SECURITIES AND EXCHANGE COMMISSION

FORM 10KSB

Annual and transition reports of small business issuers [Section 13 or 15(d), not S-B Item 405]

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FILER

NEW YORK BAGEL ENTERPRISES INC

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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 10-KSB

(MARK ONE)

[X] Annual report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 For the fiscal year ended December 27, 1998

[ ] Transition report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 For the transition period from _______________ to _____________

Commission file number 0-21205

NEW YORK BAGEL ENTERPRISES, INC.
(Name of small business issuer in its charter)

KANSAS	73-1369185
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)

115 EAST 8TH STREET
STILLWATER, OKLAHOMA 74074
405-624-3700
(Address, including zip code, and telephone number of Issuer's principal executive offices)

SECURITIES REGISTERED PURSUANT TO SECTION 12(b) OF THE EXCHANGE ACT:

TITLE OF EACH CLASS	NAME OF EACH EXCHANGE ON WHICH REGISTERED
None	

SECURITIES REGISTERED PURSUANT TO SECTION 12(g) OF THE EXCHAGE ACT:
Common Stock, par value $0.01 per share
(Title of class)

Check whether the issuer (1) filed all reports required to be filed by Section 13 or 15(d) of the Exchange Act during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes X No .

Check if there is no disclosure of delinquent filers in response to Item 405 of Regulation S-B contained in this form, and no disclosure will be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-KSB or any amendments to this Form 10-KSB. (___)

The issuer's revenues for the fiscal year ended December 27, 1998 were $18,987,623.

As of February 26, 1999, the aggregate market value of the voting and non-voting common equity held by non-affiliates of the registrant (based upon the last reported sale price of the Common Stock of the registrant as quoted on the OTC Bulletin Board of The Nasdaq Stock Market, Inc.) was $885,845.16. (For purposes of calculating the preceding amount only, all directors, executive officers and stockholders holding 5% or greater of the registrant's Common Stock are assumed to be affiliates). The number of shares of Common Stock of the registrant outstanding as of March 1, 1999 was 4,657,100.

DOCUMENTS INCORPORATED BY REFERENCE

Certain portions of the registrant's Proxy Statement for its annual meeting of stockholders to be held on May 21, 1999 are incorporated by reference into Items 9, 10, 11 and 12 of Part III. The registrant intends to file such Proxy Statement no later than 120 days after the end of the fiscal

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year covered by this Form 10-KSB.

Transitional Small Business Disclosure Format (check one):
Yes [ ] No [X]

NEW YORK BAGEL ENTERPRISES, INC.

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FOR THE FISCAL YEAR ENDED DECEMBER 27, 1998

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PART I

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

THIS FORM 10-KSB INCLUDES STATEMENTS THAT ARE "FORWARD-LOOKING STATEMENTS" WITHIN THE MEANING OF SECTION 27A OF THE SECURITIES ACT OF 1933, AS AMENDED, AND SECTION 21E OF THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED, INCLUDING STATEMENTS REGARDING THE COMPANY'S EXPECTATIONS, HOPES, BELIEFS, INTENTIONS OR STRATEGIES REGARDING THE FUTURE. ALL STATEMENTS, OTHER THAN STATEMENTS OF HISTORICAL FACTS, INCLUDED IN THIS FORM 10-KSB REGARDING THE COMPANY'S FINANCIAL POSITION, BUSINESS STRATEGY AND OTHER PLANS AND OBJECTIVES FOR FUTURE OPERATIONS, ARE FORWARD-LOOKING STATEMENTS. ALL FORWARD-LOOKING STATEMENTS INCLUDED IN THIS FORM 10-KSB ARE BASED ON INFORMATION AVAILABLE TO THE COMPANY ON THE DATE HEREOF, AND THE COMPANY ASSUMES NO OBLIGATION TO UPDATE SUCH FORWARD-LOOKING STATEMENTS. ALTHOUGH THE COMPANY BELIEVES THAT THE ASSUMPTIONS AND EXPECTATIONS REFLECTED IN SUCH FORWARD-LOOKING STATEMENTS ARE REASONABLE, IT CAN GIVE NO ASSURANCE THAT SUCH EXPECTATIONS WILL PROVE TO HAVE BEEN CORRECT OR THAT THE COMPANY WILL TAKE ANY ACTIONS THAT MAY PRESENTLY BE PLANNED. CERTAIN IMPORTANT FACTORS THAT COULD CAUSE ACTUAL RESULTS TO DIFFER MATERIALLY FROM THE COMPANY'S EXPECTATIONS ARE DISCLOSED IN THE "RISK FACTORS" SECTION OF THIS FORM 10-KSB

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ANNUAL REPORT, WHICH INCLUDE, WITHOUT LIMITATION, THE COMPANY'S ABILITY TO DEVELOP, CONSTRUCT, ACQUIRE OR FRANCHISE ADDITIONAL RESTAURANTS IN ACCORDANCE WITH THE COMPANY'S DEVELOPMENT SCHEDULE, CHANGES IN BUSINESS STRATEGY OR DEVELOPMENT PLANS, AVAILABILITY AND TERMS OF CAPITAL, ABILITY TO SUCCESSFULLY CONVERT CERTAIN RESTAURANTS TO ATOMIC BURRITO RESTAURANTS AND PARTICIPATE AS A JOINT VENTURE PARTNER, THE TRANSITION TO THE YEAR 2000, ACCEPTANCE OF NEW PRODUCT OFFERINGS, COMPETITION, MANAGEMENT OF QUARTER TO QUARTER EARNINGS, INCREASES IN OPERATING COSTS AND CHANGES IN GOVERNMENT REGULATION. ALL SUBSEQUENT WRITTEN OR ORAL FORWARD-LOOKING STATEMENTS ATTRIBUTABLE TO THE COMPANY OR PERSONS ACTING ON ITS BEHALF ARE EXPRESSLY QUALIFIED IN THEIR ENTIRETY BY SUCH FACTORS.

ITEM 1. BUSINESS

GENERAL

The Company opened its first restaurant in 1986. As of March 1, 1999, New York Bagel Enterprises, Inc. (the "Company") owned and franchised 46 quick-service New York Bagel restaurants and eight Lots A' Bagels restaurants in 11 states that serve generous portions of fresh, high quality food with fast, friendly service at an attractive price-value relationship. Historically, the Company has grown by developing Company-owned restaurants, making acquisitions and by selectively adding franchisees. As of March 1, 1999, there were 37 Company-owned restaurants located in Oklahoma, Kansas, Tennessee, Texas, Colorado and Alabama and 17 franchised restaurants located in nine states operated by 10 franchisees. In addition, the Company is a joint venture partner with Western Country Clubs, Inc. in a cobranded New York Bagel and Atomic Burrito restaurant located in Oklahoma and an Atomic Burrito restaurant located in Kansas, both of which are being converted from New York Bagel restaurants. In addition to developing new restaurants, as of March 1, 1999 the Company has acquired one bagel restaurant in Tennessee, seven Lots A' Bagels restaurants and a bagel commissary in Colorado, and four franchised New York Bagel restaurants in Texas and Kansas. See Note 10 of the Notes to Consolidated Financial Statements.

The Company's business was previously operated through six separate entities each of which was owned by one or more stockholders that existed prior to the Company's initial public offering (collectively, the "Prior Entities"). The Company was incorporated in December 1995 under the laws of Kansas and on December 31, 1995, the Prior Entities were merged into the Company (the "Reorganization"). The Company completed its initial public offering of its Common Stock on August 27, 1996. Reference to "New York Bagel" restaurants include the Company's Lots A' Bagels restaurants unless otherwise indicated.

THE NEW YORK BAGEL CONCEPT

PREPARE FRESH, HIGH QUALITY PRODUCTS. New York Bagel restaurants serve up to 20 varieties of bagels that are made from scratch, boiled and baked throughout the day in the traditional "New York style." The Company believes its five-ounce bagel is larger than those served by many of its competitors. Menu items are prepared in accordance with the Company's specifications using high quality ingredients such as Philadelphia-Registered Trademark- Brand cream cheese, Kraft-Registered Trademark- cheeses and

premium deli meats. Generous portions of cream cheese are applied on its breakfast bagel and generous portions of meat are served on each of its deli sandwiches. The Company believes that the quality and portion size of its menu items generally equals or exceeds those of its competitors. Because its menu pricing is competitive, the Company believes that it offers customers an attractive price-value relationship.

MAXIMIZE TRAFFIC THROUGHOUT THE DAY. Management has recognized the versatility of the bagel and has developed a menu to attract customers throughout the day. The breakfast menu at New York Bagel restaurants includes a variety of bagels and custom-blended cream cheeses, breakfast sandwiches on bagels, gourmet coffees, muffins and croissants. Lunch and dinner items include a wide range of delicatessen sandwiches made on bagels or other breads, salads, cookies and soft drinks. The Company also has been able to successfully operate drive-through windows at certain New York Bagel restaurants.

COMMITMENT TO TIMELY SERVICE. The Company believes that timely service is essential in the quick-service restaurant business. Service time is minimized through the division of employee functions, efficient store layout and design and queuing mechanisms.

FOCUS ON TRAINING. The Company believes that comprehensive training is essential to the efficiency and consistency of its operations. The Company conducts a 28-day training program for its restaurant managers and franchisees that places an emphasis on these areas while maintaining the

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operational systems of an actual New York Bagel restaurant. In addition, the Company provides on-site assistance during the initial days of operation at each Company-owned restaurant and at a franchisee's initial franchised restaurant.

COMPANY STRATEGY

FOCUS ON OPERATIONS; LIMITED DEVELOPMENT. The Company completed its initial public offering in August 1996 in which it raised $14.7 million that enabled the Company to grow and expand. From August 1996 through February 1998, the Company utilized such proceeds to develop 26 new restaurants and to acquire eleven additional restaurants. Consequently, Company-owned restaurants have increased from 20 restaurants just prior to the initial public offering to 37 Company-owned restaurants as of March 1, 1999. During 1998, the Company shifted its strategy from that of aggressive growth to that of limited growth with an enhanced focus on operations and closure of underperforming restaurants in an attempt to achieve profitability. The Company anticipates continuing this strategy during 1999. The strategy includes new product initiatives that are anticipated to stimulate sales growth from existing restaurants. It also includes a focus on cost controls, primarily cost of sales and restaurant operating expenses. The Company anticipates that its limited development and enhanced focus on operations will position the Company to renew restaurant development and growth. In addition, the Company has entered into a joint venture agreement with Western Country Clubs, Inc., parent of the Atomic Burrito fresh mex restaurant concept, to open up to six joint venture restaurants. As of March 1, 1999, two joint venture restaurants are under development.

EMPHASIZE MID-SIZED AND SMALLER METROPOLITAN MARKETS. The Company's restaurants are in mid-sized and smaller metropolitan markets. Management believes that these markets are attractive because they typically have fewer competing bagel restaurants and more favorable lease and labor environments than larger metropolitan markets.

ESTABLISH STRONG MARKET PRESENCE. Because the bagel industry is highly fragmented and increasingly competitive, the Company seeks to establish a strong market presence in its targeted markets. To develop a strong market presence rapidly and efficiently, the Company employs a multiple store strategy involving a bakery restaurant which produces bagels for itself and one or more nearby satellite restaurants. By entering underserved markets and opening multiple restaurants, the Company seeks to maximize market share and establish brand awareness.

CURRENT YEAR DEVELOPMENT/COMPANY-OWNED RESTAURANTS

During 1998 and through March 1, 1999, the Company developed five new restaurants located in Oklahoma (1), Alabama (2), Texas (1) and Colorado (1). The Company continued restaurant closures with a total of 11 restaurants being closed. As a result of the above activity, Company-owned restaurants have decreased from 45 as of the beginning of fiscal

1998 to 37 as of March 1, 1999. There is currently one joint venture cobranded New York Bagel and Atomic Burrito restaurant located in Oklahoma and one joint venture Atomic Burrito restaurant located in Kansas, both of which are being converted from New York Bagel restaurants.

ACQUISITIONS

On December 6, 1996, the Company acquired substantially all of the operating assets, business operations and facilities of Lots A' Bagels, Inc. ("Lots A' Bagels"), including seven restaurants and a bagel commissary located in Colorado Springs and Monument, Colorado for cash payments of $2,615,000 and the assumption of certain liabilities of Lots A' Bagels.

In 1997, the Company acquired two franchised restaurants located in Austin, Texas and one franchised restaurant located in San Antonio, Texas. Total cash purchase price for the three franchised restaurants was $738,000.

The Company's source of cash for the above acquisitions was a portion of the net proceeds from the Company's initial public offering of Common Stock completed in August 1996. See "Management's Discussion and Analysis or Plan of Operation."

RESTAURANT DESIGN AND SITE SELECTION

The Company's prototypical New York Bagel restaurant is decorated in rich colors and dark woods and contains a mixture of booth, table and barstool seating and, where available, outdoor seating. Exposed ceilings with drop lighting and a combination of tile and carpeted flooring are used to enhance its comfortable ambiance. Walls are covered with black and white photographs depicting classic New York scenes. The Company's restaurants are

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configured to facilitate a smooth flow of dine-in and carry-out traffic while retaining a casual, cafe atmosphere. Bagels and other baked products are displayed prominently behind a glass counter while other items such as salads, packaged cream cheese for take-out and specialty sodas and drinks are located in an open, self-serve refrigerated area next to the cash register. Restaurant staff prepare sandwich and other menu items behind the counter for dine-in and take-out customers. Dine-in customers' food is delivered directly to the table. The restaurants serve cappuccino and espresso and a fountain drink and gourmet coffee station are placed in the dining area for customer convenience. Retail merchandise, including logo clothing, coffee mugs and gift items, are displayed throughout the restaurant.

The Company believes that the layout and design of each restaurant contributes to the success of its operations. The Company continually reviews the restaurant design package for its restaurants and remodels as required. Pursuant to the franchise agreement, franchised restaurants' decor must be updated every five years or upon renewal of each particular franchise agreement. Remodeling typically requires closing the restaurant for one to four weeks. Although restaurants may vary in size, layout and design are generally consistent.

The Company considers the location of a restaurant to be important, and, therefore, devotes significant resources to the investigation and evaluation of potential sites. The site selection process focuses on area demographics, including population density, traffic patterns, income levels and competitive factors. Historically, the Company generally targeted locations that possess a population density of at least 50,000 residents within a three mile radius and are situated on the morning side of commuter traffic. The Company's restaurants are typically located in strip shopping centers or free-standing buildings that provide visibility, curb appeal and accessibility. Certain limited hour satellite restaurants are located in office buildings and are open during business hours Monday through Friday. The Company's restaurant design may be configured to fit a wide variety of building shapes and sizes thereby increasing the number of suitable sites for new locations.

UNIT ECONOMICS

In targeted markets, the Company employs a multiple store strategy involving a bakery restaurant which produces bagels for itself and one or more nearby satellite restaurants. The Company's approach to opening new restaurants has been to minimize its required investment by leasing substantially all of its locations. The Company believes that bakery restaurants can be opened for an initial investment, including leasehold improvements, furniture, fixtures, equipment, initial

working capital and pre-opening expenses, excluding real estate, of approximately $275,000, with satellite restaurants requiring approximately $175,000. By averaging these initial investment amounts within a particular market, the Company believes it achieves attractive returns on investment within markets.

OPERATIONS

RESTAURANT PERSONNEL. A typical New York Bagel restaurant employs a restaurant manager, an assistant manager and approximately 25 to 30 hourly employees for a bakery restaurant and 15 to 20 hourly employees for a satellite restaurant, most of whom work part-time. The restaurant manager is responsible for the day-to-day operation of the restaurant and for compliance with Company-established operating standards. The Company seeks to hire experienced restaurant managers and staff and to motivate and retain them by providing opportunities for advancement and performance-based, financial incentives. Training and compensation programs are intended to instill restaurant managers and area managers with a sense of ownership in their restaurants.

REPORTING. The Company's restaurant managers prepare daily and weekly reports of sales, cash deposits and operating costs. Physical inventories of all food and beverage items are taken weekly. The Company conducts monthly meetings with area general managers to discuss restaurant sales, profitability and operations, personnel needs and product quality.

HOURS OF OPERATIONS. The restaurants are generally open Monday through Saturday from 6:30 a.m. to 8:00 p.m. and on Sunday from 8:00 a.m. to 5:00 p.m. Although the majority of restaurants are open seven days a week, certain satellite restaurants are located in downtown business districts and are open during business hours Monday through Friday.

TRAINING

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The Company believes that comprehensive training is essential to the efficiency and consistency of its restaurants. The Company conducts a 28-day training program for its restaurant managers and franchisees that places an emphasis on these areas while maintaining the operational systems of an actual New York Bagel restaurant. In addition, the Company provides on-site assistance during the initial days of operation at each Company-owned restaurant and at a franchisee's initial franchised restaurant.

PURCHASING AND DISTRIBUTION

The Company establishes quality standards and specifications for food products and equipment used in New York Bagel restaurants and designates primary and secondary suppliers for all food items and restaurant supplies. In order to ensure product quality and consistency, franchisees purchase certain products from the Company's approved distributors. To obtain competitive prices, the Company contracts centrally for certain food products and supplies and negotiates volume discounts for the benefit of Company-owned and franchised restaurants. Most Company-owned and franchised restaurants purchase the majority of their food and non-food items from a nationally recognized distributor. The Company believes that the loss of this distributor would not materially affect the Company's results of operations.

MARKETING AND ADVERTISING

The Company and its franchisees advertise primarily through newspapers, direct mail and radio. All advertising materials must be produced or pre-approved by the Company. The Company provides restaurants with pre-opening, grand opening and ongoing advertising and in-store promotional material. Franchisees maintain sole discretion over the placement of advertisements in their market.

FRANCHISE PROGRAM

The Company commenced franchising its restaurant concept in 1993 and, as of March 1, 1999, has 10 franchisees operating 17 New York Bagel restaurants in nine states. During 1998 and through March 1, 1999, activity within the franchise program included the following: four new restaurants were developed in North Dakota (1), Tennessee (1),

Alabama (1) and Florida (1) and nine restaurants were closed and/or disenfranchised in Nebraska (3), Texas (1), Arkansas (1), Colorado (2), Washington (1) and California (1). As a result, the total number of franchised restaurants has decreased from 23 as of March 1, 1998, to 17 as of March 1, 1999. There are currently two franchised restaurants under development, one located in North Dakota and one located in Texas. The Company is not currently seeking new franchisees. Therefore, future growth in the Company's franchise program will probably be limited to current franchisees.

DEVELOPMENT AGREEMENT. The Company enters into a development agreement with each franchisee (a "Development Agreement") for the exclusive development of a predetermined number of New York Bagel restaurants within a designated market area (the "Area of Exclusivity"). The Area of Exclusivity is negotiated prior to the signing of a Development Agreement and varies by agreement as to size, number of New York Bagel restaurants required and the schedule for restaurant development and opening. A Development Agreement generally requires a franchisee to develop the first restaurant within 12 months of signing the Development Agreement and the second restaurant within 18 months. Subsequent restaurants are generally required to be opened in six-month intervals thereafter. Development schedules vary based upon the size of the territory and the number of restaurants to be developed. Development Agreements contain cross-default provisions and a failure to develop the restaurants on schedule may result in a loss of exclusivity within the Area of Exclusivity. Under the Company's Development Agreement, the franchisee is required to pay, at the time of signing, a non-refundable fee equal to one-third of the initial franchise fee per restaurant covered by the Development Agreement. The amount is credited against the Company's standard franchisee fee, the remainder of which is payable to the Company upon signing the franchise agreement for a specific location.

FRANCHISE AGREEMENT. After signing a Development Agreement, the Company enters into a franchise agreement (a "Franchise Agreement"), generally when a franchisee secures a location. The Franchise Agreement provides for a term of ten years with one ten-year renewal option and contains cross-default provisions. The Company has the right to terminate any Franchise Agreement under certain specified circumstances, including a franchisee's failure to make payments when due or failure to adhere to the Company's standards or procedures. Many state franchise laws limit the ability of a franchisor to terminate or refuse to renew a franchise. The most

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current Franchise Agreement contains a right of first refusal for the Company to purchase an interest in the franchise and the franchisee. The most current Franchise Agreement provides for an initial franchise fee of $21,000 for each bakery restaurant and $12,000 for each satellite restaurant. During 1995, the initial franchise fees for a bakery restaurant and a satellite restaurant were $18,000 and $9,000, respectively. Under the most current Franchise Agreement, the franchisee pays the Company a monthly royalty fee increasing up to 4% of gross sales. Upon renewal of the Franchise Agreement, the monthly royalty fee cannot be increased to an amount greater than the monthly royalty fee then in effect for new franchisees. See "Business-Government Regulation."

SERVICES. The Company assists each franchisee in the site selection and development of restaurants and provides the physical specifications and plans for each franchised location. Each franchisee is responsible for recommending the location for its restaurants, but must obtain Company approval of each restaurant design and each location based on Company requirements. Company personnel also visit each site in connection with the site-approval process. The Company provides standard design plans and equipment layout and specifications for most franchisees. In addition, Company personnel provide telephone support with respect to operations issues.

QUALITY CONTROL. All franchisees are required to operate their New York Bagel restaurants in compliance with the Company's policies, standards and specifications, including matters such as menu items, ingredients, materials, supplies, fixtures, furnishings, decor and signage. Each franchisee has full discretion, however, to determine the prices to charge its customers. The Company collects sales and other operating information from its franchisees on a monthly, quarterly and annual basis. The Company monitors each franchisee's operations through periodic field visits and review of information provided by the franchisees. These overview mechanisms allow the Company to quickly identify potential problems and provide operational, marketing or accounting assistance.

FRANCHISE TRAINING AND SUPPORT. Each franchisee is required to have a restaurant manager, approved by the Company, who satisfactorily completes the Company's training program and who devotes such franchisee's full business time and efforts to the operation of the franchisee's restaurant. In addition to this program, the Company also provides on-site training during the opening of the franchisee's initial restaurant and ongoing supervision thereafter. Multi-unit franchisees are encouraged to hire a full-time training coordinator to train new employees for their restaurants. The

Company regularly communicates with its franchisees and encourages active communication among its franchisees through telephone communications and periodic meetings.

GOVERNMENT REGULATION

The Company is subject to various federal, state and local laws affecting its business. Each of the Company's restaurants is subject to licensing and regulation by a number of governmental authorities, which include health, safety, sanitation, building and fire agencies in the state or municipality in which the restaurant is located. Difficulties in obtaining or failures to obtain required licenses or approvals could delay or prevent the opening of a new restaurant in a particular area.

The Company is subject to Federal Trade Commission ("FTC") regulation and various state laws which regulate the offer and sale of franchises. Several state laws also regulate substantive aspects of the franchisor-franchisee relationship. The FTC requires the Company to furnish to prospective franchisees a franchise offering circular containing prescribed information. The Company is currently required to register as a franchisor in three states. A number of states in which the Company does not anticipate franchising also regulate the sale of franchises and require registration of the franchise offering circular with state authorities. Substantive state laws that regulate the franchisor-franchisee relationship presently exist in many states and bills have been introduced in Congress from time-to-time which would provide for Federal registration of the franchisor-franchisee relationship in certain respects. State laws often limit, among other things, the duration and scope of non-competition provisions and the ability of a franchisor to terminate or refuse to renew a franchise.

The Company's operations are also subject to federal and state laws governing such matters as wages, working conditions, citizenship requirements and overtime. The Company is also subject to the Americans with Disabilities Act of 1990, which, among other things, could require certain renovations to its restaurants in order to meet federal mandates. If such renovations are required, the Company believes the cost thereof will not materially affect

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the Company's results of operations. The Company believes it is in substantial compliance with all material laws.

COMPETITION

The quick-service restaurant industry is intensely competitive and generally characterized by low barriers to entry. There are a growing number of significant national, regional and local bagel restaurant chains operating both owned and franchised bagel restaurants including Einstein/Noah Bagel Corp., Brueggers Bagel Bakery, Manhattan Bagel Company, Inc. and BAB Holdings, Inc., many of which have greater financial resources than the Company. New York Bagel restaurants also compete with other well established quick-service restaurants that have greater product and name recognition, larger financial and other resources than the Company and longer operating histories, as well as numerous local food establishments, supermarkets and convenience stores that offer similar products. The Company believes that New York Bagel restaurants compete favorably in terms of taste, food quality, portions, service, convenience and value, which the Company believes are important factors to its targeted customers. The Company's continued success is dependent to a substantial extent on its reputation for providing high quality and value with respect to its service, products and franchises and this reputation may be affected not only by the performance of Company-owned restaurants, but also by the performance of its franchised restaurants over which the Company has limited operational control.

TRADEMARKS AND SERVICE MARKS

The Company operates and franchises bagel restaurants under the names "New York Bagel Shop & Delicatessen," "New York Bagel Shop & Deli," "NY Bagel Cafe," "New York Bagel Cafe & Deli," "NYB New York Bagel" and "the New York Bagel Shop." The Company's trademark, "New York Bagel Shop & Delicatessen," and service mark, "Like Bread With An Attitude," are registered under applicable federal trademark law. Under federal trademark law, the Company is required to renew these marks every 20 years. The Company's trademark "Lots A' Bagels, Inc." is registered in the State of Colorado. The Company claims common-law rights to the marks "New York Bagel Shop & Delicatessen," "NYB," "The City's Best Bagel," "Where Yeast Meets West," and "Talkin' Soup," but there have been no judicial determinations of the existence, validity, or extent of the Company's rights. Certain marks are licensed by the Company to franchisees pursuant to franchise agreements.

The Company is aware of the use by other persons and entities in certain geographic areas of names and marks which are the same or similar to the Company's marks. Some of these persons or entities may have prior rights to those names or marks in their respective localities. Therefore, there is no assurance that the "New York Bagel Shop & Delicatessen" mark or any other marks are available in all locations.

EMPLOYEES

As of March 1, 1999, the Company employed 465 persons, 76 of which are employed full-time. None of the Company's employees is subject to any collective-bargaining agreements and management considers its relations with its employees to be good.

JOINT VENTURE

The Company has entered into a joint venture agreement whereby the Company will contribute certain restaurant equipment and leasehold improvements of up to seven of its restaurant locations and cash in certain instances to a joint venture entity with Western Country Clubs, Inc. ("Western") and Western will contribute cash (up to a stipulated amount per restaurant) to convert such restaurant locations to the new "Atomic Burrito" concept. The Company has a 40% ownership interest in the joint venture entities concerning Tulsa, Oklahoma and Wichita, Kansas. Western will oversee the restaurant conversion, the day-to-day operations and accounting matters of the Atomic Burrito restaurants. Furthermore, Western can elect to convert only five restaurants, instead of the aforementioned seven, by payment of a nominal amount to the Company. The joint venture agreement also calls for the opening of one Atomic Burrito restaurant in a location for which the Company currently holds an option to lease. As of March 1, 1999 there was one cobranded New York Bagel and Atomic Burrito restaurant located in Tulsa, Oklahoma, and one Atomic Burrito restaurant located in Wichita, Kansas, both of which are being converted from New York Bagel restaurants.

ITEM 2. PROPERTIES

The average New York Bagel bakery restaurant contains approximately 2,750 square feet, and the average satellite restaurant contains approximately 2,000 square feet. Approximately 1,200 square feet of a bakery restaurant is used for dough production, baking and food preparation while

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approximately 500 square feet of a satellite restaurant is used for food preparation. The Lots A' Bagel restaurants are approximately 2,000 square feet, 500 square feet of which is used for food preparation. The restaurants have an average seating capacity of approximately 60 persons. As of March 1, 1999, the Company leases approximately 1,200 to 4,000 square feet of space for 37 of its Company-owned restaurant sites. The Company also leases a 19,479 square-foot bagel commissary located at 4325 Northpark Drive, Colorado Springs, Colorado 80915, that provides all of the dough production, baking and food preparation for the eight Lots A' Bagels restaurants and a 5,800 square foot bagel commissary located at 238 Cleveland, Wichita, Kansas 67214, that provides all the dough production and bakery preparation for the four New York Bagel restaurants in Wichita. Such leases expire during June 2004 and April 2000, respectively. Through March 1, 1999, the Company has also entered into agreements whereby the Company sold and leased back ten restaurant facilities (nine land and buildings and one building only) to an entity owned by an officer of the Company and a significant stockholder, both of whom are members of the Board of Directors of the Company. The Company believes the terms and conditions of both the real estate sales and the related leasebacks are fair and reasonable and were on terms at least as favorable as would be available from non-affiliated parties. Although the terms of its leases for Company-owned restaurants vary, the Company typically seeks to obtain an initial five-year term lease with two or three five-year option terms. The following table sets forth certain information as of March 1, 1999 with respect to Company-owned and franchised restaurants currently in operation, under development or closed during 1997 or 1998. Restaurants under development include locations for which leases have been signed, a real estate purchase agreement has been executed, or construction has commenced, but are not currently in operation.

