminent domain (or sold under threat thereof) shall not render the remaining portion unsuitable for the continued conduct of Lessee's activities thereon, Lessor shall, to the extent possible, promptly restore the remaining portion of the Premises to the condition the same were in immediately prior to such taking, and the Lease shall continue in full force and effect. Lessor shall use such portion of the Lessor's proceeds by reason of such taking necessary to repair and restore the Premises as herein provided. During the period in which Lessor is repairing and restoring the Premises pursuant to this Paragraph, the rental payable by Lessee shall abate in proportion to the area of the Premises of which Lessee is deprived for the period in which Lessee is deprived of such area. If it is not possible to restore the remaining portion of the Premises to the condition the same was in immediately prior to such taking, and the Lessee had not elected to terminate the Lease pursuant to Paragraph 14(a) above, then the rent payable by Lessee for the remainder of the Lease shall abate proportionately to the area of the Premises of which Lessee is deprived.

c. Division of Compensation Award. Lessor and Lessee shall participate pro rate based upon their respective investments in the Premises and the value of the Leasehold hereby created as if the Lease would have expired at the end of the Lease term in all compensation awarded or paid upon a total or partial taking of the Premises. In determining the respective investments of Lessor and Lessee in the Premises, Lessee shall receive a credit for the value of Lessee's trade fixtures and improvements to the Premises, taken by any condemning authority, which credit shall take into account Lessee's proportionate share of the improvements, if any, for which Lessor had received rental compensation. In the event that a single entire award is made on account of the condemnation, Lessee and Lessor will be entitled to such proportion of the award as may be fair and reasonable. Any valuation shall also take into account Lessee's option rights.

*Notwithstanding the foregoing, nothing contained herein shall be construed to preclude Lessee from prosecuting any claim directly against the condemning authority in such condemnation proceedings for loss of business, and/or depreciation to, damage to and/or cost of removal of, and/or for the value of stock and/or Lessee's trade fixtures, furniture, equipment and other improvements made to the Premises, and any other property belonging to Lessee.

16. WARRANTY OF TITLE; QUIET ENJOYMENT; ETC. Lessor hereby warrants that it has title to the Premises in fee simple free of all liens, charges and encumbrances, and that it has full right and authority to enter into the Lease. Lessor covenants and agrees that, so long as Lessee shall duly and punctually perform and observe all of its obligations under the Lease, Lessee shall peaceably and quietly have, hold and enjoy the Premises without any hindrance or molestation from Lessor or any other party. Lessor further warrants to Lessee that, as of the date of the Lease, Lessor has no knowledge of any material defect in the condition of the Premises not described in the condition report shared with the Lessee and that the Premises are in compliance with all building, zoning and other laws, rules, regulations and ordinances of federal, state and other governmental authorities and agencies having jurisdiction of the Premises, and there are no outstanding orders against the Premises.

17. DEFAULT; REMEDIES.

a. Default by Lessee. If (i) Lessee fails to pay any of the rental or other sums required hereunder and such failure to pay continues for thirty (30) days after written notice thereof to Lessee; or, (ii) default be made in the performance or observance by Lessee of any other terms, covenants or conditions herein contained and such default shall continue for forty-five (45) days after written notice thereof to Lessee (or if such default is not of a type that can reasonably be corrected within forty-five (45) days, as determined by Lessor, and Lessee fails to commence promptly and in good faith to proceed with due diligence to correct such default), then in any of the above-described events, Lessor may elect to terminate the Lease and declare the term of the Lease ended, to re-enter the Premises or any part thereof with judicial process and to expel and remove Lessee or any person or persons occupying the same and again to repossess and enjoy the Premises. Lessor shall also have the right, at its option, to cure any default by Lessee and recover from Lessee the costs and expenses incurred by Lessor in curing such default.