COMPANY-OWNED RESTAURANTS

LOCATION		DATE OPENED/ACQUIRED	TYPE OF RESTAURANT
NEW YORK BAGEL RESTAURANTS			
Stillwater, OK	Elm Street	January 1986	Bakery
Stillwater, OK	Downtown	August 1986	Satellite
Oklahoma City, OK	Casady Square	August 1988	Bakery
Oklahoma City, OK	Leadership Square	October 1989	Satellite
Tulsa, OK	Yale and 71st Street	January 1990	Bakery
Edmond, OK	Broadway Extension	September 1991	Satellite
Wichita, KS	East Central Avenue	July 1992	Bakery
Wichita, KS	Downtown	April 1993	Satellite
Oklahoma City, OK	Brixton Square	July 1993	Satellite
Norman, OK	Lindsey Avenue	August 1994	Bakery
Norman, OK	Campus	September 1994	Satellite
Tulsa, OK	Peoria Avenue	September 1995	Bakery
Nashville, TN	West End Avenue	December 1995	Bakery
Nashville, TN	Hillsboro Village	March 1996	Satellite
Tulsa, OK	Downtown	March 1996	Satellite
Stillwater, OK	Perkins Road	September 1996	Satellite
Lubbock, TX	Quaker Avenue	November 1996	Bakery
Tulsa, OK	51st Street	December 1996	Satellite
Oklahoma City, OK	Walnut Square	December 1996	Bakery
Wichita, KS	21st Street and Rock Road	June 1997	Satellite
Wichita, KS	21st Street and Tyler Road	July 1997	Satellite
Tulsa, OK	East 61st Street	August 1997	Satellite
Midland, TX	Desta Drive	October 1997	Bakery
Mobile, AL	Azaela Road	October 1997	Bakery
Tuscaloosa, AL	McFarland Road	October 1997	Bakery
Manhattan, KS	Belmont Avenue	November 1997	Bakery
Oklahoma City, OK	A. May Avenue	February 1998	Satellite
Mobile, AL	Hillcrest Road	March 1998	Satellite
Montgomery, AL	Carmichael Road	April 1998	Bakery

LOCATION		DATE OPENED/ACQUIRED	TYPE OF RESTAURANT
LOTS A' BAGELS RESTAURANTS			
Colorado Springs, CO	East Cheyenne Mountain Blvd.	December 1996	Satellite
Colorado Springs, CO	North Academy	December 1996	Satellite
Colorado Springs, CO	West Colorado Avenue	December 1996	Satellite
Colorado Springs, CO	Austin Bluff Parkway	December 1996	Satellite

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Colorado Springs, CO	Centennial Boulevard	December 1996	Satellite
Colorado Springs, CO	North Academy	December 1996	Satellite
Monument, CO	Highway 105	December 1996	Satellite
Pueblo, CO	Highway 50	April 1998	Satellite

</TABLE>

<TABLE>
<CAPTION>

LOCATION		DATE OPENED/ACQUIRED	TYPE OF RESTAURANT
<S>	<C>	<C>	<C>
COBRANDED JOINT VENTURE RESTAURANT			
Tulsa, OK	Cherry Street	Under Development	--

</TABLE>

<TABLE>
<CAPTION>

LOCATION		DATE OPENED/ACQUIRED	TYPE OF RESTAURANT
<S>	<C>	<C>	<C>
JOINT VENTURE RESTAURANT			
Wichita, KS	Rock Road	Under Development	--

</TABLE>

<TABLE>
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LOCATION		DATE CLOSED	TYPE OF RESTAURANT
<S>	<C>	<C>	<C>
CLOSED COMPANY RESTAURANTS			
Nashville, TN	L&C Tower	November 1997	Satellite
Santa Fe, NM	St. Michaels Boulevard	November 1997	Bakery
Santa Fe, NM	Montezuma Street	November 1997	Satellite
Waco, TX	South 5th Street	November 1997	Satellite
Austin, TX	Jefferson Street	January 1998	Satellite
Louisville, KY	Shelbyville Road	March 1998	Bakery
Nashville, TN	White Bridge Road	June 1998	Satellite
Springfield, MO	Campbell Avenue	July 1998	Bakery
Springfield, MO	Sunshine Avenue	July 1998	Satellite
Austin, TX	Research Boulevard	September 1998	Bakery
Austin, TX	Research Boulevard	September 1998	Satellite
Temple, TX	General Bruce Drive	December 1998	Bakery
San Antonio, TX	East Basse Road	December 1998	Satellite
San Antonio, TX	Embassy Oaks	December 1998	Bakery
Waco, TX	West Waco Drive	December 1998	Bakery

</TABLE>

FRANCHISED RESTAURANTS

<TABLE>
<CAPTION>

LOCATION		DATE OPENED/ACQUIRED	TYPE OF RESTAURANT
<S>	<C>	<C>	<C>
Knoxville, TN	Kingston Pike	March 1994	Bakery
Little Rock, AR	Markham Avenue	November 1994	Bakery
Littleton, CO	West Bowles Avenue	April 1995	Bakery
Plano, TX	Legacy Drive	April 1995	Bakery
Knoxville, TN	Gay Street	July 1995	Satellite
Columbia, SC	Harden Street	September 1995	Bakery
Irving, TX	North MacArthur Boulevard	March 1996	Satellite
New Orleans, LA	Veteran's Boulevard	March 1996	Bakery
Birmingham, AL	20th Street South	June 1996	Bakery
Littleton, CO	Wadsworth Avenue	September 1996	Satellite
Columbia, SC	Palmetto Plaza	October 1996	Satellite
Tyler, TX	Loop 323	February 1997	Bakery
Ft. Myers, FL	Tamiami Trail	December 1997	Bakery
Birmingham, AL	Acton Road	January 1998	Satellite
Ft. Myers, FL	Topaz Court	February 1998	Satellite
Clarksville, TN	Madison Road	March 1998	Bakery
Bismarck, ND	East Bismark Expressway	November 1998	Bakery

</TABLE>

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<TABLE>
<CAPTION>

LOCATION		DATE CLOSED	TYPE OF RESTAURANT
<S>	<C>	<C>	<C>
CLOSED FRANCHISED RESTAURANTS			
San Antonio, TX	Broadway Avenue	May 1997	Satellite
Aurora, CO	East Mississippi Street	July 1997	Satellite
Little Rock, AR	Center Street	July 1997	Satellite
Tampa, FL	North Dal Mabry Highway	September 1997	Bakery
Tucson, AZ	North Oracle Avenue	September 1997	Satellite
Springdale, AR	West Sunset	October 1997	Bakery
Fayetteville, AR	Mission Boulevard	October 1997	Satellite
Lincoln, NE	13th Street	October 1997	Satellite
Amarillo, TX	West Georgia Street	November 1997	Satellite
Amarillo, TX	Soncy Road	November 1997	Bakery
Dallas, TX	Lemmon Avenue	December 1997	Bakery
Tucson, AZ	East Broadway	December 1997	Bakery
El Paso, TX	North Mesa Avenue	March 1998	Bakery
Omaha, NE	South 106th	December 1998	Bakery
Omaha, NE	Farnam Street	December 1998	Satellite
Longview, WA	Ocean Beach Highway	December 1998	Bakery
Omaha, NE	Pacific Street	December 1998	Satellite
Englewood, CO	Holly Street	December 1998	Bakery
Little Rock, AR	Fairway Avenue	December 1998	Satellite
Aurora, CO	Parker Road	February 1999	Satellite
San Carlos, CA	Redwood Shores Parkway	February 1999	Bakery

</TABLE>

The Company's principal executive offices are located at 300 I.M.A. Plaza, 250 North Water Street, Wichita, Kansas 67202-1213, where the Company subleases approximately 2,158 square feet of office space pursuant to a sublease agreement with Murfin Drilling Company, Inc., a wholly owned subsidiary of Murfin, Inc., on a month-to-month basis. The Company has the option to terminate such sublease upon 30 days' notice. David L. Murfin, a Director of the Company, is a 21.2% stockholder of Murfin, Inc. The Company believes that alternative office space is available at comparable rates from third parties. The Company's operational offices are located at 115 East 8th, Stillwater, Oklahoma 74074, where the Company leases approximately 2,200 square feet of office space and 1,000 square feet of storage space pursuant to a lease agreement that expires during December 2001. The Company conducts its management and franchisee training at its Casady Square, Oklahoma City, Oklahoma, facility in an approximately 3,400 square foot space contiguous to the restaurant. Such facility is subject to a lease that expires during July 2003. The Company is transitioning its principal executive offices to Stillwater, Oklahoma, from Wichita, Kansas. The Company anticipates that such transition will be completed during April 1999. The Company believes that its current executive offices, operational offices and training facilities are adequate for the near future and does not anticipate the need for significant expansion of these facilities in the foreseeable future.

ITEM 3. LEGAL PROCEEDINGS

The Company is involved from time-to-time in various legal proceedings and claims incident to the normal conduct of its business. The Company believes that such legal proceedings and claims, individually and in the aggregate, are not likely to have a material adverse effect on its financial condition or results of operations.

ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

None.

RISK FACTORS

THIS FORM 10-KSB INCLUDES STATEMENTS THAT ARE "FORWARD-LOOKING STATEMENTS" WITHIN THE MEANING OF SECTION 27A OF THE SECURITIES ACT OF 1933, AS AMENDED AND SECTION 21E OF THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED, INCLUDING STATEMENTS REGARDING THE COMPANY'S EXPECTATIONS, HOPES, BELIEFS, INTENTIONS OR STRATEGIES REGARDING THE FUTURE. ALL STATEMENTS, OTHER THAN STATEMENTS OF HISTORICAL FACTS, INCLUDED IN THIS FORM 10-KSB REGARDING THE COMPANY'S FINANCIAL POSITION, BUSINESS STRATEGY AND OTHER PLANS AND OBJECTIVES FOR FUTURE OPERATIONS, ARE FORWARD-LOOKING STATEMENTS. ALL FORWARD-LOOKING STATEMENTS INCLUDED IN THIS FORM 10-KSB ARE BASED ON INFORMATION AVAILABLE TO THE COMPANY ON THE DATE HEREOF, AND THE COMPANY ASSUMES NO OBLIGATION TO UPDATE SUCH FORWARD-LOOKING STATEMENTS. ALTHOUGH THE COMPANY BELIEVES THAT THE ASSUMPTIONS AND EXPECTATIONS REFLECTED IN SUCH

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FORWARD-LOOKING STATEMENTS ARE REASONABLE, IT CAN GIVE NO ASSURANCE THAT SUCH EXPECTATIONS WILL PROVE TO HAVE BEEN CORRECT OR THAT THE COMPANY WILL TAKE ANY ACTIONS THAT MAY PRESENTLY BE PLANNED. CERTAIN IMPORTANT FACTORS THAT COULD CAUSE ACTUAL RESULTS TO DIFFER MATERIALLY FROM THE COMPANY'S EXPECTATIONS ARE DISCLOSED HEREIN, WHICH INCLUDE, WITHOUT LIMITATION, THE COMPANY'S ABILITY TO DEVELOP, CONSTRUCT, ACQUIRE OR FRANCHISE ADDITIONAL RESTAURANTS IN ACCORDANCE WITH THE COMPANY'S DEVELOPMENT SCHEDULE, CHANGES IN BUSINESS STRATEGY OR DEVELOPMENT PLANS, AVAILABILITY AND TERMS OF CAPITAL, ABILITY TO SUCCESSFULLY CONVERT CERTAIN RESTAURANTS TO ATOMIC BURRITO RESTAURANTS AND PARTICIPATE AS A JOINT VENTURE PARTNER, THE TRANSITION TO THE YEAR 2000, ACCEPTANCE OF NEW PRODUCT OFFERINGS, COMPETITION, MANAGEMENT OF QUARTER TO QUARTER EARNINGS, INCREASES IN OPERATING COSTS AND CHANGES IN GOVERNMENT REGULATION. ALL SUBSEQUENT WRITTEN OR ORAL FORWARD-LOOKING STATEMENTS ATTRIBUTABLE TO THE COMPANY OR PERSONS ACTING ON ITS BEHALF ARE EXPRESSLY QUALIFIED IN THEIR ENTIRETY BY SUCH FACTORS.

RESTAURANT OPERATION. As of March 1, 1999, there were 54 restaurants in operation, consisting of 29 New York Bagel Company-owned and 17 franchised restaurants and eight Lots A' Bagels restaurants. In addition, there were two Atomic Burrito joint venture restaurants (a cobranded New York Bagel and Atomic Burrito restaurant and a Atomic Burrito restaurant) and two franchised restaurants in various stages of development. The Company has used all of the net proceeds of its initial public offering to develop and acquire Company-owned restaurants. The opening of New York Bagel restaurants depends on various factors, not all of which are within the control of the Company, including customer acceptance of the Company's concept in markets, the availability of suitable sites, the negotiation of acceptable lease or purchase terms for new locations, the ability to introduce new products, permit and regulatory compliance, the ability to meet construction schedules, the financial and other capabilities of the Company and its franchisees, the ability of the Company to successfully manage operations and to hire and train personnel, and general economic and business conditions. Furthermore, because of the Company's relatively small restaurant base, unsuccessful restaurants have a more significant adverse effect on the Company's results of operations than would be the case for a company with a larger restaurant base. There can be no assurance that the Company will be able to manage its operations effectively. There can be no assurance that the Company will continue to experience growth in, or maintain its present level of, revenues. See "Management's Discussion and Analysis or Plan of Operation" and "Business-Company Strategy."

RESTAURANT DISPOSITIONS. As of March 1, 1999 the Company has closed 15 underperforming restaurants. The Company anticipates that it will close approximately seven additional restaurants during 1999. All of the leases that derived from the sale-leaseback transactions have initial terms of 15 years. There can be no assurance that the Company will be able to negotiate the termination of restaurant real property leases on terms acceptable to the Company.

JOINT VENTURE. The Company has entered into a joint venture agreement with Western Country Clubs, Inc. ("Western") whereby the Company will contribute certain restaurant equipment and leasehold improvements of up to seven of its restaurant locations to the joint venture entity and cash in certain instances. Also, Western will contribute cash to convert the restaurants to the Atomic Burrito concept. As of March 1, 1999 there was one cobranded New York Bagel and Atomic Burrito restaurant and one Atomic Burrito restaurant under development by the joint venture. There can be no assurance that (i) the joint venture restaurants can be converted on an economical basis, (ii) the joint venture restaurants will operate profitably or (iii) the Company will successfully participate as a joint venture partner. The opening and success of joint venture restaurants will depend on various factors, most of which are outside of the control of the Company, including Western's ability to economically convert the restaurants, customer acceptance of the new Atomic Burrito concept, permit and regulatory compliance, the financial capabilities of the Company, the ability of Western to successfully manage this anticipated development and the restaurant operations, personnel hiring and training, and general economic

and business conditions. An unsuccessful restaurant could have a significant adverse effect on the Company's results of operations. See "Management's Discussion and Analysis or Plan of Operation."

DEPENDENCE ON FRANCHISEES. The Company realizes a portion of its revenues from initial franchise fees and continuing royalty payments from its franchisees. If the Company's franchisees encounter business or operational difficulties, as several have, the Company's revenues from royalties will be adversely affected. Such difficulties may also negatively impact the Company's ability to sell new franchises. Consequently, the Company's financial prospects are related to the success of its franchised restaurants, over which the Company has limited direct operational control. There can be

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no assurance that the Company's franchisees will be able to successfully operate existing or develop and operate additional New York Bagel restaurants. Through March 1, 1999, 21 franchised restaurants have been closed or disenfranchised.

COMPETITION. The quick-service restaurant industry is intensely competitive and characterized by relatively low barriers to entry. New York Bagel restaurants compete against many well established, quick-service restaurants, local food establishments, supermarkets and convenience stores, many of which have greater product and name recognition and larger financial and other resources than the Company. An increase in the number of competitors, particularly bagel restaurants or delicatessens, in the Company's territories could have an adverse impact on the Company's results of operations and expansion plans. See "Business-Competition."

TERMS OF CREDIT FACILITY; NEED FOR ADDITIONAL CAPITAL. The Company's ability to satisfy its debt obligations will depend upon its ability to secure additional capital and its future operating performance, which will be affected by prevailing economic, financial and business conditions and other factors, some of which are beyond the control of the Company. The Company anticipates that borrowings from the Credit Facility or the refinancing of such Credit Facility and cash provided by operating activities may provide sufficient funds to finance anticipated joint venture plans, meet its operating expenses and service its debt requirements as they become due. However, the Company anticipates attempting to raise additional funds through the private sale of either equity or debt securities, even though no such funds are committed. There can be no assurance that it will be able to raise such capital or on satisfactory terms, if at all. See "Management's Discussion and Analysis or Plan of Operation - Liquidity and Capital Resources." The Company has entered into a loan agreement with revolving line of credit and term loan facilities, as amended, which has a maximum aggregate commitment of $2.5 million (the "Credit Facility") with NationsBank, N.A. (the "Bank"). The Credit Facility provides for a $2.5 million revolving line of credit commitment, subject to availability under a borrowing base calculated by reference to the level of eligible equipment, inventory and accounts receivable. The terms and conditions of the Credit Facility impose restrictions that affect, among other things, the ability of the Company to incur debt; make capital expenditures; redeem equity interests; loan funds to any of the Company's officers, directors and employees and their respective affiliates; merge; sell assets; make distributions; pay dividends; create or incur liens; waste assets; change the senior management; change the name and/or change the location of the assets. Availability of the Credit Facility is also subject to certain financial covenants. As of December 27, 1998, the Company was not in compliance with certain restrictive covenants contained in the Credit Facility which require specified financial ratios. However, the Company does not believe such noncompliance will adversely impact liquidity, although there is no assurance of such. The Bank has waived such default for the fiscal year ended 1998. In the event of a default, the Bank could elect to declare the outstanding principal amount of the Credit Facility, all interest thereon and all other amounts payable under the Credit Facility to be immediately due and payable. If the Company were unable to repay such amounts, the Bank could proceed against the collateral securing the Credit Facility, substantially all of the Company's assets, to repay the indebtedness and other obligations due and payable.

RESTAURANT INDUSTRY. The Company and the restaurant industry are significantly affected by factors such as changes in local, regional or national economic conditions; changes in consumer tastes and concerns about the nutritional quality of quick-service foods. Multi-unit food service chains such as the Company can also be substantially adversely affected by publicity resulting from food quality, illness, injury or other health concerns or operating issues stemming from one restaurant or a limited number of restaurants. In addition, factors such as increases in food, labor and energy costs; the availability and cost of suitable restaurant sites; fluctuating insurance rates; state and local regulations and the availability of an adequate number of hourly-paid employees can also adversely affect the restaurant industry.

DEPENDENCE ON KEY PERSONNEL. The Company's future success will be highly dependent on the continued efforts of senior management. The Company does not have employment agreements with any of its senior management. The loss of the services of one or more of such key personnel could have a materially adverse effect upon the Company's results of operations. The Company's success is also dependent upon its ability to attract and retain skilled restaurant managers and employees and the ability of its key personnel to manage the Company's restaurants and integrate its operations. There can be no assurance that the Company will be successful in attracting and retaining such personnel.

INCREASES IN OPERATING COSTS; INTERRUPTIONS IN SUPPLIES. An increase in operating costs could adversely affect the profitability of the Company.

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Factors such as inflation; increased food and labor costs, including the additional and any future increase in the minimum hourly wage requirement, and employee benefit costs and the availability of qualified management and other personnel may adversely affect the profitability of the Company. The cost and availability of many restaurant commodities are subject to fluctuations due to seasonality, weather, demand and other factors. The Company's restaurants are dependent on frequent deliveries of food supplies and any shortages or interruptions could have a material adverse effect on the Company. See "Business-Purchasing and Distribution."

YEAR 2000. The Company believes that the transition to the Year 2000 will be a challenge to the Company and businesses generally. The Company continues to address its material internal processes that may be affected by the Year 2000 and has made inquiries of its material third-party suppliers. If the Company experiences internal problems or if a material supplier is not able to perform, the Company could incur material disruptions to its business, which in turn could have a material adverse effect on the Company. See "Management's Discussion and Analysis or Plan of Operation - Year 2000."

GEOGRAPHIC CONCENTRATION. All of the Company-owned restaurants are located in Oklahoma, Kansas, Tennessee, Texas, Colorado and Alabama. As a result, the Company's results of operations may be materially affected by adverse business, economic or weather conditions in these states. There can be no assurance that the current geographic concentration of the Company's business will not have an adverse effect on its results of operations or financial condition in the future.

FLUCTUATIONS IN QUARTERLY RESULTS. The timing of restaurant openings, closings, remodelings or acquisitions, impairments, recognition of franchise fee income and seasonal factors may result in fluctuations in quarterly operating results of the Company. In accordance with generally accepted accounting principles, franchise and development fees and the corresponding deferred charges with respect to each franchise or development agreement are not recognized as income or expense until a restaurant commences operations. There can be no assurance that quarterly fluctuations will not continue and, accordingly, the Company's financial results for a particular quarter may not be indicative of results for an entire year.

CONTROL OF COMPANY. As of March 1, 1999 the directors and officers of the Company beneficially owned approximately 45.3% of the outstanding Common Stock of the Company. In addition, the stockholders that existed prior to the Company's initial public offering and the Company are parties to a certain stockholders' agreement (the "Stockholders' Agreement"), which, among other things, sets forth certain agreements regarding the designation and election of directors of the Company. Due to their ownership position and the Stockholders' Agreement, such stockholders are anticipated to retain the power to direct the Company's business and affairs through their ability to control the outcome of elections of the Company's Board of Directors and to take other actions that require the vote or approval of the stockholders of the Company. Such stockholders' control may increase as a percentage of outstanding Common Stock of the Company due to open-market purchases of the Common Stock by the Company pursuant to the terms of the Stock Repurchase Program discussed below.

GOVERNMENT REGULATION. The Company is subject to numerous federal, state and local government regulations, including those relating to the preparation and sale of food, the sale of alcoholic beverages, public health and building and zoning requirements. Also, the Company and its franchisees are subject to laws governing their relationship with employees, including minimum-wage requirements, overtime, working conditions and citizenship requirements. The Company is also subject to federal regulation and certain state laws which govern the offer and sale of franchises. Many state franchise laws impose substantive requirements on franchise agreements, including limitations on non-competition provisions and termination or non-renewal of a franchise. Some states require that certain franchise offering materials be

registered before franchises can be offered or sold in that state. The failure to obtain or retain food licenses, alcoholic beverage licenses or approvals to sell franchises could adversely affect the Company's and its franchisees' results of operations. The future enactment, adoption or amendment of laws or regulations, such as establishing basic franchisee rights, increasing the minimum wage or other costs associated with employees, could adversely affect the Company's results of operations. See "Business-Franchise Program" and "Business-Government Regulation."

TRADEMARKS AND SERVICE MARKS. The Company is aware of the use by other persons and entities in certain geographic areas of names and marks that are the same as or similar to the Company's marks. Some of these persons or entities may have prior rights to those names or marks in their respective localities. Negative publicity surrounding such businesses may adversely affect the Company's operations in those markets. In addition, the Company's marks contain common descriptive words and thus may be subject to challenge

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by users of these words, alone or in combination with other words, which describe other services or products. Accordingly, there is no assurance that the Company's marks will be available in all locations or that a challenge to the Company's use of such marks will not result in adverse consequences, including a judgment that would entail damages and/or the discontinuation of the Company's use of its marks. It is the Company's policy to utilize other compatible marks in areas where there are preexisting competing marks. See "Business-Trademarks and Service Marks."

CLASSIFIED BOARD OF DIRECTORS. The Company's Restated and Amended Articles of Incorporation and Restated and Amended Bylaws provide for a classified Board of Directors. The terms of each class expire in consecutive years so that only one class is elected in any given year. Such provisions could delay, deter or prevent a merger, consolidation, tender offer or other business combination or change of control involving the Company that some or a majority of the Company's stockholders might consider to be in their best interests, including offers or attempted takeovers that might otherwise result in such stockholders receiving a premium over the market price for the Common Stock.

PREFERRED STOCK. The Company's Restated and Amended Articles of Incorporation and Restated and Amended Bylaws authorize shares of Preferred Stock with respect to which the Board of Directors of the Company have the power to fix the rights, preferences, privileges and restrictions without any further vote or action by the stockholders. Depending upon the rights of such Preferred Stock, the issuance of Preferred Stock could have an adverse effect on holders of Common Stock by delaying or preventing a change in control of the Company, diluting the voting rights of holders of Common Stock, making removal of the present management of the Company more difficult or reducing or restricting the payment of dividends and other distributions to the holders of Common Stock, including, without limitation, any liquidation preferences which may relate to such Preferred Stock. Such provisions could delay, deter or prevent a merger, consolidation, tender offer, or other business combination or change of control involving the Company that some or a majority of the Company's stockholders might consider to be in their best interests, including offers or attempted takeovers that might otherwise result in such stockholders receiving a premium over the market price for the Common Stock.

SUPERMAJORITY STOCKHOLDER VOTES. The Company's Restated and Amended Articles of Incorporation and Restated and Amended Bylaws require the affirmative vote of the holders of at least two-thirds of the outstanding capital stock in order to remove directors for cause, amend the Bylaws and approve certain business combinations with respect to a "related person." Such provisions could delay, deter or prevent a merger, consolidation, tender offer or other business combination or change of control involving the Company that some or a majority of the Company's stockholders might consider to be in their best interests, including offers or attempted takeovers that might otherwise result in such stockholders receiving a premium over the market price for the Common Stock.

ABSENCE OF ACTIVE MARKET; VOLATILITY OF STOCK PRICE. Generally, due to the Company's Common Stock trading on the Nasdaq's OTC Bulletin Board, there can be no assurance that any market for the Company's Common Stock will exist. Therefore, a purchaser of the Common Stock may not be able to readily liquidate its investment in the Common Stock. Market prices for the Common Stock may be influenced by a number of factors, including the Company's operating results and other factors affecting the Company specifically and the restaurant industry and the financial markets generally, as well as the liquidity of the market for the Common Stock. The Company believes that the market price of its Common Stock reflects expectations that the Company will be able to operate its restaurants profitably and to successfully participate as a joint venture partner in the Atomic Burrito joint venture restaurants. If the Company is unable to operate its restaurants profitably and successfully participate as a joint venture partner in the Atomic Burrito restaurants at a pace that reflects the

expectations of the market, investors could sell shares of the Common Stock at or after the time that it becomes apparent that such expectations may not be realized, resulting in a decrease in the market price of the Common Stock. In recent years the stock market has experienced extreme price and volume fluctuations. This volatility has had a significant effect on the market prices of securities issued by many companies for reasons unrelated to their operating performance.

SHARES ELIGIBLE FOR FUTURE SALE. Shares of Common Stock outstanding prior to completion of the Company's initial public offering are "restricted securities" as that term is defined in Rule 144 ("Rule 144") promulgated under the Securities Act of 1933, as amended (the "Securities Act"). These "restricted securities," and any shares purchased by affiliates of the Company in such offering or thereafter may be publicly sold only if

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registered under the Securities Act or if sold in accordance with an available exemption from registration, such as those provided by Rule 144. No prediction can be made as to the effect, if any, that future sales of shares, or the availability of shares for future sales, will have on the market price of the Common Stock. The sale of substantial amounts of Common Stock, or the perception that such sales could occur, could adversely affect the prevailing market price for the Common Stock.

PART II

ITEM 5. MARKET FOR COMMON EQUITY AND RELATED STOCKHOLDER MATTERS

MARKET INFORMATION

The Company's Common Stock is currently traded on the Nasdaq OTC Bulletin Board under the symbol "NYBS." From August 27, 1996 (the date of the Company's initial public offering), through November 30, 1998, the Company's Common Stock was traded on the Nasdaq National Market. Prices on the Nasdaq OTC Bulletin Board reflect inter-dealer prices, without retail mark-up, mark-down or commission and may not represent actual transactions.

The table sets forth, for the periods indicated, the reported high and low bid prices of the Company's Common Stock, as reported on the respective Nasdaq National Market and the Nasdaq OTC Bulletin Board as discussed above:

	1997	
	HIGH BID	LOW BID
First Quarter	$7.63	$3.94
Second Quarter	$5.31	$4.00
Third Quarter	$4.31	$3.25
Fourth Quarter	$4.00	$1.88

	1998	
	HIGH BID	LOW BID
First Quarter	$2.50	$1.50
Second Quarter	$1.88	$0.97
Third Quarter	$1.06	$0.75
Fourth Quarter	$0.88	$0.19

STOCKHOLDERS

According to the records of the Company's transfer agent, the Company had 129 holders of record of the Common Stock as of March 1, 1999. The Company believes that a substantially larger number of beneficial owners hold such shares in depository or nominee form.

DIVIDENDS AND DISTRIBUTIONS

S CORPORATION DISTRIBUTIONS. From January 1, 1994 until August 25, 1996 (the "Termination Date"), the Company and certain of the Prior Entities were treated for federal and state income tax purposes as S corporations under Subchapter S of the Internal Revenue Code of 1986, as amended (the "Code"). During such period, the Company's earnings were taxed

for federal and most state income tax purposes directly to the Company's stockholders, rather than to the Company. The Company is responsible for the payment of all federal and state income taxes on earnings subsequent to the Termination Date and continuing thereafter.

Certain Prior Entities paid cash distributions to their stockholders in the aggregate amounts of approximately $2.5 million during 1995. The distributions made in 1995 were in excess of the earnings of such Prior Entities and were partially funded by borrowings of such Prior Entities which were assumed by the Company in connection with the Reorganization. The Company repaid all of its bank borrowings with a portion of the net proceeds of its initial public offering. The Company used a portion of the net proceeds of its initial public offering to fund a distribution on March 4,

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1997 of $156,000 to the stockholders that existed prior to the Company's initial public offering in connection with their estimated federal and state income tax obligations attributable to the Company's 1996 earnings through the Termination Date. Under federal tax laws, if the Company failed to distribute its undistributed S corporation earnings within a limited period of time following the Termination Date, a later distribution could be taxed as a dividend to the stockholders. No S corporation distributions have been or are anticipated to be made to the stockholders in connection with the Company's earnings for any period after the Termination Date.

DIVIDEND POLICY. The Company currently intends to retain all earnings to provide funds for its operations and expansion and, therefore, does not anticipate paying cash dividends or making any other distributions on its shares of Common Stock in the foreseeable future. The Company's future dividend policy will be determined by its Board of Directors based on various factors, including the Company's results of operations, financial condition, business opportunities, capital requirements, credit restrictions and such other factors as the Board of Directors may deem relevant. The Company's ability to pay dividends is restricted by the terms of the Credit Facility.

ITEM 6. MANAGEMENT'S DISCUSSION AND ANALYSIS OR PLAN OF OPERATION

OVERVIEW

THIS FORM 10-KSB INCLUDES STATEMENTS THAT ARE "FORWARD-LOOKING STATEMENTS" WITHIN THE MEANING OF SECTION 27A OF THE SECURITIES ACT OF 1933, AS AMENDED AND SECTION 21E OF THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED, INCLUDING STATEMENTS REGARDING THE COMPANY'S EXPECTATIONS, HOPES, BELIEFS, INTENTIONS OR STRATEGIES REGARDING THE FUTURE. ALL STATEMENTS, OTHER THAN STATEMENTS OF HISTORICAL FACTS, INCLUDED IN THIS FORM 10-KSB REGARDING THE COMPANY'S FINANCIAL POSITION, BUSINESS STRATEGY AND OTHER PLANS AND OBJECTIVES FOR FUTURE OPERATIONS, ARE FORWARD-LOOKING STATEMENTS. ALL FORWARD-LOOKING STATEMENTS INCLUDED IN THIS FORM 10-KSB ARE BASED ON INFORMATION AVAILABLE TO THE COMPANY ON THE DATE HEREOF AND THE COMPANY ASSUMES NO OBLIGATION TO UPDATE SUCH FORWARD-LOOKING STATEMENTS. ALTHOUGH THE COMPANY BELIEVES THAT THE ASSUMPTIONS AND EXPECTATIONS REFLECTED IN SUCH FORWARD-LOOKING STATEMENTS ARE REASONABLE, IT CAN GIVE NO ASSURANCE THAT SUCH EXPECTATIONS WILL PROVE TO HAVE BEEN CORRECT OR THAT THE COMPANY WILL TAKE ANY ACTIONS THAT MAY PRESENTLY BE PLANNED. CERTAIN IMPORTANT FACTORS THAT COULD CAUSE ACTUAL RESULTS TO DIFFER MATERIALLY FROM THE COMPANY'S EXPECTATIONS ARE DISCLOSED IN THE "RISK FACTORS" SECTION OF THIS FORM 10-KSB ANNUAL REPORT, WHICH INCLUDE, WITHOUT LIMITATION, THE COMPANY'S ABILITY TO DEVELOP, CONSTRUCT, ACQUIRE OR FRANCHISE ADDITIONAL RESTAURANTS IN ACCORDANCE WITH THE COMPANY'S DEVELOPMENT SCHEDULE, CHANGES IN BUSINESS STRATEGY OR DEVELOPMENT PLANS, AVAILABILITY AND TERMS OF CAPITAL, ABILITY TO SUCCESSFULLY CONVERT CERTAIN RESTAURANTS TO ATOMIC BURRITO RESTAURANTS AND PARTICIPATE AS A JOINT VENTURE PARTNER, THE TRANSITION TO THE YEAR 2000, ACCEPTANCE OF NEW PRODUCT OFFERINGS, COMPETITION, MANAGEMENT OF QUARTER TO QUARTER EARNINGS, INCREASES IN OPERATING COSTS AND CHANGES IN GOVERNMENT REGULATION. ALL SUBSEQUENT WRITTEN OR ORAL FORWARD-LOOKING STATEMENTS ATTRIBUTABLE TO THE COMPANY OR PERSONS ACTING ON ITS BEHALF ARE EXPRESSLY QUALIFIED IN THEIR ENTIRETY BY SUCH FACTORS.

The Company opened its first restaurant in 1986, and, as of March 1, 1999, all of its Company-owned restaurants, including Lots A' Bagels restaurants, operate in Oklahoma, Kansas, Tennessee, Texas, Alabama and Colorado. In addition to developing new restaurants, as of March 1, 1999 the Company has acquired one bagel restaurant in Tennessee, seven Lots A' Bagels restaurants in Colorado and four franchised New York Bagel restaurants in Kansas and Texas. The Company commenced franchising the New York Bagel concept in 1993 and as of March 1, 1999 has 10 franchisees operating 17 restaurants.

The Company's business was previously operated through the Prior Entities. The Company was incorporated in December 1995 under the laws of Kansas, and on December 31, 1995, the Prior Entities were merged into the Company (the "Reorganization").

The Company's revenues are derived from sales from Company-owned restaurants and franchise revenues which consist of royalties from franchised restaurant sales as well as franchise and development fees. Franchise and development fees are initially recorded as deferred revenue until each franchised restaurant opens, at which time these fees are recorded as revenue.

Cost of sales includes food, paper and beverage costs associated with Company-owned restaurants. Restaurant operating expenses consist primarily of labor costs, rent, advertising, utilities, maintenance and insurance associated with Company-owned restaurants. General and administrative expenses include corporate and administrative salaries, accounting, legal and direct costs associated with franchise operations.

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The Company completed its initial public offering in August 1996 in which it raised $14.7 million that enabled the Company to grow and expand. From August 1996 through February 1998, the Company utilized such proceeds to develop 26 new restaurants and to acquire 11 additional restaurants. Consequently, Company-owned restaurants have increased from 20 restaurants just prior to the initial public offering to 37 Company-owned restaurants as of March 1, 1999. During 1998, the Company shifted its strategy from that of aggressive growth to that of limited growth with an enhanced focus on operations and closure of underperforming restaurants in an attempt to achieve profitability. The Company anticipates continuing this strategy during 1999. The strategy includes new product initiatives that are anticipated to stimulate sales growth from existing restaurants. It also includes a focus on cost controls, primarily cost of sales and restaurant operating expenses. The Company anticipates that its limited development and enhanced focus on operations will position the Company to renew restaurant development and growth. In addition, the Company has entered into a joint venture agreement with Western Country Clubs, Inc., parent of the Atomic Burrito fresh mex restaurant concept, to open up to seven joint venture restaurants. As of March 1, 1999, two joint venture restaurants are under development through conversion of New York Bagel restaurants.

RESULTS OF OPERATIONS

The following table sets forth the percentage relationship of certain operating statement data to total revenues except as otherwise indicated:

	FIFTY-TWO WEEKS ENDED	
	DECEMBER 27, 1998	DECEMBER 28, 1997
Revenues:		
Sales from Company-owned restaurants	99.2%	97.8%
Franchise revenues	0.8	2.2
Total revenues	100.0%	100.0%
Costs and expenses:		
Cost of sales(1)	36.4%	33.3%
Restaurant operating expenses(1)	57.4	55.3
General and administrative expenses	8.0	9.6
Depreciation and amortization	5.0	4.9
Provision for impairments and closures	24.7	19.9
Operating income (loss)	(30.7)	(21.0)
Interest expense (income), net	(0.8)	(0.4)
Cumulative effect of accounting change, net of tax benefit	-	(0.7)
Net earnings (loss)	(31.5)	(20.6)

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(1) As a percentage of sales from Company-owned restaurants.

FISCAL YEAR 1998 COMPARED TO FISCAL YEAR 1997

Total revenues remained constant at $19.0 million for 1998 compared to 1997. The additional revenue derived from the Company's restaurant openings was offset by the revenues lost as a result of the Company's closing certain restaurants as well as other factors discussed below.

Sales from Company-owned restaurants increased $273,000, or 1.5%, to $18.8 million for 1998 compared to $18.6 million for 1997. This is primarily the result of opening five additional Company-owned restaurants during 1998 and the full year sales from those restaurants opened during 1997. The Company's closing 11 restaurants during 1998 offset the increase. In addition, the Company experienced a 15.0% decrease in same restaurant sales (sales from restaurants that were open during the entire period indicated and the entire corresponding prior period) during 1998 primarily as a result of the following: (i) increased competition; (ii) increased development within certain markets; and (iii) the maturation of the bagel industry. The Company anticipates closing seven additional restaurants during 1999. As of December 27, 1998, the Company had 38 Company-owned restaurants compared to 45 restaurants as of December 28, 1997.

Franchise revenues decreased by $273,000, or 65.6%, to $144,000 for 1998 compared to $417,000 for 1997. This decrease is primarily due to the closing or disenfranchising of 10 franchise restaurants during 1998. There were 19 franchised restaurants at the end of 1998 as compared to 25 franchised restaurants at the end of 1997. Consequently, franchise and

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development fees decreased $100,000, or 67.8%, to $48,000 for 1998 compared to $148,000 for 1997 and franchise royalty revenue decreased by $174,000, or 64.4%, to $96,000 for 1998 compared to $270,000 for 1997. Franchise royalty revenue has also decreased due to the discontinuance of royalty revenue recognition on certain franchise restaurants due to collectibility concerns. Due to the aforementioned activity within the franchise program and because the Company is not currently seeking new franchisees, management expects franchise revenues to continue to decline.

Cost of sales increased by $700,000, or 10.8%, to $6.9 million for 1998 compared to $6.2 million for 1997. This increase is primarily attributable to the increase in sales from Company-owned restaurants, as well as the increased cost of butterfat related items, principally cream cheese and processed cheeses, which increased substantially in price in 1998, and closed restaurant food inventory that was not useable. As a percentage of sales from Company-owned restaurants, cost of sales increased to 36.4% in 1998 from 33.3% in 1997 primarily as a result of the above increased price of butterfat products.

Restaurant operating expenses increased by $500,000, or 5.3%, to $10.8 million for 1998 compared to $10.3 million for 1997. This increase is primarily due to the increase in labor, utility and rent costs. As a percentage of sales from Company-owned restaurants, restaurant operating expenses increased to 57.4% for 1998 from 55.3% for 1997. This increase is primarily the result of the following: (i) rental payments concerning the sale/leaseback restaurants; (ii) the increase in the minimum wage rate; and (iii) the decrease in same-store sales as discussed above.

General and administrative expenses decreased by $300,000, or 16.7%, to $1.5 million for 1998 compared to $1.8 million for 1997. This decrease is primarily attributable to administrative staff reductions and related costs. As a percentage of total revenues, general and administrative expenses decreased to 8.0% in 1998 from 9.6% in 1997 primarily due to the reduction in management staff. The Company repositioned middle management area restaurant managers into the restaurants during the third quarter of 1998.

Depreciation and amortization increased by $13,000, or 1.4%, to $943,000 for 1998 compared to $930,000 for 1997. As a percentage of total revenues, depreciation and amortization increased to 5.0% for 1998 from 4.9% in 1997. This nominal increase is due to new restaurant fixtures and equipment depreciation and amortization additions being offset by the reduction in depreciation and amortization as a result of restaurant closings and impairment provisions. Newly developed restaurants with increased property and equipment costs incur higher depreciation and amortization as compared to older restaurants that were not as expensive to develop. The increase from new restaurant development has been offset, to a certain extent, by the Company's recognition of either impairment charges against assets or restaurant closures recognized during 1997 and 1998.

A provision for impairment and restaurant closures of $4.7 million was recorded in 1998 and $3.8 million was recorded in 1997. Based on management's review of Company-owned operating markets, one market was determined to be impaired in 1998 primarily due to current and historical operating losses and four markets were impaired in 1997. The impairment charge, which amounted to $585,000 in 1998 and $2.4 million in 1997, represents a reduction of the carrying value of long-lived assets held and used (property, equipment and goodwill) to their estimated fair value. In addition, the Company closed or approved for closure 18 under-performing restaurants in 1998. Accordingly, restaurant closure costs of $4.1 million were recorded in 1998 and $1.4 million in 1997. Such costs included the write down of the carrying amount of assets to estimated fair value of $2.9 million and the present value of remaining noncancelable lease payments after the closure date, net of estimated sublease income or the effect of early lease termination, of $1.2 million.

Net interest expense increased by $227,000 to $154,000 for 1998 compared to net interest income of $73,000 for 1997. The increase in net interest expense is due to the $1.8 million outstanding under the Credit Facility as compared to the interest income earned from the remaining proceeds of the Company's initial public offering that was completed in August 1996 and a significant reduction in interest expense. The Company expects that it will continue to incur interest expense in the foreseeable future as the proceeds from the public offering have been fully utilized; the Company has $1.8 million outstanding under its Credit Facility as of March 1, 1999, and the Company anticipates the need to raise additional capital to fund operations.

No income tax benefit was recognized in 1998 as compared to income tax benefit of $144,000 for 1997. The tax benefit is net of an increase in

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the valuation allowance of $2.2 million in 1998 and $1.2 million in 1997. Based on the cumulative net loss over the past three years, management believes that the valuation allowance is appropriate due to the uncertainty regarding the realization of the Company's net deferred tax assets.

During 1997, the Company changed its accounting policy concerning restaurant preopening costs. In prior periods, the Company initially capitalized and then amortized preopening costs over the initial 12-months of a restaurant's operation. Under the new method, the Company expenses restaurant preopening costs as incurred. As a result, restaurant preopening costs, net of the cumulative effect of the accounting change discussed below, are included in restaurant operating expenses in 1997 as compared to a component of depreciation and amortization in 1996. Management believes the change is preferable to obtain a better matching of expenses with revenues. The change is considered a cumulative effect-type accounting change and, accordingly, the cumulative effect as of the beginning of fiscal 1997 of $129,000, net of tax benefit of $81,000, has been reported in 1997.

LIQUIDITY AND CAPITAL RESOURCES

The Company requires capital primarily for the development of new restaurants, maintenance of existing Company-owned restaurants and the participation as a joint venture partner in certain Atomic Burrito restaurants. Capital expenditures totaled $7.3 million and $1.6 million for 1997 and 1998, respectively. Acquisition expenditures totaled $1.4 million in 1997. Historically, the Company has funded its capital expenditures with proceeds from its initial public offering, proceeds from bank borrowings, and cash flows from operating activities. Net cash provided by operating activities was $672,000 and ($51,000) for 1997 and 1998, respectively. The decrease in cash flow from operations from 1997 to 1998 is due primarily to the underperforming restaurants that have been previously identified for closure.

The Company distributed $156,000 on March 4, 1997 to the stockholders existing prior to its initial public offering in connection with their estimated federal and state income tax obligations attributable to the Company's 1996 earnings prior to the Termination Date. No other dividends were declared or paid in 1997 or 1998 and it is currently the Company's intention to utilize all cash flows from operations to fund operations and expansion. Thus, the Company does not anticipate paying cash dividends in the foreseeable future.

Based on its contemplated limited expansion plans of new Company-owned restaurants and participation as a joint venture partner in certain Atomic Burrito restaurants, the Company estimates that its total capital expenditures will be approximately $200,000 in 1999. The Company expects that borrowings from the Credit Facility discussed below or the refinancing of borrowings from such Credit Facility and cash provided by operating activities may be sufficient to finance

such capital expenditures. The Company anticipates the need to raise additional funds through the private sale of either equity or debt securities even though no such funds are committed.

CREDIT FACILITY. On September 5, 1997, the Company entered into a loan agreement with a revolving line of credit and term loan facilities which had a maximum aggregate commitment of $10.0 million (the "Credit Facility") with NationsBank, N.A. (the "Bank"). The Credit Facility provided for a $10.0 million revolving line of credit commitment, subject to availability under a borrowing base calculated by reference to the level of eligible equipment, inventory and accounts receivable, and included a $2.0 million sublimit for new construction, remodeling and acquisition of restaurant locations. The Credit Facility also contained a "mini-perm" facility financing for new construction, remodeling and acquisition of restaurant locations with a ten year amortization and a balloon payment within five years. Interest on borrowings outstanding under the revolving line of credit facility is payable at an annual rate set forth in each note. All such notes currently outstanding are at the Bank's prime rate plus one percent. The Credit Facility is secured by substantially all of the Company's assets and matures on September 15, 1999. The proceeds from the Credit Facility (which are classified as a current liability at December 27, 1998) were primarily used for acquisition of long-lived assets such as property and equipment. During August 1998, the Company refinanced for an additional year, which now matures on September 1, 1999. During this refinancing, all outstanding notes, other than the $250,000 revolving note, were consolidated and the total commitment was decreased to $2.5 million. The note is amortized over approximately a seven-year period requiring monthly payments of principal and interest of $29,000. As of March 1, 1999, the Company has approximately $1.8 million in outstanding borrowings pursuant to the Credit Facility. As of December 27, 1998 the Company was not in compliance with certain restrictive covenants

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contained in the Credit Facility which require specified financial ratios. However, the Company does not believe such noncompliance will adversely impact liquidity although there is no assurance of such. The Bank has waived such default for the fiscal year ended 1998.

SALE-LEASEBACK TRANSACTIONS. During February 1998, July 1998 and January 1999, the Company entered into agreements to sell and lease back five restaurant sites with an entity owned by a prior officer of the Company and a significant stockholder, both of whom are Directors. The sale-leaseback transactions include five Company-owned restaurant locations (one was a building only) in which the Company sold such properties to such entity for approximately $1.9 million and leased them back for a 15-year period. The Company believes that the terms and conditions of both the real estate sale and the related lease back were fair and reasonable and were on terms at least as favorable as would be available from non-affiliated parties. The Company utilized the proceeds to reduce borrowings under the Credit Facility and to fund operations.

STOCKHOLDER LOANS. During January 1999, the Company borrowed $200,000 in total from Messrs. Geresi, Murfin, Sorrentino (all Directors) and Vrana (a significant stockholder). Each note is in the principal amount of $50,000 and bears interest at 12.75% per annum which is paid quarterly beginning March 31, 1999. The notes are due on December 31, 1999 with accrued interest. The notes are not secured.

STOCK REPURCHASE PROGRAM. In January 1998, the Company's Board of Directors approved a plan to repurchase up to 1.0 million shares of the Company's Common Stock (the "Stock Repurchase Program"). Purchases pursuant to the Stock Repurchase Program are to be made from time to time in the open market or directly from stockholders at prevailing market prices. The Stock Repurchase Program is anticipated to be funded with internally generated cash and borrowings under the Credit Facility or the refinancing of such Credit Facility. As of March 1, 1999, the Company had purchased 10,400 shares of Common Stock for $17,974. The Company anticipates limited purchases, if any, pursuant to the Stock Repurchase Program during fiscal 1999.

FINANCIAL CONDITION. Total assets at December 27, 1998 were $8.0 million as compared to $14.1 million at December 28, 1997. Cash and cash equivalents and investment securities available for sale have significantly decreased due to the Company's significant capital investments in developing and acquiring Company-owned restaurants. This is the primary reason for the $1.6 million overall decrease in current assets. Deferred costs have been almost eliminated due to the change in accounting for restaurant preopening costs, as previously discussed, and the limited new franchise development. Current liabilities have decreased $800,000 primarily as a result of the repayments made under the Credit Facility of $600,000 and a decrease of accounts payable of $200,000 in 1998. Other long-term liabilities reflect the noncurrent portion of the accrual for future noncancelable lease obligations on closed restaurants. Stockholders' equity has decreased from $9.8 million in 1997 to $3.7 million in 1998 primarily due to the $4.7 million charge for impairments

and restaurant closures incurred in 1998. The charge is primarily reflected as a reduction in the carrying value of property and equipment.

YEAR 2000

The Company's Year 2000 issues involve (i) its restaurant point of sale function, (ii) its outsourced payroll function, (iii) its financial/management reporting function and (iv) its vendors.

The Company believes its point-of-sale equipment is Year 2000 compliant and has been informed by the software and hardware provider that Year 2000 compliant software will be available to the Company during 1999. Also, the Company believes that it has sufficient manual back-up procedures upon which the Company could rely to continue operations, if required to do so. The Company has been informed by the provider of its outsourced payroll services that such services are Year 2000 compliant. The Company previously utilized data processing services from an entity controlled by a director of the Company in connection with the Company's financial/management reporting function. The Company has installed its own data processing capabilities during 1999. The Company estimates the cost of a new data processing system, which is Year 2000 compliant, to be less than $75,000. The costs of becoming Year 2000 compliant, other than cost related to the implementation of the new internal data processing system, are not expected to be material.

The Company purchases products and services from various vendors. If the Company is not able to acquire such products and services due to any vendor's inability to address the Year 2000 issue, the Company could incur a disruptive effect on its business. However, the key providers of such

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products and services are generally large and sophisticated entities and the Company does not expect to incur a material disruption to its business from the Year 2000 issue. In November 1998, the Company circulated a questionnaire to its large vendors to determine their status regarding addressing the Year 2000 issue. The vendors that have responded to the questionnaire have indicated that they have addressed the issue or will do so timely.

INFLATION

The Company believes that the relatively moderate rates of inflation over the past few years have not had a significant impact on its results of operations or total revenues.

CHANGE IN FISCAL YEAR

As of January 1999, the Company elected to change the Company's fiscal year end from a 52/53 week fiscal year, ending on the last Sunday of the year, to a 52/53 week fiscal year ending on the last Wednesday of the year, which consists of four 13-week periods. This change in fiscal year end was effective for the 1999 fiscal year beginning Monday, December 28, 1998, and ending Wednesday, December 29, 1999. The report covering the transition period will be filed on Form 10-QSB for the period ending March 31, 1999, which report will include an additional three-day period due to the change in fiscal year.

ITEM 7. FINANCIAL STATEMENTS

Reference is made to the Consolidated Financial Statements referred to in the Index on page F-1 setting forth the consolidated financial statements of New York Bagel Enterprises, Inc., and Subsidiary, together with the report of KPMG LLP dated March 12, 1999.

ITEM 8. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

None.

PART III

ITEM 9. DIRECTORS, EXECUTIVE OFFICERS, PROMOTERS AND CONTROL PERSONS; COMPLIANCE WITH SECTION 16(a) OF THE EXCHANGE ACT

Information required by this Item 9 is incorporated herein by reference to "Directors and Executive Officers of the Company" in the Company's Proxy Statement.

ITEM 10. EXECUTIVE COMPENSATION

Information required by this Item 10 is incorporated herein by reference to "Executive Compensation -Compensation Committee Interlocks and Insider Participation, -Summary Compensation Table, -Stock Option Grant Table, -Aggregate Option Exercises in Last Fiscal Year and Fiscal Year-End Option Values Table, -Employment Arrangements, and -Incentive Plan" and "Directors and Executive Officers of the Company-Compensation of Directors" in the Company's Proxy Statement.

ITEM 11. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

Information required by this Item 11 is incorporated herein by reference to "Security Ownership of Certain Beneficial Owners and Management" in the Company's Proxy Statement.

ITEM 12. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

Information required by this Item 12 is incorporated herein by reference to "Certain Relationships and Related Transactions" in the Company's Proxy Statement.

ITEM 13. EXHIBITS AND REPORTS ON FORM 8-K

(a) EXHIBITS. Reference is made to the Index to Exhibits on page E-1 for a list of all exhibits filed as part of this Report.

(b) REPORTS ON FORM 8-K. None.

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SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended, the Registrant has duly caused this Report to be signed on its behalf by the undersigned, thereunto duly authorized this 25th day of March, 1999.

NEW YORK BAGEL ENTERPRISES, INC.

By: /s/ Robert J. Geresi

Robert J. Geresi
CHIEF EXECUTIVE OFFICER AND PRESIDENT

Pursuant to the requirements of the Securities Exchange Act of 1934, this Report has been signed below by the following persons on behalf of the Registrant and in the capacities and on the dates indicated.

SIGNATURE	TITLE	DATE
/s/ William J. Walsh, Jr. William J. Walsh, Jr.	Chairman of the Board of Directors	March 25, 1999
/s/ Robert J. Geresi Robert J. Geresi	Chief Executive Officer, President and Director (Principal Executive Officer)	March 25, 1999
/s/ Richard Randall Webb Richard Randall Webb	Chief Financial Officer, Secretary and Treasurer (Principal Financial and Accounting Officer)	March 25, 1999
/s/ Paul T. Sorrentino Paul T. Sorrentino	Vice President-New Store Development and Director	March 25, 1999
/s/ Paul R. Hoover Paul R. Hoover	Director	March 25, 1999
/s/ David L. Murfin David L. Murfin	Director	March 25, 1999

NEW YORK BAGEL ENTERPRISES, INC.

INDEX TO EXHIBITS

EXHIBIT NO.	EXHIBIT DESCRIPTION
2.1	Plan and Agreement of Merger dated December 27, 1995, by and between New York Bagel Enterprises, Inc., a Kansas corporation, and New York Bagel Enterprises, Inc., an Oklahoma corporation (filed as Exhibit 2.1 to the Registration Statement on Form S-1, File No. 333-05785), incorporated herein by reference.
2.2	Plan and Agreement of Merger dated December 27, 1995, by and among New York Bagel Enterprises, Inc., VPR Incorporated, New York Bagel Shop, Inc., Bagel Boss, Inc., Bagels of Norman, Inc., New York Bagel Shop & Delicatessen, Inc. (filed as Exhibit 2.2 to the Registration Statement on Form S-1, File No. 333-05785), incorporated herein by reference.
2.3	Certificate of Ownership and Merger (Articles of Merger) Merging Nashville Bagel Co. (a Tennessee corporation) into New York Bagel Enterprises, Inc. (an Oklahoma corporation) (filed as Exhibit 2.3 to the Registration Statement on Form S-1, File No. 333-05785), incorporated herein by reference.
2.4	Asset Sale and Purchase Agreement dated December 27, 1995, by and

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	among New York Bagel Enterprises, Inc., Central & Ridge Yogurt, Inc. and Paul R. Hoover (filed as Exhibit 2.4 to the Registration Statement on Form S-1, File No. 333-05785), incorporated herein by reference.
2.5	Asset Purchase Agreement dated November 25, 1996 by and among LAB Acquisition Corporation, New York Bagel Enterprises, Inc., Lots A' Bagels, Inc., and Stephen K. Goldstone and Linda F. Goldstone (filed as Exhibit 2 to Form 8-K, Date of Event: December 6, 1996), incorporated herein by reference.
2.6	Post Closing Purchase Price Modification Agreement dated July 17, 1997 by and Among Lots A' Bagels, Inc., New York Bagel Enterprises, Inc., JBA Enterprises, Inc. and Stephen K. Goldstone and Linda F. Goldstone (filed as Exhibit 2.6 to Form 10-K for the annual period ended December 28, 1997), incorporated herein by reference.
2.7	Asset Sale and Purchase Agreement dated September 26, 1997, by and Between New York Bagel Enterprises, Inc. and Il Vicino International, L.L.C. (filed as Exhibit 2.7 to Form 10-K for the annual period ended December 28, 1997), incorporated herein by reference.
3.1	Restated and Amended Articles of Incorporation of the Registrant (filed as Exhibit 3.3 to the Registration Statement on Form S-1, File No. 333-05785), incorporated herein by reference.
3.2	Restated and Amended Bylaws of the Registrant (filed as Exhibit 3.4 to the Registration Statement on Form S-1, File No. 333-05785), incorporated herein by reference.
4.1	Specimen of Common Stock Certificate (filed as Exhibit 4.1 to the Registration Statement on Form S-1, File No. 333-05785), incorporated herein by reference.

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4.2	Form of New York Bagel Enterprises, Inc. Grant of Incentive Stock Option (filed as Exhibit 4.2 to the Registration Statement on Form S-1, File No. 333-05785), incorporated herein by reference.
4.3	Form of New York Bagel Enterprises, Inc. Grant of Nonqualified Stock Option (filed as Exhibit 4.3 to the Registration Statement on Form S-1, File No. 333-05785), incorporated herein by reference.
4.4	Form of New York Bagel Enterprises, Inc. Non-qualified Option Agreement (filed as Exhibit 10.1 to Form 10-Q for the quarter period ended September 28, 1997), incorporated herein by reference.
4.5	New York Bagel Enterprises, Inc. 4% Convertible and Subordinated Debenture due December 14, 1999 (filed as Exhibit 4.4 to the Registration Statement on Form S-1, File No. 333-05785), incorporated herein by reference.
4.6	First Amendment to 4% Convertible and Subordinated Debenture due December 14, 1999 dated January 25, 1999, by and between New York Bagel Enterprises, Inc. and Dr. Lori Adelson.
4.7	New York Bagel Enterprises, Inc. Warrant to Purchase Common Stock (filed as Exhibit 4 to Form 8-K, Date of Event: December 6, 1996), incorporated herein by reference.
4.8	Schedule of Employees Receiving Stock Option Grants.
4.9	Schedule of Non-employees Receiving Stock Option Grants.
9.1	Contract for Sale of Stock dated June 21, 1994, by and between Robert Geresi, Paul Sorrentino and Vince Vrana and David L. Murfin and Paul R. Hoover (filed as Exhibit 9.1 to the Registration Statement on Form S-1, File No. 333-05785), incorporated herein by reference.
9.2	Stockholders' Agreement dated January 1, 1996, by and among Robert J. Geresi, Vincent J. Vrana, Paul T. Sorrentino, Paul R. Hoover, David L. Murfin, Nancy Murfin Moxley, Mark A. Moxley, Barbara Murfin Murphy, V. Richard Hoover, Philip Faubert, Rodney Joe Trizza, Brent Durham, John R. Geresi, Chad E. Watkins, Markus K. Scholler and New York Bagel Enterprises, Inc., a Kansas corporation (filed as Exhibit 9.2 to the Registration Statement on Form S-1, File No. 333-05785), incorporated herein by reference.
10.1	New York Bagel Enterprises, Inc. 1996 Incentive Plan (filed as Exhibit 10.1 to the Registration Statement on Form S-1, File No. 333-05785),

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incorporated herein by reference.