b. Default by Lessor. In the event of default by Lessor in the performance or observance of any of the covenants or conditions herein contained and which shall continue for forty-five (45) days after written notice thereof to Lessor (or if such default is not of a type that can reasonably be corrected within forty-five (45) days, then if Lessee fails to commence promptly and in good faith to proceed with due diligence to correct such default), then in any of the above-described events, Lessee shall have the right at its option to immediately terminate the Lease, to cure any default by Lessor and deduct the costs and expenses incurred by Lessee in curing such default from the rental and any other amounts thereafter accruing to Lessor, or to offset the amount of damages incurred as a consequence of any claim described above from the rental and any other amount thereafter accruing to Lessor. All amounts expended by Lessee in curing Lessor's defaults or as a consequence of any claim shall be paid by Lessor upon demand by Lessee. In the event of any alleged default hereunder by either Lessor or Lessee, the parties shall endeavor, in good faith, to utilize an alternative dispute resolution mechanism which utilizes retired judicial officials prior to the commencement of any litigation.

c. Remedies Not Exclusive. Any right or remedy conferred on Lessor or Lessee under the Lease shall not be deemed to be exclusive of any other right or remedy which might otherwise be available hereunder or at law or in equity. The rights and remedies hereunder shall be cumulative and may be exercised and enforced concurrently and whenever and as often as occasion therefore arises.

d. Contingency. The Lease and the obligations of Lessor and Lessee hereunder are contingent upon Lessee obtaining within ninety (90) days from the Preoccupancy Commencement Date ("Contingency Expiration Date"), written lender or equity financing commitments in the approximate amount of Eight Hundred Thousand Dollars (\$800,000) (the "Financing Goal") which amount is adequate, in the reasonable judgment of both Lessor and Lessee, to permit the Lessee to construct necessary improvements on the Premises and provide the necessary operating expenses for such items required by Lessee's intended use of the Premises as a restaurant. In the event Lessee has timely achieved its Financing Goal, Lessee shall give written notice of same to Lessor on or before the Contingency Expiration Date, in which event the Lease shall remain in force and effective in accordance with the terms and conditions recited herein. In the event Lessee gives written notice to Lessor on or before the Contingency Expiration Date that it has not achieved its Goal, or in the event Lessee fails to give written notice to Lessor on or before the Contingency Expiration Date, the Lease shall be deemed terminated and neither Lessor nor Lessee shall have any further rights or obligations hereunder. However, Lessee may request a 30 day extension of said Contingency Expiration Date in the event Lessee provides satisfactory evidence to Lessor that Lessee has materially progressed towards such Financing Goal.

18. Parking, Deliveries and Waste Removal. Lessor hereby agrees to make available to Lessee at all times during the term of the Lease up to forty five (45) unreserved parking spaces for use by Lessee's clientele and employees. In the event that additional parking is required, the Lessor will explore re-stripping the existing parking lot stalls to reflect current average vehicle size, thus adding additional spaces.

Lessee will be allowed to access the premises, for the purpose of business deliveries and waste removal, using the park roadway leading from the east drive access of the Building's parking lot leading north on the east side of the Building to the northeast corner of the Building. Lessee will repair, or cause to be repaired, any extraordinary damage to said roadway, building, or property caused by the misuse of said route by its drivers or its subcontractors. Normal maintenance will be the responsibility of the Lessor.

19. Early Access to Premises. As of the Preoccupancy Commencement Date, Lessee shall be allowed access to the Premises for the purposes of: (i) holding such events and/or tours in the Premises as Lessee deems necessary in its efforts to achieve its Financing Goal; and (ii) allow its architects and consultants access to prepare plans, specifications, and drawings for the improvements to the Premises. Upon Lessor's confirmation that the Lessee has achieved its Financing Goal, Lessor shall provide Lessee with keys to the Building;

20. Signs. Lessee shall have the right and privilege of attaching, affixing, painting or exhibiting signs on the interior of the Premises, on the exterior of the Building and at the entrances to the Park only with the written approval of Lessor which shall not be unreasonably withheld or delayed, provided that: a) any and all signs shall comply with the ordinances of the City of Milwaukee; b) such signs if and when taken down shall not damage the building or, if any damage occurs, Lessee shall promptly repair the same; and c) it is expressly understood by Lessee that any such signage shall be subject to the applicable terms and conditions set forth by the City of Milwaukee Historic Preservation Commission. It is hereby intended that Lessor and Lessee shall cooperate in order to arrive at a mutually agreeable signage program which shall facilitate the exposure of Lessee's Premises to the general public while at the same time being esthetically compatible with the historic status of the Building and Lake Park.