10.2	First Amendment to New York Bagel Enterprises, Inc. 1996 Incentive Plan dated May 21, 1997 (filed as Exhibit 10.2 to Form 10-K for the annual period ended December 31, 1997), incorporated herein by reference.
10.3	Representative Uniform Franchise Offering Circular dated March 27, 1997, including form of Franchise Agreement and form of Development Agreement (filed as Exhibit 10.3 to Form 10-K for the annual period ended December 31, 1997), incorporated herein by reference.
10.4	Lease Agreement dated June 1, 1994, by and between Bagel Land, Inc. and Bagels of Norman, Inc. (filed as Exhibit 10.11 to the Registration Statement on Form S-1, File No. 333-05785), incorporated herein by reference.
10.5	Lease Agreement dated December 1, 1993, by and between Cherry Street

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	Land and Bagel Boss, Inc. (filed as Exhibit 10.12 to the Registration Statement on Form S-1, File No. 333-05785), incorporated herein by reference.
10.6	Sublease dated April 1, 1996, by and between Murfin Drilling Company and New York Bagel Enterprises, Inc. (filed as Exhibit 10.13 to the Registration Statement on Form S-1, File No. 333-05785), incorporated herein by reference.
10.7	Real Estate Purchase Agreement dated October 10, 1996, by and between New York Bagel Enterprises, Inc. and Bagel Land, Inc. (filed as Exhibit 10.6 to Form 10-K for the annual period ended December 29, 1996), incorporated herein by reference.
10.8	Loan Agreement dated September 5, 1997, by and Among New York Bagel Enterprises, Inc., Lots A' Bagels, Inc. and NationsBank, N.A. (filed as Exhibit 10.2 to Form 10-Q for the quarter period ended September 28, 1997), incorporated herein by reference.
10.9	Form of Promissory Note of New York Bagel Enterprises, Inc. and Lots A' Bagels, Inc. payable to the order of NationsBank, N.A. (filed as Exhibit 10.11 to Form 10-K for the annual period ended December 28, 1997), incorporated herein by reference.
10.10	Schedule of Promissory Notes of New York Bagel Enterprises, Inc. and Lots A' Bagels, Inc. payable to the order of NationsBank, N.A. (filed as Exhibit 10.11.1 to Form 10-K for the annual period ended December 28, 1997), incorporated herein by reference.
10.11	First Amendment to Loan Agreement dated August 24, 1998 by New York Bagel Enterprises, Inc., Lots A' Bagels, Inc. and NationsBank, N.A. (filed as Exhibit 10.2 to Form 10-QSB for the quarter period ended September 27, 1998), incorporated herein by reference.
10.12	Promissory Note dated August 24, 1998, of New York Bagel Enterprises, Inc. and Lots A' Bagels, Inc. payable to the order of NationsBank, N.A. (filed as Exhibit 10.7 to Form 10-QSB for the quarter period ended September 27, 1998), incorporated herein by reference.
10.13	Form of Agreement of Purchase and Sale by and Between New York Bagel Enterprises, Inc. and Commercial Equity, Inc. (filed as Exhibit 10.9 to Form 10-K for the annual period ended December 28, 1997), incorporated herein by reference.
10.14	Schedule of Agreements of Purchase and Sale by and Between New York Bagel Enterprises, Inc. and Commercial Equity, Inc. (filed as Exhibit 10.4 to Form 10-QSB for the quarter period ended September 27, 1998), incorporated herein by reference.
10.15	Form of Lease Between Commercial Equity, Inc., as Lessor, and New York Bagel Enterprises, Inc., as Lessee (filed as Exhibit 10.4 to Form 10-Q for the quarter period ended September 28, 1997), incorporated herein by reference.
10.16	Schedule of Leases by and Between New York Bagel Enterprises, Inc. and Commercial Equity, Inc. (filed as Exhibit 10.6 to Form 10-QSB for the quarter period ended September 27, 1998), incorporated herein by reference.

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10.17	Agreement of Purchase and Sale dated January 20, 1999 by and between New York Bagel Enterprises, Inc. and Commercial Equity, Inc. (concerning 8621 West 21st Street North, Wichita, Kansas).

10.18	Lease dated January 20, 1999 between Commercial Equity, Inc., as Lessor, and New York Bagel Enterprises, Inc., as Lessee (concerning 8621 West 21st Street North, Wichita, Kansas).
10.19	Lease Between L.P.V. Properties, L.L.C. and New York Bagel Enterprises, Inc. dated November 1, 1997 (filed as Exhibit 10.12 to Form 10-K for the annual period ended December 28, 1997), incorporated herein by reference.
10.20	Joint Venture Agreement by and between New York Bagel Enterprises, Inc. and Western Country Clubs, Inc. dated October 27, 1998 (filed as Exhibit 10.1 to Form 10-QSB for the quarter period ended September 27, 1998), incorporated herein by reference.
10.21	First Amendment to Joint Venture Agreement dated December 15, 1998, by and between New York Bagel Enterprises, Inc. and Western Country Clubs, Inc.
10.22	Form of January 1999 Promissory Note by New York Bagel Enterprises, Inc. for the benefit of certain stockholders.
10.23	Schedule of January 1999 Promissory Notes of New York Bagel Enterprises, Inc. payable to the order of certain stockholders.
18	Letter of KPMG Peat Marwick LLP dated November 11, 1997 regarding change in accounting principle concerning restaurant preopening costs (filed as Exhibit 18 to Form 10-Q for the quarter period ended September 28, 1997), incorporated herein by reference.
21	Subsidiaries of the Company (filed as Exhibit 21 to Form 10-K for the annual period ended December 28, 1997), incorporated herein by reference.
27	Financial Data Schedule.

NEW YORK BAGEL ENTERPRISES, INC.

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INDEPENDENT AUDITORS' REPORT

The Board of Directors
New York Bagel Enterprises, Inc.:

We have audited the accompanying consolidated balance sheets of New York Bagel Enterprises, Inc. as of December 27, 1998 and December 28, 1997, and the consolidated statements of operations, stockholders' equity (deficit), and cash flows for the fifty-two weeks ended December 27, 1998, December 28, 1997, and December 29, 1996. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

We conducted our audits in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the consolidated financial position of New York Bagel Enterprises, Inc. as of December 27, 1998 and December 28, 1997, and the results of its operations and its cash flows for the fifty-two weeks ended December 27, 1998, December 28, 1997, and December 29, 1996, in conformity with generally accepted accounting principles.

The accompanying consolidated financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in note 15 to the consolidated financial statements, the Company has suffered recurring losses from operations and current liabilities exceed current assets by approximately $2.6 million at December 27, 1998 that raise substantial doubt about its ability to continue as a going concern. Management's plans in regard to these matters are also described in note 15. The consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.

As discussed in note 1 of notes to consolidated financial statements, the Company changed its method of accounting for restaurant preopening costs in 1997.

KPMG LLP

Wichita, Kansas
March 12, 1999

NEW YORK BAGEL ENTERPRISES, INC.

Consolidated Balance Sheets

December 27, 1998 and December 28, 1997

<TABLE>
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ASSETS	1998	1997
<S>	<C>	<C>
Current assets:		
Cash and cash equivalents	$ 217,775	872,949
Accounts receivable	61,855	171,068
Inventories	310,850	349,937
Income tax receivable	--	484,957
Property and equipment available for sale	--	193,256
Prepaid expenses and other current assets	26,609	169,156
Total current assets	617,089	2,241,323
Property and equipment, net	6,330,238	10,281,696
Other assets, net of accumulated amortization of $73,482 in 1998 and $47,412 in 1997	203,823	357,001
Goodwill, net of accumulated amortization of $47,087 in 1998 and $75,524 in 1997	805,028	1,220,441

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	$ 7,956,178	14,100,461

</TABLE>
See accompanying notes to consolidated financial statements.

NEW YORK BAGEL ENTERPRISES, INC.

Consolidated Balance Sheets, Continued

December 27, 1998 and December 28, 1997

<TABLE>
<CAPTION>

LIABILITIES AND STOCKHOLDERS' EQUITY	1998	1997
<S>	<C>	<C>
Current liabilities:		
Current installments of long-term debt	$ 1,821,894	2,490,858
Accounts payable	440,387	715,453
Accrued payroll and benefits	241,844	292,321
Accrued liabilities	748,754	539,143
Deferred franchise fees	--	35,000
Total current liabilities	3,252,879	4,072,775
Long-term debt, less current installments	49,464	28,750
Deferred rents payable	90,094	99,201
Other liabilities	798,662	133,724
Total liabilities	4,191,099	4,334,450
Stockholders' equity:		
Class A common stock, $.01 par value. Authorized 30,000,000 shares; issued and outstanding 4,657,100 and 4,667,500 shares in 1998 and 1997, respectively	46,675	46,675
Additional paid-in capital	13,390,769	13,390,769
Accumulated deficit	(9,654,391)	(3,671,433)
Treasury stock, 10,400 common shares, at cost	(17,974)	--
Total stockholders' equity	3,765,079	9,766,011
Commitments		
	$ 7,956,178	14,100,461

</TABLE>

See accompanying notes to consolidated financial statements.

NEW YORK BAGEL ENTERPRISES, INC.

Consolidated Statements of Operations

For the fifty-two weeks ended December 27, 1998,
December 28, 1997, and December 29, 1996

<TABLE>
<CAPTION>

	1998	1997	1996
<S>	<C>	<C>	<C>
Revenues:			
Sales from Company-owned restaurants	$ 18,844,086	18,570,822	10,864,863
Franchise revenues	143,537	417,030	671,987
Total revenues	18,987,623	18,987,852	11,536,850

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Costs and expenses:			
Cost of sales	6,856,996	6,189,510	3,749,471
Restaurant operating expenses	10,818,673	10,273,538	5,185,362
General and administrative expenses	1,514,513	1,818,099	963,927
Depreciation and amortization	942,853	930,177	552,419
Provision for impairments and closures	4,683,645	3,773,580	--
Total costs and expenses	24,816,680	22,984,904	10,451,179
Operating income (loss)	(5,829,057)	(3,997,052)	1,085,671
Other income (expense):			
Interest income	7,732	109,588	152,167
Interest expense	(161,633)	(36,734)	(237,858)
Total other income (expense)	(153,901)	72,854	(85,691)
Earnings (loss) before income taxes	(5,982,958)	(3,924,198)	999,980
Income tax expense (benefit)	--	(144,417)	269,714
Earnings (loss) before cumulative effect of accounting change	(5,982,958)	(3,779,781)	730,266
Cumulative effect of accounting change, net of income tax benefit of $80,782	--	(129,041)	--
Net earnings (loss)	$ (5,982,958)	(3,908,822)	730,266

</TABLE>

NEW YORK BAGEL ENTERPRISES, INC.

Consolidated Statements of Operations, Continued

For the fifty-two weeks ended December 27, 1998, December 28, 1997, and December 29, 1996

<TABLE>
<CAPTION>

<S>	1998 <C>	1997 <C>	1996 <C>
Pro forma earnings to reflect income taxes:			
Income tax expense			$ 389,505
Net earnings			$ 610,475
Earnings (loss) per share (basic and diluted):			
Earnings (loss) before cumulative effect of accounting change	$ (1.28)	(.81)	.17
Cumulative effect of accounting change	--	(.03)	--
Net earnings (loss)	$ (1.28)	(.84)	.17
Pro forma amounts assuming the new method of accounting for restaurant preopening costs is applied retroactively:			
Net earnings (loss)		$ (3,779,781)	518,608
Net earnings (loss) per share - basic and diluted		$ (.81)	.15

</TABLE>

See accompanying notes to consolidated financial statements.

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NEW YORK BAGEL ENTERPRISES, INC.

Consolidated Statements of Stockholders' Equity (Deficit)

For the fifty-two weeks ended December 27, 1998, December 28, 1997, and December 29, 1996

	COMMON STOCK CLASS A	COMMON STOCK CLASS B	ADDITIONAL PAID-IN CAPITAL	RETAINED EARNINGS (ACCUMULATED DEFICIT)	TREASURY STOCK	TOTAL
Balance, December 31, 1995	$ 14,170	13,687	157,793	(1,764,115)	--	(1,578,465)
Net earnings	--	--	--	730,266	--	730,266
Issuance of 14,308 shares of common stock	--	143	(143)	--	--	--
Issuance of 1,867,500 shares of common stock pursuant to initial public offering	18,675	--	14,660,357	--	--	14,679,032
Reclassification of accumulated deficit pursuant to termination of S corporation status at August 27, 1996	--	--	(1,427,238)	1,427,238	--	--
Conversion of 1,383,012 shares of Class B common stock to Class A common stock on a one-for-one basis pursuant to the initial public offering	13,830	(13,830)	--	--	--	--
Distributions to stockholders	--	--	--	(156,000)	--	(156,000)
Balance, December 29, 1996	46,675	--	13,390,769	237,389	--	13,674,833
Net loss	--	--	--	(3,908,822)	--	(3,908,822)
Balance, December 28, 1997	46,675	--	13,390,769	(3,671,433)	--	9,766,011
Net loss	--	--	--	(5,982,958)	--	(5,982,958)
Acquisition of 10,400 shares	--	--	--	--	(17,974)	(17,974)
Balance, December 27, 1998	$ 46,675	--	13,390,769	(9,654,391)	(17,974)	3,765,079

See accompanying notes to consolidated financial statements.

NEW YORK BAGEL ENTERPRISES, INC.

Consolidated Statements of Cash Flows

For the fifty-two weeks ended December 27, 1998, December 28, 1997, and December 29, 1996

	1998	1997	1996
Cash flows from operating activities:			
Net earnings (loss)	$ (5,982,958)	(3,908,822)	730,266
Adjustments to reconcile net earnings (loss) to net cash provided by operating activities:			
Depreciation and amortization	942,853	930,177	552,419
(Gain) loss on sale of equipment	--	18,957	(21,286)
Provision for impairments and closures	4,683,645	3,773,580	--

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Cumulative effect of accounting change, net of income tax benefit	--	129,041	--
Increase (decrease) in cash resulting from changes in listed items, net of effects from acquisitions:			
Deferred income taxes	--	(2,626)	83,408
Inventory	39,087	(60,780)	(96,654)
Income taxes receivable	484,957	(397,174)	(71,036)
Property and equipment available for sale	193,256	(193,256)	--
Prepaid expenses and other current assets	142,547	(119,660)	(90,312)
Accounts receivable	109,213	145,425	(123,545)
Deferred costs	--	24,453	(337,492)
Other assets	14,722	(121)	--
Accounts payable	(275,066)	200,247	352,034
Accrued liabilities, accrued payroll and benefits, and deferred rents payable	(368,443)	192,341	399,213
Deferred franchise fees	(35,000)	(60,000)	(72,000)
Net cash provided by (used in) operating activities	(51,187)	671,782	1,305,015
Cash flows from investing activities:			
Additions to property and equipment	(1,637,763)	(7,304,032)	(4,716,867)
Acquisitions, net of cash acquired	--	(1,373,456)	(2,468,092)
Proceeds from sales of property and equipment including proceeds from sale-leaseback transactions	1,700,000	1,238,632	21,722
Purchase of investment securities available for sale	--	(7,244,550)	(7,265,862)
Proceeds from sales and maturities of investment securities available for sale	--	11,510,412	3,000,000
Purchase of other assets	--	(186,154)	(72,468)
Net cash provided by (used in) investing activities	62,237	(3,359,148)	(11,501,567)

(Continued)

</TABLE>

NEW YORK BAGEL ENTERPRISES, INC.

Consolidated Statements of Cash Flows, Continued

For the fifty-two weeks ended December 27, 1998, December 28, 1997, and December 29, 1996

<TABLE>
<CAPTION>

<S>	1998 <C>	1997 <C>	1996 <C>
Cash flows from financing activities:			
Proceeds from issuance of long-term debt	670,000	2,500,000	1,398,700
Principal payments on long-term debt	(1,318,250)	(66,642)	(4,677,450)
Purchase of treasury stock	(17,974)	--	--
Proceeds from initial public offering of common stock	--	--	14,679,032
Decrease in distributions payable	--	(164,194)	(40,499)
Debt issuance costs	--	(13,979)	--
Deferred offering costs	--	--	8,474
Net cash provided by (used in) financing activities	(666,224)	2,255,185	11,368,257
Net increase (decrease) in cash	(655,174)	(432,181)	1,171,705
Cash and cash equivalents at beginning of year	872,949	1,305,130	133,425
Cash and cash equivalents at end of year	$ 217,775	872,949	1,305,130

</TABLE>

See accompanying notes to consolidated financial statements.

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NEW YORK BAGEL ENTERPRISES, INC.

Notes to Consolidated Financial Statements

December 27, 1998 and December 28, 1997

(1) SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

(a) DESCRIPTION OF BUSINESS

The Company owns and franchises New York Bagel and Lots A' Bagels restaurants that provide a wide variety of bagels that are made from scratch, boiled, and baked in the traditional "New York style". Breakfast menu items include a wide variety of bagels and custom-blended cream cheeses, gourmet coffees, muffins, and croissants. Lunch and dinner items include an assortment of bagel delicatessen sandwiches, prepared salads, cookies, and soft drinks. As of December 27, 1998, the Company has 38 Company-owned restaurants (45 at December 28, 1997) primarily located in Oklahoma, Kansas, Colorado, Alabama, Texas, and Tennessee and 19 franchised restaurants (25 at December 28, 1997) located throughout the United States.

The Company has entered into a joint venture agreement whereby the Company will contribute certain restaurant equipment and leasehold improvements in certain restaurant locations to the joint venture entity and, in certain situations, some cash and the other party to the joint venture will contribute cash (up to a stipulated amount per restaurant) to convert such restaurant locations to a new concept called "Atomic Burrito." The Company will have a 40% ownership interest in the resulting joint venture entity. Currently, three restaurant locations have been identified to be converted to the Atomic Burrito concept.

Effective August 27, 1996, the Company completed an initial public offering (IPO) in which it sold 1,867,500 shares of its Class A common stock and realized net proceeds, net of offering costs of $951,943, of $14,679,032.

(b) PRINCIPLES OF CONSOLIDATION

The consolidated financial statements include the accounts of New York Bagel Enterprises, Inc. and its wholly-owned subsidiary. All material intercompany activity has been eliminated.

(c) FISCAL PERIODS

The Company's 52/53-week fiscal year is comprised of four thirteen-week periods which ends on the Sunday nearest to December 31.

(d) FRANCHISE REVENUES

Franchise agreements are executed for each franchise restaurant and provide the terms of the franchise arrangement between the Company and the franchisee. The franchise agreement requires the franchisee to pay an initial, non-refundable franchise fee plus continuing royalties based upon a percentage of restaurant sales. Additionally, the Company executes development agreements with certain franchisees which stipulates the area, the number of restaurants, and the timeframe for development in exchange for an initial, non-refundable development fee based on a standard price per type of restaurant.

Initial franchise fees are recognized as revenue when the Company performs substantially all initial services required by the franchise agreement, which generally occurs shortly after restaurant opening. Continuing royalties are recognized as earned with an appropriate provision for estimated uncollectible amounts. Initial franchise fees received applicable to restaurants for

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which substantially all initial services required by the franchise agreement have not been performed are recorded as deferred franchise fees in the accompanying consolidated balance sheets. Development fees are received upon signing the agreement and are initially recorded as deferred franchise fees. Such fees are applied to reduce the initial franchise fees paid for each restaurant opened and are accounted for as a component of the initial franchise fees.

Deferred initial and development fees that are expected to be recognized within twelve months of the balance sheet date are classified as current portion of deferred franchise fees in the accompanying consolidated balance sheets.

Direct, incremental costs incurred to secure franchise agreements are charged to expense in the same period the related initial franchise fees are recognized as revenue. Costs applicable to initial franchise fees not yet recognized as revenue are recorded as deferred franchise costs.

(e) INVENTORIES

Inventories are stated at the lower of cost or market. Cost is determined using the first-in, first-out method.

(f) PROPERTY AND EQUIPMENT

Property and equipment are stated at cost, except for assets that have been impaired in which the carrying amount is reduced to estimated fair value. Depreciation is calculated using the straight-line method over the estimated useful lives of the assets. Leasehold improvements are amortized on a straight-line basis over the lesser of the remaining lease term, including renewal periods when the Company intends to exercise renewal options, or the estimated useful life of the asset. Estimated useful lives are as follows:

Buildings	30 years
Restaurant and bakery equipment	5 - 10 years
Leasehold improvements	7 - 15 years
Delivery vehicles, office furniture and equipment	5 - 10 years

(g) GOODWILL

Goodwill, which represents the excess of purchase price over fair value of net assets acquired, is amortized on a straight-line basis over thirty years. The Company periodically assesses the recoverability of this intangible asset by determining whether the amortization of the goodwill balance over its remaining life can be recovered through undiscounted future operating cash flows of the acquired operation. The amount of goodwill impairment, if any, is measured based

on projected future operating cash flows discounted at a rate commensurate with the risks involved. The assessment of the recoverability of goodwill will be impacted if estimated future operating cash flows are not achieved.

(h) INCOME TAXES

Effective January 1, 1994, New York Bagel Enterprises, Inc. and certain of the restaurant entities elected and received approval to become S corporations. During the periods the entities operated as S corporations, income tax expense or benefit was not recorded in the accompanying consolidated financial statements as the entities' results of operations were reported to the entities' stockholders for inclusion in their individual income tax returns.

Concurrent with the IPO, the Company terminated its S corporation status. Accordingly, income taxes subsequent to the effective date

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of the IPO are accounted for under the asset and liability method whereby deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases and operating loss and tax credit carryforwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. Any effect on deferred tax assets and liabilities due to a change in tax rates is recognized in income in the period that includes the enactment date.

Pro forma income tax expense, as set forth in the accompanying 1996 consolidated statement of operations, reflects what the income tax expense of the Company would have been for the fifty-two weeks ended December 29, 1996 if none of the entities included in the financial statements had operated as S corporations during such periods.

(i) CONSOLIDATED STATEMENTS OF CASH FLOWS

For purposes of the consolidated statements of cash flows, the Company considers cash and cash equivalents to include currency on hand, demand deposits and money market funds.

Noncash investing and financing activities during 1998, 1997, and 1996 included:

	1998	1997	1996
Noncash distributions to stockholders:			
Distributions payable	$ --	--	156,000
Property and equipment sale proceeds included in accounts receivable and other assets	$ --	26,282	53,895

Cash paid (received) during the years for interest and income taxes is as follows:

	1998	1997	1996
Interest	$ 169,329	12,511	238,181
Taxes, net	(484,957)	255,383	257,342

(j) CHANGE IN ACCOUNTING PRINCIPLE

Effective September 28, 1997, the Company changed its accounting policy on restaurant preopening costs. In prior periods, the Company initially capitalized and then amortized preopening costs over the initial twelve months of a restaurant's operation. Under

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the new method, the Company expenses such restaurant preopening costs as incurred. Management believes the change is preferable to obtain a better matching of expenses with revenues. The effect of adopting the accounting change on earnings (loss) before cumulative effect of accounting change, net earnings (loss), and net earnings (loss) per share for 1997 was to decrease such amounts $40,388, $169,429, and $.04, respectively. The change is considered a cumulative effect-type accounting change and, accordingly, the cumulative effect as of January 1, 1997 has been reported in the accompanying consolidated 1997 financial statements. Financial statements for fiscal 1996 have not been restated but net earnings and earnings per share computed on a pro forma basis have been disclosed in the accompanying consolidated financial statements for all periods presented as if the accounting change had been applied consistently during all periods affected.

(k) NET EARNINGS (LOSS) PER SHARE

Basic net earnings (loss) per share is computed by dividing net earnings (loss) per share by the weighted average number of shares outstanding. Diluted loss per share reflects the potential dilution that could occur if contracts to issue securities (such as stock options) were exercised. See note 12.

(l) USE OF ESTIMATES

Management of the Company has made a number of estimates and assumptions relating to the reporting of assets and liabilities and the disclosure of contingent liabilities to prepare the consolidated financial statements in conformity with generally accepted accounting principles. Actual results could differ from these estimates.

(m) STOCK AWARDS

The Company accounts for its stock options in accordance with the provisions of Accounting Principles Board (APB) Opinion No. 25, ACCOUNTING FOR STOCK ISSUED TO EMPLOYEES. As such, compensation expense is recorded on the date of grant only if the current market price of the underlying stock exceeds the exercise price. In addition, SFAS No. 123, ACCOUNTING FOR STOCK-BASED COMPENSATION, requires that pro forma net earnings and pro forma earnings per share disclosures be provided for employee stock option grants made in 1996 and subsequent years as if the fair-value-based cost measurement method defined in SFAS No. 123 had been applied.

(n) IMPAIRMENT OF LONG-LIVED ASSETS

Long-lived assets and certain identifiable intangibles are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability of assets to be held and used (including associated goodwill) is measured by a comparison of the carrying amount of an asset to estimated future net cash flows (undiscounted and without interest charges) expected to be generated by the asset. If such assets are considered to be impaired, the impairment to be recognized is measured by the amount by which the carrying amount of the assets exceed the fair value of the assets. Assets to be disposed of are reported at the lower of the carrying amount or fair value less costs to sell.

For purposes of determining impairment, the Company groups long-lived assets to be held and used at a market level due to the bakery-satellite relationship which, in management's estimation, results in the market-level as the lowest level for which there are cash flows that are largely independent of the cash flows of other groups of assets.

(o) STORE CLOSURE COSTS

Store closure costs are recognized when a decision is made to close a restaurant within the next twelve months.

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(2) FRANCHISE REVENUES

Franchise revenues for the fifty-two weeks ended December 27, 1998, December 28, 1997, and December 29, 1996 consist of the following:

	1998	1997	1996
Initial franchise and development fees	$ 47,500	147,500	228,500
Royalty revenue	96,037	269,530	443,487
Total	$ 143,537	417,030	671,987

The associated franchise receivables included within accounts receivable in the accompanying consolidated balance sheets at December 27, 1998 and December 28, 1997 include initial and franchise fees of $-0- and $26,000, respectively, royalties receivable of $-0- and $54,266, respectively, and allowance for doubtful accounts of $-0- and $(20,000), respectively.

(3) PROPERTY AND EQUIPMENT

A summary of property and equipment and accumulated depreciation as of December 27, 1998 and December 28, 1997 is as follows:

	1998	1997
Land and buildings	$ 299,022	1,841,773
Restaurant and bakery equipment	2,401,299	4,066,611
Leasehold improvements	4,453,557	5,536,480
Delivery vehicles, office furniture and equipment	944,638	232,908
	8,098,516	11,677,772
Less accumulated depreciation	(1,768,278)	(1,396,076)
Net property and equipment	$ 6,330,238	10,281,696

(4) IMPAIRMENT OF LONG-LIVED ASSETS AND STORE CLOSURES

The provision for impairment of assets to be held and used, which amounted to $584,631 and $2,342,766 for the fifty-two weeks ended December 27, 1998 and December 28, 1997, respectively, represents a reduction of the carrying value of the impaired assets to estimated fair value. Such impairment charge relates to long-lived restaurant assets and associated goodwill. The primary indicators of impairment are continued operating losses or sufficient negative trends that management determines impairment is probable. Estimated fair values were determined by using a combination of discounted estimated future cash flows and valuation multiples recently used by the Company in actual acquisitions. Management judgment is inherent in the estimated fair value determinations and, accordingly, actual results could vary from such estimates.

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Store closure costs, which amounted to $4,099,014 and $1,430,814 for the fifty-two weeks ended December 27, 1998 and December 28, 1997, respectively, include a provision for writing down the carrying amount of restaurant assets to estimated fair value less costs of disposal aggregating $2,914,884 and $1,113,800, respectively, and a provision for the net present value of any remaining noncancelable lease payments after the expected closure date net of estimated sublease income or the effect of early lease terminations considered by management to be probable aggregating $1,184,130 and $317,014, respectively. The liability for expected future lease costs related to store closures is reflected in the accompanying balance sheets as follows:

	1998	1997
Accrued liabilities	$ 368,194	169,186
Other liabilities	798,662	133,724
Total	$ 1,166,856	302,910

Activity in the liability for expected future lease costs for 1998 is as follows:

Provision for closures approved in in 1998	$ 1,302,765
Net adjustments to beginning of year liability for effect of changes in estimates due primarily to lease termination and sublease activity	(118,635)
Net provision	1,184,130
Payments made	(320,184)
Increase in liability during 1998	$ 863,946

During the fifty-two weeks ended December 27, 1998, the Company closed 11 restaurants and decided to close an additional seven restaurants and a support facility which will be closed at various times prior to August 31, 1999. During the fifty-two weeks ended December 28, 1997, the Company closed four restaurants and decided to close one additional restaurant. The carrying amount of assets at December 27, 1998 and December 28, 1997 applicable to restaurants which have been closed or approved for closure amounted $112,500 and $196,630, respectively, net of provisions for impairment.

The revenues and operating income (loss) from the eleven restaurants closed during 1998 and the seven additional restaurants and support facility approved for closure during 1998 for the fifty-two weeks ended December 27, 1998, December 28, 1997 are as follows:

	STORES CLOSED	STORES APPROVED FOR CLOSURE	TOTAL

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1998:			
Revenues	$ 1,720,122	2,237,664	3,957,786
Net operating income (loss)	(442,436)	(263,134)	(705,570)
1997:			
Revenues	2,135,601	2,080,427	4,216,028
Net operating income (loss)	(455,620)	(79,424)	(535,044)
1996:			
Revenues	690,858	1,973,199	2,664,057
Net operating income (loss)	(35,758)	95,487	59,729

</TABLE>

(5) LEASES

The Company leases several restaurant facilities under noncancelable operating leases. These leases generally contain renewal options for periods ranging from three to fifteen years and require the Company to pay executory costs such as maintenance and insurance. Rent expense for operating leases aggregated $1,814,051, $1,363,563, and $631,021 for the fifty-two weeks ended December 27, 1998, December 28, 1997, and December 29, 1996, respectively.

Future minimum lease payments under noncancelable operating leases with initial or remaining lease terms in excess of one year as of December 27, 1998 are:

<TABLE>
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<S>	<C>
1999	$ 1,547,997
2000	1,472,748
2001	1,285,902
2002	1,153,560
2003	1,051,794
Thereafter	5,598,909
Total minimum lease payments	$ 12,110,910

</TABLE>

The Company is party to certain operating leases with companies that are owned by certain

stockholders of the Company. Rent paid to these related companies pursuant to lease agreements aggregated $255,440, $101,863, and $60,177 in 1998, 1997, and 1996, respectively.

Deferred rents payable in the accompanying balance sheets represent accruals for escalating rental payments on operating leases.

SALE-LEASEBACK TRANSACTIONS

The Company entered into agreements to sell and lease back four and three restaurant facilities (land and buildings) during 1998 and 1997, respectively, with an entity owned by an officer of the Company and a significant stockholder, both of whom are members of the Board of Directors of the Company. The proceeds from the sale-leaseback transactions amounted to approximately $1.7 million and $1.2 million in 1998 and 1997, respectively, and the primary leaseback term is 15 years. As a result of the sale-leaseback transactions, the Company incurred losses of $551,655 and $379,752 in 1998 and 1997, respectively, which were deferred for financial reporting purposes and included within leasehold improvements and are being amortized over the term of the related leases (unless subject to provision for impairment or closure (see note 4). The Company believes that the terms and conditions of both the real estate sales and the related leasebacks are fair and reasonable and were on terms at least as favorable as would be available from non-affiliated parties. The Company utilized the proceeds to fund new restaurant development and to reduce borrowings under the Credit Facility.

(6) LONG-TERM DEBT

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Long-term debt at December 27, 1998 and December 28, 1997 consists of the following:

<TABLE>
<CAPTION>

<S>	1998 <C>	1997 <C>
Prime rate (7.75% at December 27, 1998) note payable to bank pursuant to credit facility described below	$ 1,593,858	2,462,108
Line of credit to bank pursuant to credit facility described below	220,000	--
Subordinated debenture payable in monthly installments of $1,000 including interest at 6% through December 2002 with final payment of $22,255 due January 2003	57,500	57,500
Total long-term debt	1,871,358	2,519,608
Less current installments of long-term debt	1,821,894	2,490,858
Long-term debt, less current installments	$ 49,464	28,750

</TABLE>

In 1997, the Company entered into a loan agreement for a revolving line of credit and term loan facilities with a bank. The loan agreement, as amended August 1998, provides for a maximum

aggregate commitment of $2.5 million subject to availability under a borrowing base calculated based on the level of eligible equipment, inventory, and accounts receivable and compliance with certain financial covenants. Each borrowing under the loan agreement is represented by a promissory note that provides specific terms. Notes issued pursuant to the loan agreement are secured by substantially all of the Company's assets and mature in 1999. The loan agreement contains customary restrictive covenants including certain financial ratios. At December 31, 1998, the Company was not in compliance with certain of the restrictive covenants; however, the Company has obtained a waiver from the lender for such noncompliance.

The proceeds from the note payable to bank (such note payable is classified as a current liability at December 27, 1998) were primarily used for acquisition of long-lived assets such as property and equipment. To the extent such note is not otherwise repaid in the normal course of business prior to maturity on September 15, 1999, the Company anticipates that it will refinance the outstanding balance of such note payable although the Company does not currently have a commitment from the lender to refinance such note payable.

At December 27, 1998, the Company has $220,000 outstanding on revolving line of credit pursuant to the loan agreement. The line of credit matured March 10, 1999 with interest payable at prime rate (7.75% at December 27, 1998). The line of credit was renewed to mature on May 10, 1999.

The subordinated debenture was refinanced in 1998 to extend the maturity date to January 2003. The debenture included a conversion feature whereby the debenture holder had the right to convert all or a portion of the debenture principal into shares of the Company's common stock. The conversion feature expired unexercised June 13, 1997. The debenture is subordinate to all other liabilities of the Company.

The aggregate maturities of long-term debt for each of the years subsequent to December 27, 1998 are as follows: 1999 - $1,821,894; 2000 - $9,285; 2001 - $9,857; 2002 - $10,465; and 2003 - $19,857.

(7) INCOME TAXES

Income tax expense (benefit) for the fifty-two weeks ended December 27, 1998, and December 28, 1997, and December 29, 1996 consists of the

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following:

	1998	1997	1996
Current	$ --	(141,791)	186,306
Deferred	--	(2,626)	83,408
Total	$ --	(144,417)	269,714

Certain entities included in the consolidated financial statements were S corporations during 1995 and part of 1996, and as a result did not pay corporate income taxes. Concurrent with the IPO, the

Company terminated its S corporation status and, consequently, incurred a one-time charge of $74,000 to deferred tax expense to properly record deferred tax assets and liabilities that existed as of the effective date of the IPO.

Actual income tax expense (benefit) differs from the "expected" tax expense computed by applying the U. S. federal corporate tax rate of 34% to earnings (loss) before income taxes for the fifty-two weeks ended December 27, 1998, December 28, 1997, and December 29, 1996 as follows:

	1998	1997	1996
Computed expected tax expense (benefit)	$ (2,034,206)	(1,334,227)	339,993
S corporation earnings allocated to stockholders	--	--	(167,578)
S corporation termination deferred tax charge	--	--	74,000
State taxes, net of federal income tax benefit	(236,925)	(141,516)	19,503
Nondeductible goodwill impairment and amortization	--	139,988	2,462
Change in valuation allowance	2,197,214	1,189,251	--
Other	73,917	2,087	1,334
	$ --	(144,417)	269,714

The tax effects of temporary differences that give rise to deferred tax assets and deferred tax liabilities at December 27, 1998 and December 28, 1997 are presented below:

	1998	1997
Deferred tax assets:		
Accrued and other liabilities, due to accrual for financial reporting purposes	$ 475,217	159,472
Property and equipment, due to provision for impairments and closures for financial reporting purposes, net of accelerated depreciation for tax reporting purposes	1,403,573	976,460
Net operating loss carryforward	1,631,552	198,624

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Total deferred tax assets	3,510,342	1,334,556
Valuation allowance	(3,386,465)	(1,189,251)
Net deferred tax assets	123,877	145,305
Deferred tax liabilities:		
Deferred loss on sale-leaseback transactions recognized for tax reporting purposes	123,877	144,306
Other	--	999
Total deferred tax liabilities	123,877	145,305

</TABLE>

<TABLE>
<S>

	<C>	<C>
Net deferred tax liability	$--	--

</TABLE>

The net change in the total valuation allowance for the fifty-two weeks ended December 27, 1998 and December 28, 1997 was an increase of $2,197,214 and $1,189,251, respectively. In assessing the realizability of deferred tax assets, management considers whether it is more likely than not that some portion or all of the deferred tax assets will not be realized. Based on the cumulative net loss over the past three fiscal years, management believes the valuation allowance is appropriate due to the uncertainty regarding the realization of the deferred tax assets.

At December 27, 1998, the Company has net operating loss carryforwards for federal and state income tax purposes of $4,532,131 and $724,903, respectively, which are available to offset future taxable income at various dates through 2018.

(8) STOCKHOLDERS' EQUITY

During 1998, the Company's Board of Directors approved a plan to repurchase up to one million shares of the Company's Common Stock (the "Stock Repurchase Program"). Purchases pursuant to the Stock Repurchase Program are to be made from time to time in the open market or directly from stockholders at prevailing market prices. The Stock Repurchase Program is anticipated to be funded with internally generated cash and borrowings under the Credit Facility. As of December 27, 1998, the Company had purchased 10,400 shares of Common Stock for $17,974.

In 1996, as a result of the Company's termination of its S corporation status immediately prior to the effective date of the IPO, the Company

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declared a distribution to the then current stockholders in an amount commensurate with their federal and state income tax obligations arising from the Company's 1996 results of operations while an S corporation which are reported to the stockholders for inclusion in their individual income tax returns.

The Company is authorized to issue 5,000,000 shares of preferred stock with no par value. There were no shares issued or outstanding at December 27, 1998 or December 28, 1997.

(9) FINANCIAL INSTRUMENTS FAIR VALUE INFORMATION

The carrying value of the Company's long-term debt approximates its fair value based on current interest rates of similar instruments. The carrying values of the Company's other financial instruments at December 27, 1998 and December 28, 1997, including cash and cash equivalents, accounts receivable, other current assets, and accounts payable approximate their fair values because of their short maturity.

(10) ACQUISITIONS

Effective February 28, 1997, the Company purchased substantially all of the operating assets and business operations of Bagel Buds, Inc. for $415,000. The acquisition has been accounted for by the purchase method of accounting and, accordingly, the operations of Bagel Buds, Inc. have been included in the accompanying statements of operations subsequent to February 28, 1997. The initial purchase price has been allocated to the assets acquired based on their estimated fair values at date of

acquisition. Goodwill arising from the acquisition amounted to $248,240.

Effective May 9, 1997, the Company purchased substantially all of the operating assets and business operations of M.Y. Bagel Shop, Inc. for $323,000. The acquisition has been accounted for by the purchase method of accounting and, accordingly, the operations of M.Y. Bagel Shop, Inc. have been included in the accompanying statements of operations subsequent to May 9, 1997. The initial purchase price has been allocated to the assets acquired based on their estimated fair values at date of acquisition. Goodwill arising from the acquisition amounted to $148,975.

The aggregate pro forma effect of the aforementioned 1997 acquired operations on revenues, net earnings (loss), and earnings (loss) per share for the fifty-two weeks ended December 28, 1997 and December 29, 1996 is not material and, accordingly, no related pro forma information is provided.

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Effective December 6, 1996, the Company purchased substantially all of the operating assets and business operations and assumed certain liabilities of Lots A' Bagels, Inc. for an initial cash payment of $2,100,000. In addition, certain contingent consideration was to be paid as additional purchase price based on Lots A' Bagels, Inc.'s earnings (as defined in the purchase agreement) for the period July 1, 1996 through March 30, 1997. On July 17, 1997, the Company paid $515,000 as full payment of the contingent consideration, which was recorded as additional goodwill at that time. Total acquisition expenses amounted to $139,761. The acquisition has been accounted for by the purchase method of accounting and, accordingly, the operations of Lots A' Bagels, Inc. have been included in the accompanying statements of operations subsequent to December 6, 1996. The purchase price has been allocated to the assets acquired and liabilities assumed based on their estimated fair values at date of acquisition. Goodwill as of December 27, 1998 and December 28, 1997 arising from the acquisition amounted to $805,028 and $852,116, respectively.

Effective September 27, 1996, the Company purchased certain assets of Jeff Eateries Limited Partnership for $245,000. The acquisition has been accounted for by the purchase method of accounting. The purchase price has been allocated to the assets acquired based on their estimated fair values at date of acquisition. Goodwill arising from the acquisition amounted to $94,182.

The following table summarizes the pro forma results of operations for the fifty-two weeks ended December 29, 1996 as if the acquisitions consummated in 1996 had been consummated at the beginning of 1996. In presenting the pro forma information, depreciation, amortization and interest expense have been adjusted to reflect the purchase accounting recorded in the acquisitions and income taxes have been recognized as if none of the entities included in the pro forma results had operated as an S corporation. For purposes of determining pro forma results of operations, the acquisition cost of Lots A' Bagels, Inc. includes the contingent consideration paid in 1997. The pro forma results do not necessarily reflect what would have occurred if the acquisitions had been made at the beginning of the respective periods or the results that may occur in the future.

<TABLE>
<CAPTION>

<S>	1996 <C>
Revenues	$ 15,314,832
Net earnings	604,741

</TABLE>

<TABLE>

<S>	<C>
Net earnings per share - basic and diluted	.17

</TABLE>

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(11) STOCK AWARDS

In 1996, the Company adopted the 1996 Incentive Plan (the Plan) pursuant to which the Company may grant incentive stock options, nonqualified stock options or restricted stock to officers, directors, employees, consultants and advisors. The Plan, as amended, authorizes grants of up to 500,000 shares of authorized but unissued common stock. In addition to the stock options granted under the Plan, the Company entered into nonqualified stock option agreements with four of its non-employee directors to purchase a total of 170,000 shares of authorized but unissued common stock. Stock options are granted with an exercise price equal to the stock's fair market value at the date of grant except for options granted to employees and directors that are also greater than 10% stockholders of the Company in which case such options are granted with an exercise price equal to 110% of the stock's fair market value at the date of grant. Stock options granted have terms of either five years or ten years. The majority of options granted vest (i) 20% exercisable six months after date of grant and, (ii) 20% exercisable on each of the first four anniversaries of the date of grant. Certain options granted in 1997, however, were immediately vested as of the grant date.

In October 1997, the Company modified the terms of options to acquire 276,000 shares that were originally granted in 1996 and options to acquire 8,500 shares that were originally granted in January 1997. The modification consisted of reducing the original exercise price of such options which ranged from $6.13 to $9.90 for 207,000 options and $6.05 for 77,500 options. Vesting periods were not modified and are calculated from the original grant date. The exercise prices for the modified options were greater than the market price of the stock on the modification date. The weighted average exercise price for the modified options is $5.65 and the weighted average fair value of the modified options is $1.13. The modified options are reflected in the table of stock option activity below as 1997 granted options and 1997 canceled options. The incremental value as a result of the modified terms is included in the pro forma compensation cost disclosed below.

In December 1998, the Company modified the terms of 197,000 options that were originally granted in 1997. The modification consisted of reducing the original exercise price of such options which ranged from $3.69 to $6.05. Vesting periods were not modified and are calculated from the original grant date. The exercise prices for the modified options were greater than the market price of the stock on the modification date. The exercise price for the modified options is $1.00 and the fair value of the modified options is $.05. The modified options are reflected in the table of stock option activity below as 1998 granted options and 1998 canceled options. The incremental value as a result of the modified terms is included in the proforma compensation cost disclosed below.

At December 27, 1998, there were 293,000 additional shares available for grant under the Plan. The per share weighted average fair value of stock options granted during 1998 and 1997 was $.09 and $1.32 on the date of grant using the Black Scholes option-pricing model with the following weighted average assumptions for 1998 and 1997, respectively: expected dividend yield of 0% for both years, expected volatility of 44.99% and 40.35%, risk-free interest rate of 4.54% and 5.93%, and an expected life of five years for both years.

The Company applies APB Opinion No. 25 in accounting for its stock options and, accordingly, no compensation cost has been recognized for its stock options in the financial statements. Had the Company determined compensation cost based on the fair value at the grant date for its stock options under SFAS No. 123, the Company's 1998 and 1997 net loss and loss per share would have been the amounts indicated below.

<TABLE>
<CAPTION>

	1998	1997

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Net loss	As reported	$ (5,982,958)	(3,908,822)
	Pro forma for SFAS No. 123	(6,013,810)	(4,277,606)
Loss per share - basic and diluted	As reported	(1.28)	(.84)
	Pro forma for SFAS No. 123	(1.29)	(.92)

Stock option activity during 1998 and 1997 is as follows:

	NUMBER OF SHARES	WEIGHTED AVERAGE EXERCISE PRICE
Balance at December 31, 1995	--	$ --
Granted	331,000	8.77
Exercised	--	--
Forfeited	(34,500)	9.00
Balance at December 29, 1996	296,500	8.74
Granted	441,000	5.14
Exercised	--	--
Forfeited	(27,500)	8.23
Canceled	(284,500)	8.65
Balance at December 28, 1997	425,500	5.10
Granted	307,000	.91
Exercised	--	--
Forfeited	(158,500)	5.01
Canceled	(197,000)	4.98
Balance at December 27, 1998	377,000	$ 1.79

At December 27, 1998 and December 28, 1997, the number of options exercisable was 276,900 and 206,900 and the weighted average exercise price of those options was $.91 and $4.84, respectively.

At December 27, 1998, the range of exercise prices and weighted average remaining contractual life of outstanding options was $.75 - $1.00 for 307,000 shares and $5.50 - $6.05 for 70,000 shares and 5.67 years, respectively.

(12) EARNINGS PER SHARE

The following is a reconciliation of the net earnings (loss) and outstanding shares utilized in the computation of earnings (loss) per share.

	1998	1997	1996
Earnings (loss) before cumulative effect of accounting change - basic	$ (5,982,958)	(3,779,781)	730,266
Pro forma adjustment to income tax expense	--	--	(119,791)
Pro forma net earnings (loss) - basic	(5,982,958)	(3,779,781)	610,475
Debenture interest adjustment, net of income tax effect	--	--	2,852
Adjusted net earnings (loss) for diluted calculation	$ (5,982,958)	(3,779,781)	613,327

Outstanding shares:

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Weighted average shares outstanding - basic	$	4,658,763	4,667,500	3,565,464
Effect of dilutive convertible debenture		--	--	19,121
As adjusted for diluted calculation	$	4,658,763	4,667,500	3,584,585

</TABLE>

Options to purchase common stock were not included in the computation of diluted earnings (loss) per share because the options' exercise price was greater than the average market price of the common shares during such period so the effect would not be dilutive. As of December 27, 1998, there are 377,000 options outstanding at a weighted average exercise price of $1.79 which may become dilutive in the future.

The weighted average shares outstanding for 1996 include pro forma shares of 145,292 based on the assumed number of shares whose proceeds would be sufficient (based upon the net initial public offering price) to replace the excess of distributions to stockholders over net earnings for the year ended December 29, 1995.

(13) SUBSEQUENT EVENT

During January 1999, the Company entered into an agreement to sell and lease back one restaurant site with an entity owned by an officer of the Company and a significant stockholder, both of whom are members of the Board of Directors of the Company. The proceeds from the transaction approximated $180,000 and the primary leaseback term is 15 years.

(14) QUARTERLY FINANCIAL INFORMATION (UNAUDITED)

Financial results by quarter are as follows (all dollars in thousands except per share amounts):

<TABLE>
<CAPTION>

<S>	<C> FIRST QUARTER	<C> SECOND QUARTER	<C> THIRD QUARTER	<C> FOURTH QUARTER
1998:				
Total revenues	$ 4,842	5,139	4,737	4,270
Gross profit (a)	3,140	3,344	2,926	2,577
Provision for impairments and closures (b)	1,106	--	3,268	310
Operating loss	(1,187)	(101)	(3,673)	(868)
Net loss	(1,222)	(137)	(3,709)	(915)
Net loss per share - basic and diluted	(.26)	(.03)	(.80)	(.19)
1997:				
Total revenues	$ 4,474	4,819	4,815	4,880
Gross profit (a)	2,925	3,208	3,161	3,087
Provision for impairments and closures	--	--	3,558	216
Operating income (loss)	411	255	(3,928)	(735)
Earnings (loss) before cumulative effect of accounting change (c)	289	179	(2,596)	(1,652)
Cumulative effect of accounting change	(129)	--	--	--
Net earnings (loss) (c)	160	179	(2,596)	(1,652)
Net earnings (loss) per share - basic and diluted (c)	.03	.04	(.56)	(.35)

</TABLE>

(a) Gross profit is sales from Company-owned restaurants less cost of sales.

(b) The fourth quarter provision is due to changes in accounting estimates applicable to restaurants previously approved for closure.

(c) Includes effect of establishing a valuation allowance for deferred tax assets of $1,189,251. See note 7.

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(15) OPERATIONS AND LIQUIDITY

The Company has incurred substantial net losses in 1998 and 1997 and current liabilities exceed current assets at December 27, 1998 by approximately $2.6 million. While a substantial portion of the net loss before income tax in each year was due to provisions for impairment and restaurant closures, the pre-tax loss exclusive of such provisions amounted to $1,299,313 in 1998 and $150,618 in 1997.

Since January 1, 1996, the Company has opened or acquired 39 restaurants. The Company was unable to achieve, or maintain, profitable operations in certain of these restaurants, primarily due to not achieving expected sales levels. Furthermore, the Company experienced a same store restaurant sales decline in 1998 of approximately 15.0%.

The Company's ability to continue as a going concern is dependent upon obtaining sufficient financing and ultimately upon achieving sufficient cash flows from operations to enable the Company to meet its obligations.

Management's plans to address the above issues include (i) the closure of 11 unprofitable restaurants during 1998 and the determination during 1998 to close seven additional restaurants and a support facility prior to August 31, 1999 (see note 4), (ii) the planned reduction of approximately $500,000 in overhead costs in 1999, (iii) an increased focus on controlling restaurant level operating costs, (iv) new product initiatives designed to stimulate sales growth in existing restaurants and (v) converting certain restaurants to the Atomic Burrito concept pursuant to the joint venture arrangement discussed in note 1(a).

The Company borrowed $200,000 from certain officers and directors subsequent to December 27, 1998, and entered into a sale-leaseback arrangement which generated approximately $180,000 in proceeds. Management expects to seek additional debt or equity financing but currently does not have any commitments to obtain such additional financing.

Management anticipates that it will refinance its notes payable to bank (see note 6) at maturity on September 15, 1999 although the Company currently does not have a commitment from the lender to refinance such notes payable. As discussed in note 6, the Company was not in compliance with certain restrictive covenants in the loan agreement with the bank at December 27, 1998; however, the Company has obtained a waiver from the lender for such noncompliance.

The ability of the Company to achieve sufficient financing and cash flows from operations and thereby continue as a going concern is dependent upon the extent to which management can achieve such plans.

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EXHIBIT 4.6

FIRST AMENDMENT TO 4% CONVERTIBLE AND
SUBORDINATED DEBENTURE DUE DECEMBER 14, 1999

THIS FIRST AMENDMENT TO 4% CONVERTIBLE AND SUBORDINATED DEBENTURE DUE DECEMBER 14, 1999 (this "Amendment") is made and entered into as of this 25th day of January, 1999,

BY AND BETWEEN NEW YORK BAGEL ENTERPRISES, INC., a Kansas Corporation, hereinafter referred to as

"CORPORATION"

AND DR. LORI ADELSON, an individual, hereinafter referred to as

"HOLDER"

WITNESSETH:

WHEREAS, Corporation and Holder entered into that certain 4% Convertible and Subordinated Debenture Due December 14, 1999, dated December 14, 1995 (the "Debenture");

WHEREAS, Corporation has previously paid Holder two (2) principal payments of Twenty-eight Thousand Seven Hundred Fifty Dollars ($28,750) with interest thereon at the rate of four percent (4%) per annum;

WHEREAS, Pursuant to the terms of the Debenture, Corporation owes Holder the two (2) principal payments due on December 14, 1998, and December 14, 1999, respectively, in the principal amount of Twenty-eight Thousand Seven Hundred Fifty Dollars ($28,750) each plus related interest; and

WHEREAS, Corporation and Holder desire to amend the Debenture by restructuring all remaining indebtedness.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. INCORPORATION OF RECITALS. The parties agree that the Debenture is hereby modified, altered and amended to incorporate the whereas clause recitals set forth above.

2. AMENDMENT TO SECTION 1. Section 1 of the Debenture is hereby

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amended by deleting the same in its entirety and inserting in lieu thereof the following:

SECTION 1. TERMS. The parties acknowledge and agree that New York Bagel Enterprises, Inc., a Kansas corporation ("Corporation") has paid Dr. Lori Adelson, successor to the Estate of Stephen Z. Plotkin, a Tennessee probate estate ("Payee"; Payee and any permitted subsequent holder(s) hereof are hereinafter referred to collectively as "Holder") two installments of Twenty-eight Thousand Seven Hundred Fifty Dollars ($28,750) on December 14, 1996, and December 14, 1997, with related interest at four percent (4%) per annum. Subject to Section 6 herein, Corporation shall pay Holder the remaining principal balance of Fifty-seven Thousand Five Hundred and No/100 Dollars ($57,500.00) as follows: (i) a monthly payment of One Thousand Dollars ($1,000) for forty-eight (48) months beginning on February 1, 1999 and payable on the first day of each month through and including January 1, 2003 (the "Maturity Date"); and (ii) Twenty-one Thousand Two Hundred Fifty-five and 32/100 Dollars ($21,255.32) on January 1, 2003, which amount includes remaining principal and interest at six percent (6%) per annum and interest at four percent (4%) for one year. If any of the principal or interest is not so paid, and at the option of Holder, or its assigns, all principal and interest shall become immediately due and payable.

3. AMENDMENT TO SECTION 16. Section 16 of the Debenture is hereby amended by deleting the same in its entirety and inserting in lieu thereof the following:

SECTION 16. NOTICES. All notices and other communications required or permitted under this Debenture shall be validly given, made, or served if in writing and delivered personally or sent by registered mail at the following address:

If to Corporation: Robert J. Geresi, Chief Executive Officer
New York Bagel Enterprises, Inc.
115 E. 8th Street
Stillwater, Oklahoma 74074

with a copy to: Gregory B. Klenda, Esq.
Klenda, Mitchell, Austerman & Zuercher, L.L.C.
1600 Epic Center
301 North Main Street
Wichita, Kansas 67202-4888

If to Holder: Dr. Lori Adelson
6 Warwick Lane
Nashville, Tennessee 37205

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with a copy to: Alan L. Saturn
Saturn and Mazer
212 Third Avenue, North
Nashville, Tennessee 37201

4. OTHER TERMS. All other terms and conditions in the Debenture shall remain unchanged and nothing herein shall affect the rights and obligations of the parties hereto under the Debenture except as modified herein.

5. AMENDMENT AND MODIFICATIONS. This Amendment may only be amended or modified in writing signed by the parties.

6. ENTIRE AGREEMENT. This Amendment contains the entire agreement between the parties and supersedes all prior agreements, arrangements and understandings relating to the subject matter hereof.

7. COUNTERPARTS AND FACSIMILE SIGNATURES. This Amendment may be executed simultaneously in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Facsimile signatures of the parties hereto shall be binding.

8. HEADINGS. The headings contained in this Amendment are for convenience and reference purposes only and shall not affect the meaning or interpretation of this Amendment.

9. GOVERNING LAW. This Amendment shall be governed by and construed in accordance with the laws of the State of Oklahoma.

10. SUCCESSORS AND ASSIGNS. This Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors, permitted assigns, heirs and personal representatives.

11. TERMS AND WORDS. All terms and words used in this Amendment, regardless of numbers and genders in which they are used, shall be deemed to include singular or plural and all genders as the context or sense of this Amendment or any paragraph or clause herein may require.

IN WITNESS WHEREOF, the parties have executed this Amendment the day and year first above written.

NEW YORK BAGEL ENTERPRISES, INC.