21. Control of Access. Included within the Premises shall be a reasonably adequate amount of space located in the west lobby area by Lessee as a reservations desk if desired. Lessor hereby acknowledges and agrees that, in order for Lessee to control access to the second floor of the Building, Lessee shall have the right to exclusively control the second floor of the Building by controlling access to that floor.

22. Definitions. (a) "Gross Sales" shall mean the total revenues earned from restaurant or catering activities at or provided from the Premises, as well as revenues derived from rental of the Premises, at the Lake Park Pavilion.

(b) "Revenues Derived from Rentals and Catering" shall mean the aggregate amount of rental income actually received by Lessee from third parties outside of the Normal Business Hours of Lessee each year during the term of the Lease, or income received from third party for catering services provided by Lessee either on or off site.

(c) "Normal Business Hours of Lessee" shall mean the hours when the restaurant is expected to be open to the public. Those hours are expected to include a six (6) days per week dinner service (5 p.m. through 10 p.m.) and a Sunday brunch service (9 a.m. - 2 p.m.).

23. Prohibited Practices.

(a) During the term of this Agreement, Lessee shall not hire, retain or utilize for compensation any member, officer or employee of the County or any person who, to the actual knowledge (without inquiry) of Lessee, has a conflict of interest.

(b) Lessee hereby acknowledges that portion of Lessor's Code of Ethics, which states in part: "No person may offer to give to any County officer or employee or his immediate family, and no County officer or employee or his immediate family may solicit or receive anything of value pursuant to an understanding that such officers or employees vote, official actions or judgment would be influenced thereby."

24. Miscellaneous.

(a) Notices. Whenever in the Lease it shall be required or permitted that notice be given by any party hereto to the other, such notice shall be given by certified or registered mail, and any notice so sent shall be deemed to have been given on the date that the same is deposited in the United States mail, postage prepaid. Notices shall be addressed to Lessor at Milwaukee County Department of Parks, Recreation and Culture, 9480 Watertown Plank Road, Wauwatosa, Wisconsin 53226, Attn: Director (with a copy to Corporation Counsel, Room 303, Milwaukee County Courthouse, 901 North Ninth Street, Milwaukee, Wisconsin 53233), and to Lessee at Joseph Bartolotta, Ristorante Bartolotta, 7616 West State Street, Wauwatosa, WI 53213, or at such other address as either party may from time to time specify in writing in lieu thereof. It is further agreed that each party hereto will promptly furnish to the other party hereto a copy of any notice it may receive from any third person which may affect the rights of any party hereunder.

(b) Access. Lessor, its agents and representatives, shall, upon reasonable notice to Lessee, be entitled to enter upon the Premises at reasonable times during normal business hours for the purpose of examining and inspecting the condition thereof, and exercising any right or power reserved to Lessor under the Lease; provided, however, such entry shall be done in a manner so as not to unreasonably interfere with the conduct of Lessee's activities thereon, and such entry shall only be made if Lessor is accompanied by a responsible employee of Lessee, and provided, further that no person shall be allowed or permitted on the Premises if such person is engaged in any activities, enterprises or business that compete, directly or indirectly, with any product or business of Lessee. The Parks Department Director will be provided with a single access key to the Premises, as soon as the Department's locks to the Premises are changed.

(c) Disadvantaged Business Enterprise (MBE/WBE) Utilization. The Lessee will submit a plan to the Lessor for the utilization of the MBE/WBE firms on the construction of improvements. Said plan will contain, but not be limited to, the following information:

- 1) Name(s) of M/WBE(s) firms(s) being considered for utilization.
- 2) Description of services that will be provided by the M/WBE(s).
- 3) Dollar amount of the work assigned to the M/WBE(s). The Lessee will have a seventeen percent (17%) goal of utilization of M/WBE's in the construction of improvements, which will be reviewed by the Lessor's Disadvantaged Business Development (DBD) Office.