By: /s/ Robert J. Geresi

Robert J. Geresi, Chief Executive Officer

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"CORPORATION"

/s/ Lori Adelson

DR. LORI ADELSON
as successor in interest to
The Estate of Stephen Z. Plotkin
"HOLDER"

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EXHIBIT 4.8

SCHEDULE OF EMPLOYEES RECEIVING STOCK OPTION GRANTS
NEW YORK BAGEL ENTERPRISES, INC.
1998 GRANTS

INCENTIVE STOCK OPTIONS

	Date Granted	Director/Employee	Shares Granted	Strike Price
	REPRICED ALL OUTSTANDING INCENTIVE STOCK OPTIONS			
1	December 1, 1998	Paul Murphy	6,000	$1.000
2	December 1, 1998	Chris Cohea	6,000	$1.000
3	December 1, 1998	Andrew Lee	6,000	$1.000
4	December 1, 1998	Kyle Shipley	6,000	$1.000
5	December 1, 1998	Stephanie Baker	1,000	$1.000
6	December 1, 1998	Barbara Spillane	1,000	$1.000
7	December 1, 1998	Todd Bacon	2,500	$1.000
8	December 1, 1998	Jon Phelps	1,000	$1.000
9	December 1, 1998	Justin Fransung	1,000	$1.000
10	December 1, 1998	Billy Seamster	500	$1.000
11	December 1, 1998	Celeste Ramirez	500	$1.000
12	December 1, 1998	Alan Bounds	1,000	$1.000
13	December 1, 1998	Stephanie Barnes	1,000	$1.000
14	December 1, 1998	Robert Geresi	20,000	$1.000
15	December 1, 1998	Paul Sorrentino	20,000	$1.000
16	December 1, 1998	Vince Vrana	20,000	$1.000
17	December 1, 1998	Joe Trizza	20,000	$1.000
18	December 1, 1998	Chris Moorman	5,000	$1.000
19	December 1, 1998	Suzi Lindsey	5,000	$1.000
20	December 1, 1998	Andy Stafford	2,500	$1.000
21	December 1, 1998	Craig Wallace	1,000	$1.000
22	December 1, 1998	Robert Maldanado	1,000	$1.000
23	December 1, 1998	Rhonda Edwards	1,000	$1.000
24	December 1, 1998	Mark White	1,000	$1.000
25	December 1, 1998	Ethel Ruggles	1,000	$1.000
26	December 1, 1998	Jay Gates	500	$1.000
27	December 1, 1998	Steve Frazier	2,500	$1.000
28	December 1, 1998	Kenny Dove	1,000	$1.000
29	December 1, 1998	Theresa Morgan	1,000	$1.000
30	December 1, 1998	Tracy Percifield	1,000	$1.000

31	December 1, 1998	Robert Geresi	20,000	$1.000
32	December 1, 1998	Paul Sorrentino	10,000	$1.000
33	December 1, 1998	Vince Vrana	10,000	$1.000
34	December 1, 1998	Steve Frazier	10,000	$1.000
35	December 1, 1998	Joe Trizza	10,000	$1.000
			197,000	

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October 9, 1998	Richard R. Webb	10,000	$0.750

GRAND TOTALS		207,000	

</TABLE>

* These issuances are a result of the Board of Directors meeting dated December 1, 1998 in which the Board repriced outstanding options by canceling and re-issuing on a one-for-one basis at an exercise price of $1.00 per share which is greater than 100% of the quoted bid price of the stock of the corporation. In addition, such re-priced options are to vest as originally granted such that the new vesting periods shall be modified to give credit for the prior holding periods.

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EXHIBIT 4.9

SCHEDULE OF NON-EMPLOYEES RECEIVING
STOCK OPTION GRANTS
NEW YORK BAGEL ENTERPRISES,
INC.

NONQUALIFIED STOCK OPTIONS

<TABLE>
<CAPTION>

	Date Granted	Director		Shares Granted	Strike Price	Exercised (Cancelled)
<S>		<C>	<C>		<C>	<C>
1	October 6, 1997	David Murfin	a	17,500	$6.050 *	-
2	October 6, 1997	Bill Walsh	a	17,500	$5.500 *	-
3	October 9, 1998	Bill Walsh	a	100,000	$0.750	
4	January 28, 1999	Paul R. Hoover		17,500	$0.750	
				152,500		-

</TABLE>

a Nonqualified Stock Options have been issued outside of the New York Bagel Enterprises, Inc. Incentive Stock Plan to the above named members of the Board of Directors.

* These issuances are a result of the Board of Directors meeting dated October 6, 1997 in which the Board repriced outstanding options by canceling and re-issuing on a one-for-one basis at an exercise price of $5.50 per share which is greater than 100% of the quoted close price of the stock of the corporation in The Wall Street Journal. In addition, such re-priced options are to vest as originally granted such that the new vesting periods shall be modified to give credit for the prior holding periods.

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EXHIBIT 10.17

AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT OF PURCHASE AND SALE (this "Agreement") is made as of the 20th day of January, 1999,

BY AND BETWEEN NEW YORK BAGEL ENTERPRISES, INC., a Kansas corporation, hereinafter referred to as

"SELLER"

AND COMMERCIAL EQUITY, INC., a Kansas corporation, hereinafter referred to as

"BUYER"

W I T N E S S E T H :

WHEREAS, Seller is the current lessee of certain real property located at 21st and Tyler in the city of Wichita, Kansas, and more particular described in Exhibit "A" ("Wichita Land"), subject to that certain Ground Lease by and between Kenneth R. Reichenberger and Mary Ellen Reichenberger, as lessors, and Seller, as lessee, attached hereto as Exhibit "B" (the "Ground Lease") and the owner of all buildings, structures, facilities, improvements and fixtures located thereon, including, without limitation, a facility currently used as a New York Bagel Cafe restaurant ("Wichita Improvements"); provided, however, that upon expiration of Ground Lease all the Wichita Improvements shall revert to the lessors of the Ground Lease. The Wichita Land, the Wichita Improvements and the Ground Lease are hereinafter collectively referred to as the "Wichita Facility"; and

WHEREAS, Seller desires to sell all of its right, title and interest in and to the Wichita Facility to Buyer, and Buyer desires to purchase all of Seller's right, title and interest in and to the Wichita Facility from Seller, all on the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the covenants and agreements contained herein, the parties hereto agree as follows:

1. PURCHASE AND SALE. Seller agrees to sell all of its right, title and interest in and to all the Wichita Facility to Buyer, and Buyer agrees to purchase all of Seller's right, title and interest in and to all the Wichita

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Facility from Seller, on the terms and conditions hereinafter set forth in this Agreement.

2. PURCHASE PRICE.

2.1 The aggregate purchase price ("Purchase Price") for the Wichita Facility shall be One Hundred Eighty Thousand Dollars ($180,000).

2.2 The Purchase Price shall be paid at the Closing (as hereinafter defined) by delivering the Purchase Price to Seller by wire transfer of immediately available federal funds.

3. CONDITION OF TITLE TO WICHITA FACILITY.

3.1 At Closing, Seller shall assign to Buyer all of its right, title and interest to the Wichita Facility free and clear of all liens, except for (i) liens securing real property taxes and assessments, which constitute liens not yet due and payable; and (ii) such other exceptions and reservations (other than liens) shown on the Preliminary Title Report ("Preliminary Report") issued by the title company set forth in Exhibit "C" ("Title Company") for the Wichita Facility which are approved in writing by Buyer. All exceptions to title permitted pursuant to this Paragraph 3.1 are referred to in this Agreement as "Permitted Exceptions." Seller shall provide Buyer with a copy of the Preliminary Report and a copy of all exceptions described therein as soon as possible. Buyer shall have ten (10) business days after the date of Buyer's receipt thereof within which to notify Seller in writing of Buyer's disapproval of any exceptions set forth in the Preliminary Report. In the event of Buyer's disapproval of any exception in the Preliminary Report, this Agreement shall thereupon terminate.

3.2 At the Closing, Buyer's right, title and interest in and to the Wichita Facility shall be evidenced by the commitment of the title company to issue an ALTA Owner's and Loan Leasehold policy of title insurance with all endorsements required by Buyer, with liability in the amount of the Purchase Price, showing a leasehold interest in the Wichita Facility vested in Buyer, subject only to the Permitted Exceptions (the "Title Policy") and the standard printed exceptions (except that the exceptions relating to mechanic's liens and survey matters shall be deleted from the final title insurance policy).

4. BUYER'S CONTINGENCIES. Buyer's obligation to purchase the Wichita Facility is subject to satisfaction of the following contingencies described in Subparagraphs (a) through (f) in this Paragraph 4 ("Contingencies") prior to the

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Closing Date (as hereinafter defined) or earlier date set forth below. Each and all of the following Contingencies are for the sole benefit of Buyer and may be waived or deemed satisfied by Buyer in Buyer's sole and absolute discretion:

Buyer shall have approved and both Buyer and Seller shall have executed that certain lease ("Lease") between Buyer, as the lessor, and Seller, as the lessee, relating to the Wichita Facility, upon terms and conditions mutually satisfactory to the parties, each of which Lease shall by its terms have the Closing Date as the "Commencement Date" thereunder.

Buyer shall have reviewed and approved the Preliminary Report and all recorded exceptions to title thereon, as and when provided under Paragraph 3 hereof, and Title Company shall be committed to issue the Title Policy as required hereunder without expense to Buyer.

Seller shall have delivered to Buyer no later than five (5) days prior to the date scheduled for Closing, and Buyer shall have reviewed and approved, an ALTA land title survey for the Wichita Facility, prepared by a professional land surveyor entirely satisfactory to Buyer, showing all improvements located thereon, plotting all record easements, covenants and other encumbrances located thereon, with the record legal description of appearing on the face thereof.

Seller shall have delivered to Buyer, and Buyer shall have reviewed and approved, a tax lien search as to the Wichita Facility, updated as of not earlier than thirty (30) days prior to the Closing Date.

Seller shall have delivered to Buyer, and Buyer shall have reviewed and approved, a Phase I Environmental Site Assessment as to the Wichita Facility dated within three hundred and sixty (360) days of the Closing Date.

Buyer shall have approved its inspection and examination of the physical condition of the Wichita Facility. Buyer shall have access to the Wichita Facility at reasonable times and shall have the right to conduct, at Buyer's expense, soil tests, engineering feasibility studies, environmental investigations and such other studies with respect to the physical condition of the Wichita Facility as Buyer may desire. Buyer shall hold and save Seller harmless from and against any and all loss, cost, damage, liability, entry or expense, arising out of or in any way related to damage to property, injury to or death of persons, or the assertion of lien claims caused by such entry, inspection and implementation of soil tests, environmental

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investigations and other studies with respect to the physical condition of the Wichita Facility; provided, however, that notwithstanding any contrary provision contained herein, Buyer shall have no liability to Seller for any diminution in value of the Wichita Facility directly or indirectly resulting from or related to any information pertaining to the Wichita Facility discovered by Buyer and reported to Seller or its agents pursuant to the terms of this Agreement. If Buyer elects to terminate this Agreement by reason of failure of the Contingencies set forth in this Paragraph 4(d), Buyer shall promptly upon such election deliver to Seller all written reports, studies and information prepared by third parties for Buyer which pertain to the physical condition of the Wichita Facility.

Seller shall have delivered to Buyer all corporate resolutions, certificates and other documentation as may be reasonably required by Buyer.

Buyer's obligation to purchase the Wichita Facility is conditioned on Buyer obtaining on or before the Closing financing of the Purchase Price on terms and conditions acceptable to Buyer in Buyer's sole discretion. In the event this contingency is not met by the Closing Date, this Agreement shall, at Buyer's option, terminate without any remaining liability of any party.

Seller shall have delivered to Buyer a duly executed assignment of the Ground Lease.

If Buyer disapproves any Contingency prior to the Closing or earlier date set forth above, Buyer's sole remedy shall be to terminate this Agreement and Seller shall have no obligation to remedy any Contingency which Buyer disapproves.

5. REPRESENTATIONS AND WARRANTIES BY SELLER.

5.1 Seller makes the representations and warranties in this Paragraph 5, each and all of which shall survive any and all inquiries and investigations made by Buyer and shall survive the Closing:

(a) Seller is a corporation duly organized, validly existing and good standing under the laws of the State of Kansas which has the power and authority to enter into this Agreement and to consummate the transactions contemplated hereby. Seller, and the specific, individual parties signing this Agreement on behalf of Seller, represent and warrant that the parties

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signing this Agreement on behalf of Seller have the full legal power, authority and right to execute and deliver this Agreement.

(b) Neither the entering into this Agreement nor the performance of any of Seller's obligations under this Agreement will violate the terms of any contract, agreement or instrument to which Seller is a party.

(c) The Wichita Facility is zoned to permit the operation of a restaurant thereon, and all improvements on the Wichita Facility conform to all existing building, zoning, environmental or other laws and ordinances, and is in good operating condition and repair as of the Closing Date. Seller has not received any notice of any presently uncured violation of any law, ordinance, rule or regulation (including, without limitation, those relating to zoning, building, fire, health and safety) of any governmental, quasi-governmental authority bearing on the construction, operation, ownership or use of the Wichita Facility.

(d) Seller has not received any notice of any pending widening, modification or realignment of any street or highway contiguous to either property or any existing or proposed eminent domain proceeding which would result in a taking of all or any part of the Wichita Facility.

(e) None of the easements, covenants, conditions, restrictions or agreements to which the Wichita Facility is subject interferes with or is breached by the use or operation of the Wichita Facility as presently used and operated as a restaurant.

(f) Seller has not been served with any litigation, and no arbitration proceedings have been commenced, which do or will affect any aspect of the Wichita Facility or Seller's ability to perform its obligations under this Agreement. In addition, Seller has not been threatened in writing with any litigation (or arbitration) by a third party which would affect any aspect of the Wichita Facility or Seller's ability to perform its obligations under this Agreement.

(g) Adequate gas, telephone, electricity, water and sewer facilities are available to all the Wichita Facility, and all such facilities serving the Wichita Facility have been

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paid for such that Buyer will not be subject to charges or assessments for capital or hookup costs relating to such facilities.

(h) There are not any written commitments to, or written agreements with, any governmental or quasi-governmental authority or agency materially affecting the Wichita Facility which have not been heretofore disclosed by Seller to Buyer in writing.

(i) All expenses in connection with the construction of all the improvements on the Wichita Land have been fully paid, such that there is no possibility of any mechanics' or materialmens' liens being asserted or filed in the future against the Wichita Facility in respect of any initial construction activities undertaken prior to the Closing.

(j) Seller has not been served or notified by any governmental or quasi-governmental authority that (i) the Wichita Facility, or any adjoining property, contains or may contain any "Hazardous Materials" in violation of any "Environmental Regulations" (as those terms are defined in Paragraph 5.1(k) below); or (ii) Hazardous Materials have heretofore been stored, used or maintained on, in or under the Wichita Facility in violation of any Environmental Regulations. In addition, to the best of Seller's knowledge, but without any specific investigation therefore, there are no Hazardous Materials located in, on or under all or any portion of the Wichita Facility or the area surrounding the Wichita Facility.

(k) As used in this Agreement, the terms "Environmental Regulations" and "Hazardous Materials" shall have the following meanings:

(i) "ENVIRONMENTAL REGULATIONS" shall mean all applicable statutes, regulations, rules, ordinances, codes, license, permits, orders,

approvals, plans, authorizations, and similar items, of all governmental agencies, departments, commissions, boards, bureaus or instrumentalities of the United States, states and political subdivisions thereof and all applicable judicial and administrative and regulatory decrees, judgments and orders relating to the protection of human health or

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the environment, including, without limitation: (1) all requirements, including, without limitation, those pertaining to reporting, licensing, permitting, investigation and remediation of emissions, discharges, releases or threatened releases of Hazardous Materials, whether solid, liquid or gaseous in nature, into the air, surface water, groundwater or land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials, whether solid, liquid or gaseous in nature; and (2) all requirements pertaining to the protection of the health and safety of employees or the public.

(ii) "HAZARDOUS MATERIALS" shall mean (1) any flammables, explosive or radioactive materials, hazardous waste, toxic substances or related materials including, without limitation, substances defined as "hazardous substances," "hazardous materials," "toxic substances" or "solid waste" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sec. 9601, ET SEQ.; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, ET SEQ.; the Toxic Substances Control Act, 15 U.S.C., Section 2601 ET SEQ.; the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6901 ET SEQ.; Occupational Safety and Health Act, 29 U.S.C. Section 651, ET SEQ.; and any and all similar state and local laws and ordinances, and the regulations now or hereafter adopted, published and/or promulgated pursuant thereto; (2) those substances listed in the United States Department of Transportation Table (49 C.F.R. 172.101 and amendments thereto) or by the Environmental Protection Agency (or any successor agency) as hazardous substances (40 C.F.R. Part 302 and amendments thereto); (3) those substances defined as "hazardous wastes," "hazardous substances" or "toxic substances" in any similar federal, state or local laws or in the regulations adopted and publications promulgated pursuant to any of the foregoing laws or which otherwise are regulated by any governmental authority, agency, department, commission, board or instrumentality of the United States of America, the State of Kansas or any political subdivision thereof; (4) any pollutant or contaminant or hazardous, dangerous or toxic chemicals, materials, or substances within the meaning of any other applicable federal, state, or local law, regulation, ordinance, or requirement (including consent decrees

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and administrative orders)

relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, all as amended; (5) petroleum or any by-products thereof; (6) any radioactive material, including any source, special nuclear or by-product material as defined at 42 U.S.C. Sections 2011 ET SEQ., as amended, and in the regulations adopted and publications promulgated pursuant to said law; (7) asbestos in any form or condition; and (8) polychlorinated biphenyls.

(l) Other than the Ground Lease, there are no other written agreements for the use, occupancy or possession of the Wichita Facility, or any portion thereof. There are no oral agreements for the use, occupancy or possession of the Wichita Facility or any portion thereof.

(m) Until the Closing, the Wichita Facility will continue to be operated in substantially the same manner as operated as of the date of this Agreement. Seller will not do or cause anything to be done that would change, alter or modify the operation of the Wichita Facility in the manner in which it is operated as of the date of this Agreement, without the prior written consent of Buyer.

(n) Seller has neither engaged nor dealt with any broker or finder in connection with the sale contemplated by this Agreement and Seller shall indemnify, defend and hold Buyer harmless from and against, any commission or finder's fee payable to any party who represents or claims to represent Seller.

(o) Seller will not alter the physical condition of the Wichita Facility from and after the date of this Agreement through, and including, the Closing Date, reasonable wear and tear excepted. Subject to Paragraphs 10 and 11 hereof, if, through no fault of Seller, the physical condition of the Wichita Facility is different as of the Closing from that as of the date of this Agreement, the terms and conditions of Paragraph 5.2, below shall apply.

5.2 Each and all of the representations and warranties set forth in Paragraph 5.1 above shall be true and correct as of the Closing; provided that, if, prior to the Closing, new events have

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occurred which were beyond the control of Seller (other than pursuant to Paragraphs 10 and 11 hereof) and which render any previously true representation or warranty untrue, Seller shall immediately disclose those matters by written notice to Buyer. Buyer shall have ten (10) business days after the earlier of (i) such disclosure; or (ii) Buyer's independent discovery that such representation or warranty has become untrue, to elect, in its sole and absolute discretion, and as its sole remedy, by written notice to Seller within said ten (10) business day period, whether (i) to purchase the Wichita Facility or (ii) terminate this Agreement. If Buyer fails to notify Seller of its election to terminate this Agreement within said ten (10) business day period provided above, Buyer shall be deemed to have

accepted the modified representations and warranties and elected to purchase the Wichita Facility.

6. REPRESENTATIONS AND WARRANTIES BY BUYER.

Buyer makes the following representations and warranties in this Paragraph 6, each and all of which shall survive any and all inquiries and investigations made by Seller and shall survive the Closing:

6.1 Buyer is a corporation duly organized, validly existing and good standing under the laws of the State of Kansas which has the power and authority to enter into this Agreement and to consummate the transactions contemplated hereby. Buyer, and the specific, individual parties signing this Agreement on behalf of Buyer represent and warrant that the parties signing this Agreement on behalf of Buyer have the full legal power, authority and right to execute and deliver this Agreement.

6.2 Buyer has neither engaged nor dealt with any broker or finder in connection with the sale contemplated by this Agreement and Buyer shall indemnify, defend and hold Seller harmless from and against, any commission or finder's fee payable to any party who represents or claims to represent Buyer.

7. INDEMNIFICATION.

7.1 Subject to any other provisions of this Agreement to the contrary, each party agrees to indemnify ("Indemnitor") and hold the other party ("Indemnitee") harmless from and against any claim, loss, damage or expense, including any reasonable attorneys' fees (including attorneys' fees on appeal), asserted against or suffered by the Indemnitee resulting from:

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(a) Any breach by the Indemnitor of this Agreement; or

(b) The inaccuracy or breach of any of the representations, warranties or covenants made by the Indemnitor in this Agreement.

7.2 The Indemnitee shall submit any claim for indemnification under this Agreement to the Indemnitor in writing within a reasonable time after Indemnitee determines that an event has occurred which has given rise to a right of indemnification under this Paragraph 7 and shall give Indemnitor a reasonable opportunity to investigate and cure any default of Indemnitor under this Agreement and eliminate or remove any claim by a third party. Notwithstanding the foregoing, if the nature of Indemnitor's default or the third party claim is such that it would be impracticable or unreasonable to give Indemnitor an opportunity to investigate and cure such default and remove such claim, Indemnitee need not give Indemnitor such opportunity.

7.3 If such claim for indemnification relates to a claim or demand presented in writing by a third party against Indemnitee, Indemnitor shall have the right to employ counsel reasonably acceptable to Indemnitee to defend any such claim or demand, and Indemnitee shall make available to Indemnitor, or its representatives, all records and other materials in its possession or under its control reasonably required by Indemnitor for its use in contesting such liability. If Indemnitor does not elect to defend any such claim or demand, Indemnitee may do so at its option, but shall not have any obligation to do so.

8. CLOSING.

8.1 Provided that all Contingencies set forth in Paragraph 4 have been satisfied or waived, as provided therein, the parties shall close the transactions ("Closing") on January 20, 1999 or earlier date agreed upon by the parties ("Closing Date"). Upon the Closing, Seller shall deliver exclusive right of possession of each of the Properties to Buyer subject only to the permitted exceptions.

8.2 At the Closing, Buyer shall deliver to Seller the following funds and documents:

(a) The Purchase Price (in the aggregate amount specified in Paragraph 2), as adjusted pursuant to this Agreement; and

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(b) Duly executed Lease between Buyer, as lessor, and Seller, as lessee, relating to the Wichita Facility.

8.3 Upon the Closing, Seller shall pay all closing costs and expenses incurred by both Seller and Buyer in connection with this transaction, including, without limitation, (a) the entire cost of any title policies; (b) all recording fees; and (c) all of Buyer's costs and expenses as defined below. "Buyer's costs and expenses" shall mean all costs and expenses incurred by Buyer, including, without limitation, Buyer's attorneys' fees and expenses not to exceed Five Thousand Dollars ($5,000) in connection with the negotiation, drafting, due diligence review and investigation, and the closing of the transactions contemplated herein. Buyer is to incur no direct cost or expense in connection with the Closing of the transactions contemplated herein.

8.4 If the Closing fails to occur as provided hereunder as a result of the default of this Agreement by a party, the defaulting party shall pay all title charges; provided, however, that nothing in this Paragraph 8 shall be deemed to limit, and the provisions of this Paragraph 8 shall be in addition to, all other rights and remedies of the nondefaulting party.

9. PRORATIONS. There shall be no prorations of any costs or expenses related to the Wichita Facility owing to the fact that the Lease is a so-called triple-net lease and all costs and expenses which would otherwise be prorated shall be paid by Seller pursuant to the Lease.

10. DAMAGE OR DESTRUCTION PRIOR TO CLOSING. If the Wichita Facility, or any portion thereof, is damaged or destroyed prior to the Closing from any cause whatsoever, whether insured risk or not, including, without limitation, fire, flood, accident or other casualty which, according to Buyer's and Seller's best estimate, would cost more than Ten Thousand Dollars ($10,000) to repair, Buyer shall have the option, upon written notice to Seller, to either (i) terminate this Agreement, or (ii) purchase all the Wichita Facility. If Buyer elects to purchase the Wichita Facility, Seller shall promptly repair such Property. In the event that Buyer's and Seller's best estimate of the cost of repair is Ten Thousand Dollars ($10,000) or less, Buyer shall purchase the Wichita Facility and Seller shall promptly repair such Property. Should any damage or destruction occur prior to the Closing, the date scheduled for the Closing shall be extended for a period of time not to extend thirty (30) days, for the purpose of allowing Buyer and Seller sufficient time to estimate the cost of repair. If Buyer fails to notify Seller of its election under this Paragraph 10, Buyer shall be deemed to have elected to purchase the Wichita Facility.

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11. EMINENT DOMAIN.

11.1 The words "condemnation" or "condemned" as used in this Paragraph 11 shall mean the exercise of, or intent to exercise, the power of eminent domain expressed in writing, as well as the filing of any action or proceeding for such purpose, by any person, entity, body, agency or authority having the right or power of eminent domain (the "condemning authority").

11.2 If Seller receives written notice from a condemning authority advising of a condemnation of all or any portion of the Wichita Facility ("Condemnation Notice"), Seller shall immediately advise Buyer of same in writing and deliver therewith a copy of the Condemnation Notice. Within three (3) days after Buyer's receipt of the Condemnation Notice, Buyer shall notify Seller of its election to either (i) terminate this Agreement or (ii) purchase the Wichita Facility. If Buyer elects to purchase the Wichita Facility, Seller shall transfer to Buyer at the Closing all proceeds from condemnation or Seller's right to receive all such proceeds. If Buyer fails to notify Seller of its election under this Paragraph 11, Buyer shall be deemed to have elected to purchase the Wichita Facility.

12. SURVIVAL OF REPRESENTATIONS. All representations, warranties, covenants, conditions, agreements and obligations contained in or relating to this Agreement shall survive the Closing.

13. NOTICES. All notices to be given pursuant to this Agreement shall be either (i) personally delivered; (ii) sent via certified or registered mail, postage prepaid; or (iii) overnight courier. If sent via personal delivery, receipt shall be deemed effective on the day of delivery. If sent via certified or registered mail, receipt shall be deemed effective the second business day after being deposited in the United States mail. If sent via overnight courier, receipt shall be deemed effective the next business day after the sending thereof. All notices to be given pursuant to this Agreement shall be given to the parties at the following respective address:

To Buyer: Commercial Equity, Inc.
300 I.M.A. Plaza
250 North Water Street
Wichita, Kansas 67202-1213
Attention: David L. Murfin, President
Telecopier No.: 316-267-6004

with a copy to: Foulston & Siefkin L.L.P.
700 NationsBank Financial Center
Wichita, Kansas 67202
Attention: William R. Wood II

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Telecopier No.: 316-267-6345

To Seller: New York Bagel Enterprises, Inc.
300 I.M.A. Plaza
250 North Water Street
Wichita, Kansas 67202-1213
Attention: Robert J. Geresi
CEO and President
Telecopier No.: (316) 267-8154

with a copy to: Klenda, Mitchell, Austerman & Zuercher, L.L.C.
1600 Epic Center
301 North Main Street
Wichita, Kansas 67202-4888
Attention: Gregory B. Klenda
Telecopier No.: (316) 267-0333

14. ENTIRE AGREEMENT. This Agreement, and the exhibits attached hereto, represent the entire Agreement between the parties in connection with the transactions contemplated hereby and the subject matter hereof and this Agreement supersedes and replaces any and all prior and contemporaneous agreements, understandings and communications between the parties, whether oral or written, with regard to the subject matter hereof. There are no oral or written agreements, representations or inducements of any kind existing between the parties relating to this transaction which are not expressly set forth herein. This Agreement may not be modified except by a written agreement signed by both Buyer and Seller.

15. BINDING EFFECT. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, legal representatives, administrators, successors in interest and assigns.

16. WAIVER. No waiver by any party at any time of any breach of any provision of this Agreement shall be deemed a waiver or a breach of any other provision herein or a consent to any subsequent breach of the same or another provision. If any action by any party shall require the

consent or approval of another party, such consent or approval of such action on any one occasion shall not be deemed a consent to or approval of such action on any subsequent occasion or a consent to or approval of any other action.

17. CAPTIONS AND HEADINGS. The captions and paragraph numbers appearing in this Agreement are inserted only as a matter of convenience and do not define, limit, construe, or describe the scope or intent of this Agreement.

18. COUNTERPARTS. This Agreement may be executed in counterparts, each

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of which shall be considered an original and all of which taken together shall constitute one and the same instrument.

19. GOVERNING LAW. This Agreement has been prepared, negotiated and executed in, and shall be construed in accordance with, the laws of the State of Kansas.

20. ATTORNEYS' FEES. If either party named herein brings an action or proceeding to enforce the terms hereof or declare rights hereunder, the prevailing party in any such action (or proceeding), on trial or appeal, shall be entitled to its reasonable attorneys' fees to be paid by the losing party as fixed by the Court (or if applicable, the arbitrator).

21. TIME OF ESSENCE. Time is of the essence with respect to all matters contained in this Agreement.

22. DATE OF AGREEMENT. All references in this Agreement to "the date of this Agreement" or "the date hereof" shall be deemed to refer to the date set forth in the first paragraph of this Agreement.

23. INVALIDITY OF ANY PROVISION. If any provision (or any portion of any provision) of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws effective during the term of this Agreement, the legality, validity, and enforceability of the remaining provisions (or the balance of such provision) shall not be affected thereby.

24. DRAFTING OF AGREEMENT. Buyer and Seller acknowledge that this Agreement has been negotiated at arm's length, that each party has been represented by independent counsel and that this Agreement has been drafted by both parties and no one party shall be construed as the draftsperson.

25. NO THIRD PARTY BENEFICIARY RIGHTS. This Agreement is entered into for the sole benefit of Buyer and Seller and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.

26. INCORPORATION OF EXHIBITS. Each and all of the exhibits to this Agreement are incorporated herein as if set forth in full in this Agreement.

27. PUBLIC ANNOUNCEMENTS. The parties agree that all statements and/or public announcements, including those to the media, concerning this transaction shall be subject to the parties' collective approval, which approval shall not be unreasonably or untimely withheld.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth in the first paragraph of this Agreement.

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NEW YORK BAGEL ENTERPRISES, INC.,
a Kansas corporation

By: /s/ Richard Randall Webb

Richard Randall Webb, Secretary

"SELLER"

COMMERCIAL EQUITY, INC.,
a Kansas corporation

By: /s/ Paul R. Hoover

Paul R. Hoover, Vice-President

"BUYER"

EXHIBIT A

LEGAL DESCRIPTION
8621 West 21st North, Wichita, Kansas 67205

Lot 1, Westwind 5th Addition, to Wichita, Sedgwick County, Kansas, containing 18,864 square feet, more or less.