The Lessee will contact the DBD Office for a list of certified MBE/WBE firms.

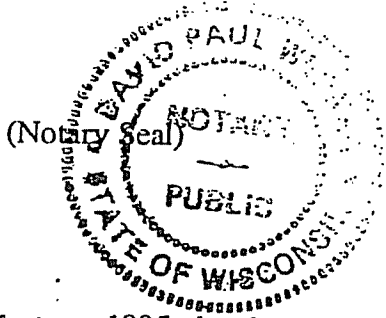
(d) Equal Employment Opportunities. In accordance with Section 56.17 of the Milwaukee County General Ordinances and Title 41 of the Code of Federal Regulations, Chapter 60, the Lessee Certifies to the Lessor as to the following:

- 1) **Non-Discrimination:** The Lessee certifies that it will not discriminate against any employee or applicant for employment because of race, color, national origin, age, sex or handicap which includes, but is not limited to, the following: employment, upgrading, demotion or transfer, recruitment, or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training, including apprenticeship. The Lessee will post in conspicuous places, available for employment, notices setting forth the provisions of the non-discriminatory clause. Attached hereto as Exhibit E is an Equal Employment Opportunity Certificate which shall be executed and delivered by Lessee simultaneously with the execution and delivery of the Lease.
- 2) **Affirmative Action Program:** The Lessee certifies that it will strive to implement the principles of equal employment opportunity through an effective affirmative program which shall have as its objective to increase the utilization of women, minorities and handicapped persons and other protected groups, at all levels of employment in all divisions of its work force, where these groups may have been previously under-utilized and under-represented. The Lessee also agrees that in the event of any disputes as to compliance with the aforementioned requirements, it shall be its responsibility to show that it has exercised good faith efforts to meet all requirements.
- 3) **Non-Segregated Facilities:** The Lessee certifies that it does not and will not maintain or provide segregated facilities for its employees, and that it does not permit its employees to perform their services at any location under its control where segregated facilities are maintained.
- 4) **Reporting Requirement:** When applicable, the Lessee certifies that it will comply with all reporting requirements and procedures established in Title 41 Code of Federal Regulations, Chapter 60.
- 5) **Affirmative Action Plan:** The Lessee certifies that if it has 50 or more employees, it has filed or will develop and submit (within 120 days of contract award) a written affirmative action plan. Current Affirmative Action Plan, if required, must be filed with any of the following: The Office of Federal Contract Compliance Programs or the State of Wisconsin, or the Milwaukee County Department of Audit, Room 319 Courthouse Annex, 907 North Tenth Street, Milwaukee, Wisconsin 53233.
- 6) **Compliance:** The Lessee certifies that it is not currently in receipt of any outstanding letters of deficiencies, show cause, probable cause, or other such notification of noncompliance with EEO regulations.

(e) Surrender of Premises. Lessee upon termination of the Lease, by lapse of time or otherwise, agrees peaceably to surrender the Premises to Lessor.

(f) Holding Over. If Lessee, with the consent or acquiescence of Lessor, remains

STATE OF WISCONSIN)
) SS.
COUNTY OF MILWAUKEE)



Personally came before me this 16 day of May, 1995, the above-named Joseph Bartolotta and _____, to me known to be the Managing Member and _____, respectively, of MARY-BART, L.L.C., and acknowledged that they executed the foregoing instrument as such officers, as the deed of said corporation and by its authority.

David Paul, Notary Public
State of Wisconsin
My commission: April 6, 1997

Exhibit Listing:

- A. Floor Plans of Building
- B. Land Use Plan of Lake Park
- C. County Ordinances 56.32, 47.02, and 47.16
- D. Lake Park Pavilion Conditions Report
- E. Equal Employment Opportunity Certificate