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EXHIBIT 10.18

LEASE

BETWEEN

COMMERCIAL EQUITY, INC., AS LESSOR

AND

NEW YORK BAGEL ENTERPRISES, INC., AS LESSEE

JANUARY 20, 1999

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LEASE

THIS LEASE (this "Lease") is made as of this 20th day of January, 1999, by and between COMMERCIAL EQUITY, INC., a Kansas corporation, herein called "Lessor," and NEW YORK BAGEL ENTERPRISES, INC., a Kansas corporation, herein called "Lessee," subject to the terms, conditions and contingencies set forth below.

ARTICLE I

1.1 LEASED PROPERTY. Upon and subject to the terms and conditions hereinafter set forth, Lessor leases to Lessee, and Lessee rents and hires from Lessor all of the following (collectively, the "Leased Property"):

(i) The real property described in Exhibit "A" attached hereto (the "Land");

(ii) All buildings, structures, Fixtures (as hereinafter defined) and other improvements of every kind including, without limitation, alleyways and connecting tunnels, sidewalks, utility pipes, conduits and lines (on-site and off-site), parking areas and roadways appurtenant to such buildings and structures presently situated upon the Land (collectively, the "Leased Improvements");

(iii) All easements, rights and appurtenances relating to the Land and the Leased Improvements; and

(iv) All permanently affixed equipment, machinery, fixtures, and other items of real and/or personal property, including all components thereof, permanently affixed to or incorporated into the Leased Improvements, including, without limitation, all furnaces, boilers, heaters, electrical equipment, heating, plumbing, lighting, ventilating, refrigerating, incineration, air and water pollution control, waste disposal, air-cooling and air conditioning systems and apparatus, sprinkler systems and fire and theft protection equipment, all of which to the greatest extent permitted by the law, are hereby deemed by the parties hereto to constitute real estate, together with all replacements, modifications, alterations and additions thereto, to the extent acquired by Lessor pursuant to the "Purchase Agreement" as defined in Article II hereof (collectively, the "Fixtures").

The Leased Property is subject that certain Ground Lease dated January 15, 1997 by and between Kenneth R. Reichenberger and Mary Ellen Reichenberger, as landlords, and Lessee, as tenant (the "Ground Lease"), a copy of which is attached hereto as Exhibit "B". The Leased Property

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includes the Building operated as a New York Bagel Cafe restaurant and located at the Location set forth in Schedule 1 attached hereto. Notwithstanding the foregoing, the Leased Property shall not include any property not acquired by Lessor from the Seller pursuant to the Purchase Agreement. The Leased Property is further subject to all covenants, conditions, restrictions, easements, and other matters of record, and all other matters that affect title, zoning and any other matters set forth in that certain title policy issued by the title company set forth in Schedule 1 attached hereto concurrently with Lessor's purchase of the Leased Property (the "Permitted Title Matters").

1.2 TERM. The initial term of this Lease (the "Initial Term") shall be the period commencing on the closing (the "Closing") under the Purchase Agreement (the "Commencement Date") and shall expire upon the earlier of April 1, 2007, upon the termination of the Ground Lease or in accordance with Paragraph 1.4. Lessee has the right to extend the term of this Lease, at Lessee's option, as provided in Article XVIII, below. (The Initial Term plus all validly exercised options to extend, if any, shall be referred to herein as the "Term").

1.3 LESSEE BOUND BY GROUND LEASE. Except as is otherwise provided in this Lease, Lessor and Lessee hereby agree that all of the terms, covenants, promises and conditions of the Ground Lease are hereby incorporated in this Lease by reference, and Lessee hereby agrees to comply with and be bound by all of the terms, covenants, promises and conditions of the Ground Lease as applicable therein to Lessee.

1.4 EARLY TERMINATION. Lessor and Lessee shall each have the right to terminate this Lease at anytime upon at least six (6) months prior written notice to the other party. In the event Lessor terminates the Lease pursuant to this paragraph, then Lessee shall not be required to remit Minimum Rent hereunder during the last three (3) months of the Term and Lessor shall indemnify and hold Lessee harmless for any and all obligations under the Ground Lease. In the event Lessee terminates the Lease pursuant to this paragraph, then Lessee shall be required to remit the Minimum Rent hereunder until such time as the Lease is terminated.

ARTICLE II

2. DEFINITIONS. For all purposes of this Lease, except as otherwise expressly provided, (i) the terms defined in this Article II have the meanings assigned to them in this Article II and include the plural as well as the singular; (ii) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles at the time applicable; and (iii) the words "herein," "hereof" and "hereunder" and other words of similar import refer to this Lease as a whole and not to any particular Article, Paragraph or other subdivision:

ADDITIONAL CHARGES. As defined in Paragraph 3.2.

AFFILIATE. When used with respect to any corporation, the term "Affiliate" shall mean any person or entity (including any trust) which, directly or indirectly, controls or is controlled by or is under common control with such corporation. For the purposes of this definition,

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"control" (including the correlative meanings of the terms "controlled by" and "under common control with"), as used with respect to any person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person, through the ownership of voting securities, partnership interests or other equity interests. For the purposes of this definition, "person" shall mean any natural person, trust, partnership, corporation, joint venture or other legal entity.

BUILDING. That certain building currently operated as a New York Bagel Cafe restaurant which is part of the Leased Property, as defined in Article I, above.

BUILDING MORTGAGE. As defined in Article XIII.

BUILDING MORTGAGEE. As defined in Article XIII.

BUSINESS DAY. Each Monday, Tuesday, Wednesday, Thursday, and Friday, which is not a day on which national banks in the State of Kansas are authorized or obligated, by law or executive order, to close.

CALENDAR YEAR. The period from January 1 through and including December 31 in the same calendar year.

CODE. The Internal Revenue Code of 1986, as amended.

ENCUMBRANCE. As defined in Article XXXII.

EVENT OF DEFAULT. As defined in Article XVI.

EXTENDED TERM. As defined in Article XVIII.

FIXTURES. As defined in Article I.

GROUND LEASE. As defined in Article I.

GROUND RENT. The rent attributable to the lease of the land in the amounts set forth in the Ground Lease.

IMPOSITIONS. Collectively, all taxes (including, without limitation, all ad valorem, sales and use or any other taxes as the same relate to or are imposed upon Lessee or Lessor or the business conducted upon the Leased Property), assessments (including, without limitation, all assessments for public improvements or benefits, whether or not commenced or completed prior to the date hereof and whether or not to be completed within the Term), water, sewer or other rents and charges, excises, tax levies, fees (including, without limitation, license, permit, inspection, authorization and similar fees), and all other governmental charges, in each case whether general or special, ordinary or extraordinary, or foreseen or unforeseen, of every character in respect of the Leased Property, Lessor, or the business conducted thereon by Lessee (including all interest and penalties thereon due

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to any failure in payment by Lessee), and all increases in all the above from any cause whatsoever, including reassessment, which at any time prior to, during or in respect of the Term may be assessed or imposed on or in respect of or be a lien upon (a) Lessor's interest in the Leased Property or any part thereof; (b) the Leased Property or any part thereof; or (c) any occupancy, operation, use or possession of, or sales from, or activity conducted on, or in connection with the Leased Property or the leasing or use of the Leased Property or any part thereof by Lessee. Without limiting the foregoing, the term "Imposition" shall include any sales tax paid under this Lease, depreciation recapture, any other taxes (except for the specific exclusions stated below), fees or charges imposed by the State and any potential subdivision thereof relating to the Leased Property, or this Lease, whether relating to any period prior to or after the Commencement Date. Nothing contained in this Lease shall be construed to require Lessee to pay (1) the following taxes

and fees to the extent they relate to Lessor's business generally (as opposed to relating specifically to Lessor's ownership of the Building, lease thereof to Lessee or income therefrom): any federal, state or local income tax of Lessor, taxes based on outstanding corporate shares of Lessor or Lessor's equity or capitalization, regardless of whether denominated as an income tax, franchise tax, capital tax or otherwise; (2) any income or capital gain tax imposed with respect to the sale, exchange or other disposition, or operation, by Lessor of any Leased Property or the proceeds thereof; or (3) estate, inheritance, gift taxes or documentary transfer taxes.

INSURANCE REQUIREMENTS. All terms of any insurance policy required by this Lease and all requirements of the issuer of any such policy.

LAND. As defined in Article I.

LEASE. As defined in the Preamble.

LEASE YEAR. The twelve (12) month period from January 1 to December 31 in each calendar year. In the case of the beginning of the Initial Term, the provision "Lease Year" shall mean the period from the Commencement Date (defined in Paragraph 1.2, above) to December 31, 1999; in the case of the end of the Term, the provision "Lease Year" shall mean the period from the last January 1 to occur in the Term to the date of expiration of the Lease. The Lease Year 1999 shall mean the Commencement Date through December 31, 1999; the Lease Year 2000 shall mean January 1, 2000 through December 31, 2000, and so on.

LEASED IMPROVEMENTS; LEASED PROPERTY. Each as defined in Article I.

LEGAL REQUIREMENTS. All federal, state, county, municipal, and other governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees, and injunctions affecting either the Leased Property or the construction, use or alteration thereof whether now or hereafter enacted and in force, including any which may (i) require repairs, modifications or alterations in or to the Leased Property; or (ii) in any way adversely affect the use and enjoyment thereof, and all permits, licenses and authorizations

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and regulations thereto, and all covenants, agreements, restrictions, and encumbrances contained in any instruments, either of record or known to Lessee, at any time in force affecting the Leased Property.

LESSEE. New York Bagel Enterprises, Inc., a Kansas corporation (and any assignee permitted subject to the terms and conditions in this Lease).

LESSEE'S PERSONAL PROPERTY. All machinery, equipment, furniture, furnishings, movable walls or partitions, computers, or movable trade fixtures or other personal property, and consumable inventory and supplies, owned by Lessee and used or useful in Lessee's business on the Leased Property, including, without limitation, all items of furniture, furnishings, equipment, supplies and inventory, except items acquired by Lessor pursuant to the Purchase Agreement.

LESSOR. Commercial Equity, Inc., a Kansas corporation, and its successors and assigns. Unless Lessee is notified by Lessor otherwise, Lessor's address is: Commercial Equity, Inc.,

300 I.M.A. Plaza, 250 North Water Street, Wichita, Kansas 67202-1213, Attention: David L. Murfin, President.

MINIMUM RENT. As defined in Paragraph 3.1.

NOTICE. A notice given pursuant to Article XXXI hereof.

OFFICERS' CERTIFICATE. A certificate of Lessee signed by (i) the Chairman of the Board of Directors, Chief Executive Officer or the President or any authorized Vice President; and (ii) the Secretary, or another officer authorized by appropriate resolution to so sign by the Board of Directors. Any signature required above may be substituted with a signature of another person whose power and authority to act has been authorized by an appropriate corporate resolution.

OVERDUE RATE. On any date, a rate equal to the Prime Rate (defined below), plus five percent (5%); provided, however, that it is the intent of Lessor and Lessee that the Overdue Rate (and all other interest rates provided for hereunder) be in strict compliance with applicable usury laws of the State of Kansas, and that in the event the Overdue Rate (or other interest rate provided for hereunder) shall be deemed to exceed that permitted to be charged by the laws of the State of Kansas, any and all excess sums collected by Lessor shall be credited against the Rent payable under this Lease or if there is no Rent due, promptly refunded to Lessee.

PAYMENT DATE. Any due date for the payment of the installments of Minimum Rent or any other payments required under this Lease.

PRIMARY INTENDED USE. As defined in Paragraph 7.2.2.

PRIME RATE. On any date, a rate equal to the annual rate on such date announced by NationsBank, N.A. to be its prime rate for 90-day unsecured

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loans to its corporate borrowers of the highest credit standing or, if not available, such other rate as may be published by THE WALL STREET JOURNAL as the prime rate in its listing of "MONEY RATES."

PURCHASE AGREEMENT. That certain Agreement of Purchase and Sale, dated January 20, 1999, between Lessee as "Seller" and Lessor as "Buyer" providing for Lessor's acquisition of all of Lessee's interest in and to the Leased Property.

RENT. Any and all monetary obligations of Lessee owing under this Lease.

STATE. As defined in Schedule 1 attached hereto and incorporated herein.

SUBSIDIARIES. Corporations, of which either Lessee or Lessor owns, directly or indirectly, more than 50% of the voting stock (individually, a "Subsidiary").

TERM. Collectively, the Initial Term plus any Extended Terms, as the context may require, unless earlier terminated pursuant to the provisions hereof.

UNSUITABLE FOR ITS PRIMARY INTENDED USE. A state of condition of the Building such that by reason of damage or destruction, or a partial taking by Condemnation, in the good faith judgment of Lessor, reasonably exercised, the Building cannot be operated on a commercially practicable basis for its Primary Intended Use taking into account.

UNAVOIDABLE DELAYS. Delays due to strikes, lock-outs, inability to procure materials, power failure, acts of God, governmental restrictions, enemy action, civil commotion, fire, unavoidable casualty or other causes beyond the control of the party responsible for performing an obligation hereunder; provided that lack of funds shall not be deemed a cause beyond the control of either party hereto unless such lack of funds available to Lessor results from Lessee's failure to perform any of its obligations under this Lease.

The above does not include all the definitions to be used in this Lease. Various definitions of other terms are included in the other Articles of this Lease.

ARTICLE III

3.1 MINIMUM RENT. Lessee will pay to Lessor in lawful money of the United States of America which shall be legal tender for the payment of public and private debts, at Lessor's address set forth above or at such other place or to such other person, firms or corporations as Lessor from time-to-time may designate in a Notice, Minimum Rent (as defined below), during the Term, as follows:

(a) INITIAL TERM. The "Minimum Rent" shall be the annual

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sums as stated in Schedule 1 attached hereto and incorporated herein. The Minimum Rent shall be paid in advance in equal, consecutive monthly installments on the first day of each calendar month of the Term. Minimum Rent shall be prorated for any partial month at the beginning or end of the Term.

(b) EXTENDED TERMS. The Minimum Rent during the Extended Terms shall be as stated in Article XVIII, below.

3.2 ADDITIONAL CHARGES. In addition to the Minimum Rent, (1) Lessee will also pay and discharge as and when due and payable all other amounts, liabilities, obligations and Impositions which Lessee assumes or agrees to pay under this Lease and the Ground Lease, and (2) in the event of any failure on the part of Lessee to pay any of those items referred to in the immediately preceding clause (1) above, Lessee will also promptly pay and discharge every fine, penalty, interest and cost which may be added for non-payment or late payment of such items (the items referred to in clauses (1) and (2) above being referred to herein collectively as the "Additional Charges"), and Lessor shall have all legal, equitable and contractual rights, powers and remedies provided either in this Lease or by statute or otherwise in the case of non-payment of the Additional Charges. If any elements of Additional Charges shall not be paid within seven (7) Business Days after its due date and Lessor pays any such amount (which Lessor shall have the right, but not the obligation, to do), then, in addition to Lessor's other rights and remedies, Lessee will pay Lessor on demand, as Additional Charges, interest on such unpaid Additional Charges computed at the Overdue Rate from the due date of such installment to the date of Lessee's payment thereof.

3.3 NET LEASE. Subject to the provisions of Article V, below, without limiting any provision of this Lease, the Rent shall be paid absolutely net to Lessor, so that this Lease shall yield to Lessor the full amount of the installments of Minimum Rent throughout the Term, all as more fully set forth in Articles IV, VIII, IX and XIII, and other provisions of this Lease, so that, accordingly, Lessee shall pay all Additional Charges and any other expenses of any kind associated with this Lease and the Leased Property to insure that Lessor receives the Minimum Rent, net of all expenses. Further, because Lessee, prior to the date of this Lease, is the leasehold interest holder to the Leased Property, Lessee shall be responsible for all Additional Charges and all other amounts due under this Lease and the Ground Lease for any period prior to and during the Term.

3.4 LATE CHARGE. LESSEE HEREBY ACKNOWLEDGES THAT LATE PAYMENT BY LESSEE TO LESSOR OF RENT (INCLUDING, WITHOUT LIMITATION MINIMUM RENT AND ADDITIONAL CHARGES) WILL CAUSE LESSOR TO INCUR COSTS NOT CONTEMPLATED BY THIS LEASE, THE EXACT AMOUNT OF WHICH WILL BE EXTREMELY DIFFICULT TO ASCERTAIN. SUCH COSTS INCLUDE, WITHOUT LIMITATION, PROCESSING AND ACCOUNTING CHARGES. ACCORDINGLY, IF ANY INSTALLMENT OF MINIMUM RENT OR ANY OTHER SUM DUE FROM LESSEE SHALL NOT BE RECEIVED BY LESSOR WITHIN FIVE (5) BUSINESS DAYS AFTER SUCH AMOUNT SHALL BE DUE, THEN WITHOUT ANY REQUIREMENT FOR NOTICE TO LESSEE, LESSEE SHALL PAY TO LESSOR A LATE CHARGE EQUAL TO FIVE PERCENT (5%) OF SUCH OVERDUE AMOUNT. THE PARTIES HEREBY AGREE THAT SUCH LATE CHARGE REPRESENTS A FAIR AND REASONABLE ESTIMATE OF THE COSTS LESSOR WILL INCUR BY REASON OF LATE

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PAYMENT BY LESSEE. ACCEPTANCE OF SUCH LATE CHARGE BY LESSOR SHALL IN NO EVENT CONSTITUTE A WAIVER OF LESSEE'S DEFAULT OR BREACH WITH RESPECT TO ANY UNPAID OVERDUE AMOUNTS, NOR PREVENT LESSOR FROM EXERCISING ANY OF THE OTHER RIGHTS AND REMEDIES GRANTED UNDER THIS LEASE WITH RESPECT TO ANY SUCH UNPAID OVERDUE AMOUNTS.

ARTICLE IV

4.1 PAYMENT OF IMPOSITIONS. Subject to Article XII relating to permitted contests, Lessee will pay, or cause to be paid, all Impositions coming due prior to or during the Term, or which relate to any period within the Term or prior to the Term, before any fine, penalty, interest or cost may be added for non-payment (or earlier if required by any taxing authority), such payments to be made directly to the taxing authorities where feasible, and will promptly furnish to Lessor copies of official receipts or other satisfactory proof evidencing such payments. Lessee's obligation to pay Impositions shall be deemed absolutely fixed upon the date such Impositions become a lien upon the Leased Property or any part thereof. If any Imposition may, at the option of the taxpayer, lawfully (without penalty) be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Lessee may exercise the option to pay the same (and any accrued interest on the unpaid balance of such Imposition) in installments and in such event, shall pay such installments during the Term hereof (subject to Lessee's right of contest pursuant to the provisions of Article XII) as the same respectively become due and before any fine, penalty, premium, further interest or cost may be added thereto. Lessee, at its expense, shall, to the extent required or permitted by Legal Requirements, prepare and file all tax returns and reports in respect of any

Imposition as may be required by governmental authorities. If any refund shall be due from any taxing authority in respect of any Imposition, the same shall be paid over to or retained by Lessee if no Event of Default shall have occurred hereunder and be continuing, but if such Event of Default has occurred and is continuing (i.e., it has not been cured), such refund shall be paid to Lessor and utilized to cure any such continuing Event of Default. After fully curing such Event of Default, any excess funds from such refund shall be paid by Lessor to Lessee. Any such funds retained by Lessor, a provided above, shall be applied as provided in Article XVI. Lessor and Lessee shall, upon request of the other, provide such data as is maintained by the party to whom the request is made with respect to the Leased Property as may be necessary to prepare any required returns and reports. In the event governmental authorities classify any property covered by this Lease as personal property, Lessee shall file all personal property tax returns in such jurisdictions where it must legally so file. Lessor, to the extent it possesses the same, and Lessee, to the extent it possesses the same, will provide the other party, upon request, with cost and depreciation records necessary for filing returns for any property so classified as personal property. Where Lessor is legally required to file personal property tax returns, Lessee will provide to Lessor copies of assessment notices indicating a value in excess of the reported value in sufficient time for Lessor to file a protest. Lessee may, upon notice to Lessor, at Lessee's option and at Lessee's sole cost and expense, protest, appeal or institute

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such proceedings as Lessee may deem appropriate to effect a reduction of real estate or personal property assessments and Lessor, at Lessee's sole cost and expense as aforesaid, shall fully cooperate with Lessee in such protest, appeal, or other action, provided that Lessee may not withhold payments pending such challenges except under the conditions set forth in Article XII. Lessor shall have the right to require that Lessee pay to Lessor 1/12th of the annual Impositions each month concurrently with the payment of Minimum Rent, effective (a) upon the occurrence of any Event of Default relating to the payment or nonpayment of Impositions (and irrespective of whether such Event of Default is continuing or has been cured); (b) as to any Event of Default not covered in the preceding subparagraph (a), upon the occurrence of the second Event of Default under this Lease (and irrespective of whether any such Events of Default ae continuing or have been cured); and (c) once any Event of Default has occurred hereunder that has not been cured within sixty (60) days. Unless Lessee is notified by Lessor otherwise, Lessee shall pay all Impositions directly to the appropriate taxing or other authorities to which payments are due, and Lessee shall provide Lessor written evidence and notice that all such payments have been made. Without limiting any of the other indemnities set forth in this Lease, Lessee hereby agrees to defend, indemnify, protect and hold harmless Lessor in connection with any Impositions that relate to any time prior to or during the Term, and Lessee acknowledges and agrees that it will not make claims against, or otherwise look to, Lessor to reimburse Lessee for payments made relating to any period prior to the Commencement Date.

4.2 NOTICE OF IMPOSITIONS. Lessor shall give prompt Notice to Lessee for all Impositions payable by Lessee hereunder of which Lessor has knowledge, but Lessor's failure to give any such Notice shall in no way diminish Lessee's obligations hereunder to pay such Impositions, but such failure shall obviate any default hereunder for a reasonable time after Lessee receives notice (from any source) of any Imposition which it is obligated to pay. However, notwithstanding the foregoing, it shall be Lessee's sole duty to inquire and determine all of the Impositions for which it is liable as provided herein and shall promptly pay such Impositions when due, and Lessor shall have no duty of inquiry concerning Impositions.

4.3 UTILITY CHARGES. Lessee will pay or cause to be paid all charges for electricity, power, gas, oil, water, sewer connection and all other utilities used in or for the Leased Property during the Term.

4.4 INSURANCE PREMIUMS. Lessee will pay or cause to be paid all premiums for the insurance coverage required to be maintained pursuant to Article XIII during the Term.

4.5 PAYABLES. Lessee acknowledges and agrees that prior to the Commencement Date, certain liabilities and other obligations were incurred arising from the development, construction and operation of the Building for which Lessee is and shall remain responsible and liable and Lessor shall have no responsibility, liability or obligation whatsoever with respect to the same. Therefore, Lessee agrees as part of this Lease to pay all liabilities and obligations concerning the Building, whether arising before or after the Commencement Date.

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ARTICLE V

5.1 NO TERMINATION, ABATEMENT, ETC. Subject to the provisions of Paragraph 5.2, Lessee shall not be entitled to any abatement, deduction, deferment or reduction of Rent, or set-off against the Rent, nor shall the respective obligations of Lessor and Lessee be otherwise affected by reasons of (a) any damage to, or destruction of, any Leased Property or any portion thereof; (b) the lawful or unlawful prohibition of, or restriction upon, Lessee's use of the Leased Property, or any portion thereof, the interference with such use by any person, corporation, partnership or other entity, or by reason of eviction by paramount title; (c) any claim which Lessee has or might have against Lessor or by reason of any default or breach of any warranty by Lessor under this Lease or any other agreement between Lessor and Lessee, or to which Lessor and Lessee are parties; (d) any bankruptcy, insolvency, reorganization, composition, readjustment, liquidation, dissolution, winding-up or other proceedings affecting Lessor or any assignee or transferee of Lessor; or (e) for any other cause whether similar or dissimilar to any of the foregoing other than a discharge of Lessee from any such obligations as a matter of law. Lessee hereby specifically waives all rights, arising from any occurrence whatsoever, which may now or hereafter be conferred upon it by law to (i) modify, surrender or terminate this Lease or quit or surrender the Leased Property or any portion thereof; or (ii) entitle Lessee to any abatement, reduction, suspension or deferment of the Rent payable under this Lease. The obligations of Lessor and Lessee hereunder shall be separate and independent covenants and agreements and the Rent due under this Lease shall continue to be payable in all events, irrespective of Lessor's performance or non-performance under this Lease, unless the obligations to pay the same shall be terminated pursuant to the express provisions of this Lease or by termination of this Lease other than by reason of an Event of Default.

5.2 ABATEMENT PROCEDURES. In the event Lessee is entitled to an abatement of Minimum Rent under Article XV (by reason of any Condemnation as provided thereunder), the Lease shall not terminate (except as provided in Article XV) but the Minimum Rent shall be abated in proportion to the reduced capacity of the Leased Property for the use made of the same by Lessee at the time of the Condemnation. If Lessor and Lessee are unable to agree upon the amount of such abatement within thirty (30) days after any partial taking as provided under Article XV, the matter shall be submitted by either party to a court of competent jurisdiction for resolution, but Lessee

during such resolution shall continue to perform its obligations hereunder, including, without limitation, payment of that portion of the Minimum Rent which is not then in dispute.

ARTICLE VI

6.1 OWNERSHIP OF THE LEASED PROPERTY. Lessee acknowledges and agrees that the Leased Property, except the Land, is the property of Lessor and that Lessee has only the right to the exclusive possession and use of the Leased Property upon the terms and conditions of this Lease and the Ground Lease.

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6.2 LESSEE'S PERSONAL PROPERTY. Subject to the Ground Lease, Lessee may (and shall as provided hereinbelow), at its expense, install, assemble or place on any parcels of the Land or in any of the Leased Improvements, any items of Lessee's Personal Property, and Lessee may, subject to the conditions set forth below, remove the same upon the expiration or any prior termination of the Term. All of Lessee's Personal Property not removed by Lessee upon the termination of this Lease shall be considered abandoned by Lessee and may be used, appropriated, sold, destroyed, or otherwise disposed of by Lessor without first giving notice thereof to Lessee and without any payment to Lessee and without any obligation to account therefor. Lessee shall, at its sole cost and expense, repair any damage to the Land or the Leased Improvements occasioned by the installation, maintenance or removal of Lessee's Personal Property, and restore the Land or Leased Improvements to its condition immediately prior to any such installation. To the extent allowed by law, Lessor and Lessee agree that the provisions of this Paragraph 6.2 shall be in substitution of any statutory obligations Lessor may have to give Lessee notice of demand for removal of Lessee's Personal Property and notice of sale of Lessee's Personal Property. Lessor and Lessee agree that Lessor shall not be required to sell Lessee's Personal Property or account to Lessee therefor.

ARTICLE VII

7.1 CONDITION OF LEASED PROPERTY. Lessee acknowledges receipt and delivery of possession of the Leased Property and further acknowledges that Lessee has examined and otherwise has knowledge of the condition of the Leased Property prior to the execution and delivery of this Lease and has found the same to be in good order and repair and satisfactory for it purposes hereunder. Lessee is leasing the Leased Property "AS-IS" in its present condition. Lessee waives any claim or action against Lessor in respect of the condition of the Leased Property. LESSOR MAKES NO WARRANTY OR REPRESENTATIONS, EXPRESS OR IMPLIED, IN RESPECT OF THE LEASED PROPERTY OR ANY PART THEREOF, EITHER AS TO ITS FITNESS FOR USE, DESIGN OR CONDITION FOR THE MATERIAL OR WORKMANSHIP THEREIN, LATENT OR PATENT, IT BEING AGREED THAT ALL SUCH RISKS ARE TO BE BORNE BY LESSEE. LESSEE ACKNOWLEDGES THAT THE LEASED PROPERTY HAS BEEN INSPECTED BY LESSEE AND IS SATISFACTORY TO IT.

7.2 USE OF THE LEASED PROPERTY.

7.2.1 Lessee covenants that it will obtain and, at all times during the Term, maintain all approvals needed to use and operate the Leased Property under applicable federal, state and local law.

7.2.2 After the Commencement Date and during the entire Term, Lessee shall use or cause to be used the Leased Property in accordance with the use requirements set forth in the Ground Lease and as a New York Bagel Cafe restaurant or other restaurant (the particular such use to which the Leased Property is put at any particular time is herein referred to as the "Primary Intended Use"). Lessee shall not use the Leased Property or any portion thereof for any other use without the prior written consent of Lessor, which consent shall not be unreasonably withheld or delayed.

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7.2.3 Lessee shall not commit or suffer to be committed any waste on the Leased Property, or in the Building nor shall Lessee cause or permit any nuisance thereon.

7.2.4 Lessee shall neither suffer nor permit the Leased Property to be used in such a manner as (i) might reasonably tend to impair Lessor's title thereto or to any portion thereof; or (ii) may reasonably make possible a claim or claims of adverse usage or adverse possession by the public, as such, or of implied dedication of the Leased Property or any portion thereof.

ARTICLE VIII

8.1 COMPLIANCE WITH LEGAL AND INSURANCE REQUIREMENTS, INSTRUMENTS, ETC. Subject to Article XII relating to permitted contests, Lessee, at its sole cost and expense, will promptly comply with all applicable Legal Requirements and Insurance Requirements in respect of the use, operation, maintenance, repair, and restoration of the Leased Property, whether or not compliance therewith shall require structural changes in any of the Leased Improvements or interfere with the use and enjoyment of the Leased Property.

8.2 LEGAL REQUIREMENT COVENANTS. Lessee covenants and agrees that the Leased Property and Lessee's Personal Property shall not be used for any unlawful purpose. Lessee further warrants and represents that Lessee has obtained all necessary approvals and has given all necessary notices to allow Lessee to operate the Leased Property for its Primary Intended Use.

ARTICLE IX

9.1 MAINTENANCE AND REPAIR.

9.1.1 Lessee, at its sole cost and expense, will keep the Leased Property and all sidewalks and curbs appurtenant thereto and which are under Lessee's control in good order and repair (whether or not the need for such repairs occurs as a result of Lessee's use, any prior use, the elements or the age of the Leased Property, or any portion thereof), and, except as otherwise provided in Article XIV, with reasonable promptness, make all necessary and appropriate repairs thereto of every kind and nature, whether interior or exterior, structural or non-structural, ordinary or extraordinary, foreseen or unforeseen or arising by reason of a condition existing prior to the Commencement Date (concealed or otherwise). All repairs shall, to the extent reasonably achievable, be at least equivalent in quality to the original work. Lessee will not take or omit to take any action the taking or omission of which may materially or adversely impair the value or the usefulness of the Leased Property or any part thereof for its Primary Intended Use. Any repair work performed by Lessee shall be paid for so that no lien (i.e., mechanics', materialmen's or other liens) shall attach to the Leased Property, subject to the provisions of Article XII.

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9.1.2 Lessor shall not under any circumstances be required in connection with this Lease to build or rebuild any improvements on the Leased Property, or to make any repairs, replacements, alterations, restorations, or renewals of any nature or description to the Leased Property, whether ordinary or extraordinary, structural or non-structural, foreseen or unforeseen, or to make any expenditure whatsoever with respect thereto, or to maintain the Leased Property in any way. Lessee hereby waives, to the extent permitted by law, the right to make repairs at the expense of Lessor pursuant to any law in effect at the time of the execution of this Lease or hereafter enacted. Lessor shall have the right to give, record and post, as appropriate, notices of non-responsibility (or similar notices) under any mechanics' or materialmen's lien laws now or hereafter existing.

9.1.3 Lessee shall not make any modifications, alterations or improvements to the Leased Improvements or any portion thereof, whether by addition or deletion, without Lessor's prior written consent, which consent shall not be unreasonably withheld or delayed.

9.1.4 Lessee will, upon the expiration or prior termination of the Term, vacate and surrender the Leased Property in the condition in which the Leased Property was originally received from Lessor, except as repaired, rebuilt, restored, altered or added to as permitted or required under this Lease and except for ordinary wear and tear (subject to the obligation of Lessee to maintain the Leased Property in good order and repair during the entire Term).

9.2 ENCROACHMENTS, RESTRICTIONS, ETC. If any of the Leased Improvements shall, at any time, encroach upon any property, street or right-of-way adjacent to the Leased Property, or shall violate the agreements or conditions contained in any lawful restrictive covenant or other agreement affecting the Leased Property, or any part thereof, or shall impair the rights of others under any easement or right-of-way to which the Leased Property is subject, then promptly upon the request of Lessor at the behest of any person affected by any such encroachment, violation or impairment, Lessee shall, at its sole cost and expense, (and after Lessor's prior approval) subject to

Lessee's right to sue Lessor's predecessors in title with respect thereto or to contest the existence of any such encroachment, violation or impairment and, in such case, in the event of an adverse final determination, either (i) obtain valid and effective waivers or settlements of all claims, liabilities and damages resulting from each such encroachment, violation or impairment, whether the same shall affect Lessor or the Leased Property; or (ii) make such changes in the Leased Improvements, and take such other actions, as Lessee in the good faith exercise of its judgment deems reasonably practicable, to remove such encroachment, and to end such violation or impairment, including, if necessary, the alteration of any of the Leased Improvements, and in any event take all such actions as may be necessary in order to be able to continue the operation of the Leased Improvements for the Primary Intended Use substantially in the manner and to the extent the Leased Improvements were operated prior to the assertion of such violation, impairment or encroachment. Lessee's obligations under this Paragraph 9.2 shall be in addition to and shall in no way discharge or diminish any obligation of any insurer under any policy of title or other insurance.

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ARTICLE X

10.1 LESSEE'S OBLIGATIONS FOR HAZARDOUS MATERIALS. Lessee shall, at its sole cost and expense, take all actions as required to cause the Leased Property including, without limitation, the Land and all Leased Improvements, to be free and clear of the presence of all Hazardous Materials during the Term; provided, however, that Lessee shall be entitled to use and maintain Hazardous Materials on the Leased Property in connection with Lessee's business and in compliance with all applicable laws. In this connection, Lessee shall, upon its discovery, belief or suspicion of the presence of Hazardous Materials on, in or under any part of the Leased Property, including, without limitation, the Land and all Leased Improvements, immediately notify Lessor and, at no expense to Lessor, cause any such Hazardous Materials to be removed immediately, in compliance with all applicable laws and in a manner causing the least disruption of or interference with the operation of Lessee's business. Lessee hereby agrees to fully indemnify, protect, defend and hold harmless Lessor from any costs, damages, claims, liability or loss of any kind or nature arising out of or in any way in connection with the presence, suspected presence, removal or remediation of Hazardous Materials in, on, or under the Leased Property, or any part thereof.

10.2 DEFINITION OF HAZARDOUS MATERIALS. For purposes of this Lease, "Hazardous Materials" shall include, without limitation, any substance, material, waste, pollutant or contaminant, now or hereafter defined, listed or regulated by the "Environmental Laws" (defined below) or any other federal state or local law, regulation or order or by common law decision. "Environmental Laws" means and includes any law, ordinance, regulation or requirement now or hereinafter in effect relating to land use, air, soil, surface water, groundwater (including the protection, cleanup, removal, remediation or damage thereof), human health and safety or any other environmental matter, including, without limitation, the following laws as the same may be amended from time to time: Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Sec. 9601, et seq.; Federal Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6901, et seq.; Clean Water Act, 33 U.S.C. Sec. 1251, et seq.; Toxic Substances Control Act, 15 U.S.C. Sec. 2601, et seq.; Refuse Act, 33 U.S.C. Sec. 407; Occupational Safety and Health Act, 29 U.S.C. Sec. 651, et seq.; Clean Air Act, 42 U.S.C. Sec. 7401, et seq.; and any and all similar state and local laws and ordinances and the regulations now or hereafter adopted, published and/or promulgated pursuant thereto.

ARTICLE XI

11. NO LIENS. Subject to the provisions of Article XII relating to permitted contests, Lessee will not directly or indirectly, voluntarily or by operation of law, create or allow to remain and will promptly discharge at its expense any lien, mortgage, encumbrance, attachment, title retention agreement, or claim upon the Leased Property or any attachment, levy, claim, or encumbrance in respect of the Rent.

ARTICLE XII

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12. PERMITTED CONTESTS. Lessee shall have the right to contest the amount or validity of any Imposition or any Legal Requirement or Insurance Requirement or any lien, attachment, levy, encumbrance, charge or claim ("Claims") not otherwise permitted by Article XI, by appropriate legal proceedings in good faith and with due diligence, and to delay payment if legally permitted; provided this shall not be deemed or construed in any way as relieving, modifying or extending Lessee's covenants to pay or its covenants to cause to be paid any such charges at the time and in the manner as in this Lease provided and further provided that, such legal proceedings (and delay in payment) shall not cause the sale of the Leased Property, or any part thereof, to satisfy the same or cause Lessor or Lessee to be in default under the Ground Lease or any mortgage or deed of trust encumbering the Leased Property or any interest therein or otherwise threaten to cause loss or damage to Lessor or the Leased Property. Upon the reasonable request of Lessor, Lessee shall provide to Lessor reasonable security satisfactory to Lessor to assure the payment of all Claims which may be assessed against the Leased Property, together with interest and penalties, if any, thereon. Lessor agrees to join in any such proceedings if the same be required to legally prosecute such contest of the validity of such Claims; provided, however, that Lessor shall not thereby be subjected to any liability for the payment of any costs or expenses in connection with any proceedings brought by Lessee; and Lessee covenants to indemnify and save harmless Lessor from any such costs or expenses. In the event that Lessee fails to pay any Claims when due or, upon Lessor's request, to provide the security therefor as provided in this Article XII and to diligently prosecute any contest of the same or in the event the same threatens to cause loss or damage to Lessor or the Leased Property, Lessor may, upon thirty (30) days advance written Notice to Lessee, pay such charges together with any inteest and penalties and the same shall be repayable by Lessee to Lessor at the next Payment Date provided for in this Lease. Provided, however, that should Lessor reasonably determine that the giving of such Notice would risk loss to the Leased Property or otherwise threaten to cause loss or damage to Lessor, then Lessor shall give such written Notice as is practical under the circumstances. Lessee shall be entitled to any refund of any Claims and such charges and penalties or interest thereon which have been paid by Lessee or paid by Lessor and for which Lessor has been fully reimbursed.

ARTICLE XIII

13.1 GENERAL INSURANCE REQUIREMENTS. Subject to the provisions of Paragraph 13.8, during the Term, Lessee shall at all times keep the Leased Property, and all property located in or on the Leased Property, insured with the kinds and amounts of insurance described below. This insurance shall be written by companies authorized to do insurance business in the state in which the Leased Property is located. The policies must name Lessor as loss payee and additional named insured, shall contain a provision that such insurance may not be canceled or amended without at least thirty (30) days' notice to Lessor and shall be payable to Lessor as provided in Article XIV. In addition, upon Lessor's written request, the policies shall name as mortgagee, loss payee and additional insured the holder ("Building Mortgagee") of any mortgage, deed of trust or other security agreement and any other Encumbrance placed on the Leased

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Property in accordance with the provisions of Article XXXII, as well as any other entity interested in the Leased Property ("Building Mortgage") by way of a standard form of mortgagee's loss payable endorsement. Evidence of insurance shall be deposited with Lessor and, if requested, with any Building Mortgagee(s). The policies on the Leased Property, including the Leased Improvements, Fixtures and Lessee's Personal Property, shall insure against the following risks:

13.1.1 Loss or damage by fire, vandalism and malicious mischief, extended coverage perils commonly known as "All Risk," and all physical loss perils normally included in such All Risk insurance, including, without limitation, sprinkler leakage, in an amount not less than one hundred percent (100%) of the then full replacement cost thereof (as defined below in Paragraph 13.2);

13.1.2 Claims for personal injury or property damage under a policy of comprehensive general public liability insurance with amounts not less than One Million Dollars ($1,000,000.00) per occurrence, and with an annual aggregate of Three Million Dollars ($3,000,000.00);

13.1.3 Flood (if the Leased Property is located in whole or in part within a flood plain area, as designated by any governmental or other responsible agency and if such insurance is available pursuant to applicable law) and such other hazards and in such amounts as may be customary for comparable properties in the area; and

13.1.4 Any other kinds of insurance, and in such amounts, as Lessor may reasonably require from time to time to the extent available in the state where the Leased Property is located.

13.2 REPLACEMENT COST. The term "full replacement cost" as used herein, shall mean the full actual replacement cost of the Leased Property as determined from time-to-time upon the request of Lessor or Lessee (but not more frequently than once in every 24 months), including an increased cost of construction endorsement, less exclusions provided in the standard form of fire insurance policy in the state where the Leased Property is located. Lessor and Lessee agree that as of the Commencement Date the full replacement cost shall be deemed to be that amount set forth in Schedule 1 attached hereto and incorporated herein.

13.3 ADDITIONAL INSURANCE. In addition to the insurance described above, Lessee shall maintain such additional insurance as may be reasonably required from time-to-time by Lessor or any Building Mortgagee (to the extent available in the state where the Leased Property is located) and shall further at all times maintain adequate worker's compensation insurance coverage for all persons employed by Lessee on the Leased Property. Such worker's compensation insurance shall be in accordance with the requirements of applicable federal, state and local law.

13.4 WAIVER OF SUBROGATION. All insurance policies carried by either party covering the Leased Property, the Fixtures, the Building, or Lessee's Personal Property including, without limitation, contents, fire and casualty insurance, shall expressly waive any right of subrogation on the part of the

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insurer against the other party. The parties hereto agree that their policies will include such waiver clause or endorsement so long as the same are obtainable without extra cost, and in the event of such an extra charge the other party, at its election, may pay the same, but shall not be obligated to do so. Upon written request, each party shall provide the other party with a copy of each insurance policy with the waiver clause or endorsement attached.

13.5 FORM SATISFACTORY, ETC. All of the policies of insurance referred to in this Article XIII shall be written in a form reasonably satisfactory to Lessor and by insurance companies reasonably satisfactory to Lessor. Subject to the foregoing, Lessor agrees that it will not unreasonably withhold its approval as to the form of the policies of insurance or as to the insurance companies selected by Lessee. Lessee shall pay all of the premiums therefor, and deliver such policies or certificates thereof to Lessor prior to their effective date (and, with respect to any renewal policy, prior to the expiration of the existing policy), and in the event of the failure of Lessee either to effect such insurance as herein called for or to pay the premiums therefor, or to deliver such policies or certificates thereof to Lessor at the times required, Lessor shall be entitled, but shall have no obligation, to effect such insurance and pay the premiums therefor, which premiums shall be repayable by Lessee to Lessor upon written demand therefor, and failure to repay the same shall constitute an Event of Default within the meaning of Paragraph 16.1(b). Each insurer mentioned in this Article XIII shall agree, by endorsement on the policy or policies issued by it, or by independent instrument furnished to Lessor, that will give to Lessor (and to any Building Mortgagee, if required by the same) thirty (30) days written notice before the policy or policies in questions shall be altered, allowed to expire or cancel.

13.6 INCREASE IN LIMITS. In the event that Lessor or a Building Mortgagee shall at any reasonable time deem the limits of the personal injury or property damage public liability insurance then carried to be insufficient, Lessee shall thereafter carry the insurance with increased limits until further change pursuant to the provisions of this Paragraph; provided that if Lessor desires to increase the limits of insurance, and such is not pursuant to the request of a Building Mortgagee, then Lessor may not demand an increase in limits above the limits generally consistent with the requirements of owners of restaurant facilities in the State.

13.7 BLANKET POLICY. Notwithstanding anything to the contrary contained in this Article XIII, Lessee's obligations to carry the insurance provided for herein may be brought within the coverage of a so-called blanket policy or policies of insurance carried and maintained by Lessee; provided, however, that the coverage afforded Lessor will not be reduced or diminished or otherwise be different from that which would exist under a separate policy meeting all other requirements of

this Lease by reason of the use of such blanket policy of insurance, and provided further that the requirements of this Article XIII are otherwise satisfied.

13.8 NO SEPARATE INSURANCE. Lessee shall not on Lessee's own initiative or pursuant to the request or requirement of any third party take out separate insurance concurrent in form or contributing in the event of loss with

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that required in this Article, to be furnished or which may reasonably be required to be furnished, by Lessee or increase the amount of any then existing insurance by securing any additional policy or additional policies, unless all parties having an insurable interest in the subject matter of the insurance, including in all cases Lessor and all Building Mortgagees, are included therein as additional insureds, and the loss is payable under said insurance in the same manner as losses are payable under the Lease. Lessee shall immediately notify Lessor of the taking out of any such separate insurance or of the increasing of any of the amount of the then existing insurance.

13.9 CONTINUOUS COVERAGE. Lessee was the owner of the Leased Property prior to the date of this Lease. Therefore, Lessee already has in place insurance with respect to the Leased Property. Lessee shall assure that there is no gap in the insurance coverage provided in connection with the Building at or after the Commencement Date, and therefore, the insurance provided by Lessee shall be continuous, with the types and amounts of coverage, described herein to be applicable on the Commencement Date. To the extent there is not full, complete and continuous coverage for all issues, no matter when arising, claimed or occurring, Lessee shall, at its sole cost, obtain such insurance.

ARTICLE XIV

14.1 INSURANCE PROCEEDS. All proceeds payable by reason of any loss of or damage to the Leased Property, or any portion thereof, which is insured under any policy of insurance required by Article XIII of this Lease, where the total proceeds paid by the insurer are less than $150,000.00, shall be paid to Lessee and applied to the reconstruction or repair, as the case may be, of any damage to or destruction of the Leased Property, or any portion thereof. All proceeds payable by reason of any loss of or damage to the Leased Property, or any portion thereof, which is insured under any policy of insurance required by Article XIII of this Lease where the total proceeds paid by the insurer are equal to or in excess of $150,000.00 shall be paid to Lessor and held by Lessor in trust (subject to the provisions of Paragraph 14.7) and shall be made available for reconstruction or repair, as the case may be, of any damage to or destruction of the Leased Property, or any portion thereof, and shall be paid out by Lessor from time-to-time for the reasonable costs of such reconstruction or repair. Any excess proceeds of insurance remaining after the completion of the restoration or reconstruction of the Leased Property shall go to Lessee, provided this Lease is in force and there exists no uncured Event of Default; otherwise such excess shall be paid to Lessor for application as set forth in Article XVI hereof. In the event neither Lessor nor Lessee is required or elects to repair and restore, and this Lease is terminated as described in Paragraph 14.7, all such insurance proceeds shall be retained by Lessor. All salvage resulting from any risk covered by insurance shall belong to Lessor except that any salvage relating to Lessee's Personal Property shall belong to Lessee.

14.2 RECONSTRUCTION IN THE EVENT OF DAMAGE OR DESTRUCTION COVERED BY INSURANCE PROCEEDS.

14.2.1 If during the Term, the Leased Property is totally or partially destroyed by a risk covered by the insurance described in Article XIII

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and whether or not the Building thereby is rendered Unsuitable for Its Primary Intended Use, Lessee shall restore the Leased Property to substantially the same condition as existed immediately before the damage or destruction.

14.2.2 If the cost of the repair or restoration exceeds the amount of proceeds received by Lessee or Lessor from the insurance required under Article XIII, Lessee shall be obligated to restore the Leased Property and pay the extra cost therefor, provided that, prior to commencing the repair and restoration, Lessee shall either (i) contribute any excess amount needed to restore the Leased Property, or (ii) provide Lessor with satisfactory evidence that such funds are, and throughout the entire period of reconstruction will be, available. If Lessee contributes such excess in cash, such excess shall be paid by Lessee to Lessor to be held in trust, together with any insurance proceeds, for application to the cost of repair and restoration.

14.3 RECONSTRUCTION IN THE EVENT OF DAMAGE OR DESTRUCTION NOT COVERED BY INSURANCE. If during the Term, the Leased Property is damaged or destroyed irrespective of the extent of the damage from a risk not covered by the insurance described in Article XIII, whether or not such damage or renders the Building Unsuitable for Its Primary Intended Use, Lessee shall restore the Leased Property to substantially the same condition it was in immediately before such damage or destruction and such damage or destruction shall not terminate this Lease.

14.4 LESSEE'S PROPERTY. All insurance proceeds payable by reason of any loss of or damage to any of Lessee's Personal Property shall be paid to Lessee, and Lessee shall hold such insurance proceeds in trust to pay the cost of repairing or replacing damaged Lessee's Personal Property. Any proceeds in excess of the cost of repairing or replacing any such Lessee's Personal Property shall belong to Lessee.

14.5 RESTORATION OF LESSEE'S PROPERTY. Without limiting Lessee's obligation to restore the Leased Property as provided in Paragraphs 14.2 and 14.3, Lessee shall also pay the cost to restore all Alterations and other improvements made by Lessee which Lessee elects to restore, including Lessee's Personal Property to the extent that Lessee's Personal Property is necessary to the operation of the Leased Property for its Primary Intended Use in accordance with applicable Legal Requirements.

14.6 NO ABATEMENT OF RENT. This Lease shall remain in full force and effect and Lessee's obligation to make rental payments and to pay all other charges required by this Lease shall remain unabated during any period required for repair and restoration.

14.7 TERMINATION OF OPTION TO EXTEND. Any termination of this Lease by reason of damage to or destruction of the Leased Property shall cause any options to extend the Lease under Article XVIII to be terminated and without further force or effect.

14.8 WAIVER. Lessee hereby waives any statutory rights of termination which may arise by reason of any damage to or destruction of the Leased Property which Lessor is obligated to restore or may restore under any of the provisions

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of this Lease.

ARTICLE XV

15.1 DEFINITIONS.

15.1.1 "Condemnation" means (a) the exercise of any governmental power, whether by legal proceedings or otherwise, by a Condemnor; or (b) a voluntary sale or transfer by Lessor to any Condemnor, either under threat of Condemnation or while legal proceedings for Condemnation are pending.

15.1.2 "Date of Taking" means the date the Condemnor has the right to possession of the property being condemned.

15.1.3 "Award" means all compensation, sums or anything of value awarded, paid or received on a total or partial Condemnation.

15.1.4 "Condemnor" means any public or quasi-public authority, or private corporation or individual, having the power of Condemnation.

15.2 PARTIES' RIGHTS AND OBLIGATIONS. If during the Term there is any taking of all or any part of the Leased Property or any interest in this Lease by Condemnation, the rights and obligations of the parties shall be determined by this Article XV.

15.3 TOTAL CONDEMNATION. If title to the fee of the whole of the Leased Property shall be taken or condemned by any Condemnor, this Lease shall cease and terminate as of the Date of Condemnation by said Condemnor. If title to the fee of less than the whole of the Leased Property shall be so taken or condemned, which nevertheless renders the Leased Property Unsuitable for Its Primary Intended Use, as reasonably determined by Lessor and Lessee, Lessee and Lessor shall each have the option by written Notice to the other, at any time at or prior to the taking of possession by, or the date of vesting of title in, such Condemnor, whichever first occurs, to terminate this Lease as of the date of the occurrence of such first event. If such Notice has timely been given, this Lease shall thereupon cease and terminate. Upon the termination of the Lease, all Minimum Rent, and Additional Charges paid or payable by Lessee hereunder shall be apportioned as of the date the Lease terminates.

15.4 ALLOCATION OF PORTION OF AWARD. The total Award made with respect to all or any portion of the Leased Property or for loss of rent, or for loss of business, whether or not beyond the Term of this Lease, or for the loss of value of the leasehold shall be solely the property of and payable to Lessor and Lessee hereby assigns to Lessor any and all rights in such Award; provided, however, that Lessee shall be entitled to make a separate claim for the taking of Lessee's Personal Property and relocation expense as long as any such claim will not in any way diminish Lessor's Award, or for any other loss that can be awarded to Lessee separately from Lessor's claim and which will not in any respect whatsoever diminish or threaten to diminish the total amounts to be awarded

to Lessor, as set forth above or otherwise. To the extent Lessee's claim may

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thereafter reduce Lessor's claim, Lessee shall, and hereby does, assign its claim to Lessor. In any Condemnation proceedings, each of the Lessor and Lessee shall seek its own claim in conformity herewith, at its own expense.

15.5 PARTIAL TAKING. If title to the fee of less than the whole of the Leased Property shall be so taken or condemned, and the Leased Property is still suitable for its Primary Intended Use, as reasonably determined by Lessor and Lessee, or if Lessee or Lessor shall be so entitled, but shall not elect to terminate this Lease as provided in Paragraph 15.3 hereof, Lessee, at its own cost and expense (subject to Lessor's contribution described below), shall with all reasonable dispatch restore the untaken portion of any Leased Improvements on the Leased Property so that such Leased Improvements shall constitute a complete architectural unit of the same general character and condition (as nearly as may be possible under the circumstances) as the Leased Improvements existed immediately prior to such Condemnation. Lessor shall contribute to the cost of restoration that part of its Award specifically allocated to such restoration, provided, however, the amount of such contribution shall not exceed the cost of restoration. The Minimum Rent shall be reduced as set forth in Paragraph 5.2.

15.6 TEMPORARY TAKING. Lessee agrees that if, at any time after the date hereof, the whole or any part of the Leased Property or of Lessee's interest under this Lease, shall be Condemned by any Condemnor for its temporary use or occupancy, this Lease shall not terminate by reason thereof, and Lessee shall continue to pay, in the manner and at the times herein specified, the full amounts of Minimum Rent and Additional Charges. Except only to the extent that Lessee may be prevented from doing so pursuant to the terms of the order of the Condemnor, Lessee shall also continue to perform and observe all of the other terms, covenants, conditions and obligations hereof, on the part of the Lessee to be performed and observed, as though such Condemnation had not occurred. In the event of any such Condemnation as in this Paragraph 15.6 described, the entire amount of any such Award made for such temporary use, whether paid by way of damages, rent or otherwise, shall be paid to Lessee to the extent attributable to any period within the Initial Term (as extended by any already exercised options to extend) and except as otherwise provided hereunder. Notwithstanding the foregoing, in the event that any temporary use or occupancy covered under this Paragraph 15.6 renders any portion of the Leased Property Unsuitable for its Primary Intended Use (or otherwise reduces the number of residents the Leased Property can accommodate) for a period in excess of twelve (12) calendar months, Lessee shall have the right to elect a reduction in Minimum Rent as set forth in Paragraph 5.2 commencing on the twelve (12) month anniversary of any such use or occupancy and continuing so long as such temporary use or occupancy continues, in which event any Award made for such temporary use or occupancy shall be paid to Lessor to the extent attributable to the period that Minimum Rent is so abated. Lessee covenants that upon the termination of any such period of temporary use or occupancy as set forth in this Paragraph 15.6, it will, at its sole cost and expense, retore the Leased Property as nearly as may be reasonably possible, to the condition in which the same was immediately prior to the Condemnation, unless such period of temporary use or occupancy shall extend beyond the expiration of the Term, in which case Lessee shall not be required to make such restoration, and in such case, Lessee shall contribute to the cost of such restoration that portion of its entire Award which is specifically allocated to such restoration in the judgment or order of the court, if any.

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ARTICLE XVI

16.1 EVENTS OF DEFAULT. Any one or more of the following events shall be an "Event of Default":

(a) if Lessee fails to make payment of the Rent payable by Lessee under this Lease when the same becomes due and payable and such failure is not cured by Lessee within a period of five (5) Business Days; or

(b) if Lessee fails to observe or perform any other term, covenant or condition of this Lease and such failure is not cured by Lessee within a period of thirty (30) days after Notice thereof from Lessor, unless such failure cannot with due diligence be cured within a period of thirty (30) days, in which case such failure shall not be deemed an Event of Default if Lessee proceeds promptly and with due diligence to cure the failure and diligently completes the curing thereof within ninety (90) days; or

(c) if Lessee does any of the following:

(i) admit in writing its inability to pay its debts generally as they become due;

(ii) file a petition in bankruptcy or a petition to take advantage of any insolvency law;

(iii) make an assignment for the benefit of creditors;

(iv) consent to the appointment of a receiver of itself or of the whole or any substantial part of its property; or

(v) file a petition or answer seeking reorganization or arrangement under the Federal bankruptcy laws or any other applicable law or statute of the United States of America or any state thereof; or

(d) if Lessee, on a petition in bankruptcy filed against it, is adjudicated a bankrupt or an order for relief thereunder is entered against it or a court of competent jurisdiction shall enter an order or decree appointing, without the consent of Lessee, a receiver for Lessee or of the whole or substantially all of its property or the Building, or approving a petition filed against Lessee seeking reorganization or arrangement of Lessee under the Federal bankruptcy laws or other applicable law or statute of the United States of America or any state thereof, and such judgment, order or decree shall not be vacated or set aside within one hundred twenty (120) days from the date of the entry thereof; or

(e) if Lessee shall be liquidated or dissolved, or shall begin proceedings toward such liquidation or dissolution, or shall, in any manner, permit the sale or divestiture of substantially all of its assets; or

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(f) subject to the provisions of Article XII hereof, if the estate or interest of Lessee in the Leased Property or any part thereof be levied upon or attached in a proceeding and the same shall not be vacated or discharged within the later of ninety (90) days after commencement thereof or thirty (30) days after Notice thereof from Lessor, or a mechanic's or similar lien is filed with respect to the Leased Property and is not released or bonded around for a period exceeding sixty (60) days after Lessee first has knowledge of the same; or

(g) if Lessee voluntarily ceases operations on the Leased Property for a period in excess of two (2) days other than for required remodeling or if required by law; or

(h) if any of Lessee's representations or warranties expressly set forth in this Lease (or financial statements provided to Lessor) proves to be untrue when made in any material respect which materially and adversely affects Lessor; or

(i) if Lessee attempts to assign or sublease, in violation of the provisions of this Lease; or

(j) subject to the provisions of Article XII hereof, if Lessee ceases to maintain in effect any license, permit, certificate or approval necessary or otherwise required to operate the Building in accordance with its Primary Intended Use.

Upon the occurrence of an Event of Default, in addition to all of Lessor's other remedies, Lessor may terminate this Lease by giving Lessee not less than ten (10) Business Days Notice of such termination and upon the expiration of the time fixed in such Notice, the Term shall terminate and all rights of Lessee under this Lease shall cease.

In the event litigation is commenced with respect to any alleged default under this Lease, the prevailing party in such litigation shall receive, in addition to its damages incurred, such sum as the court shall determine as its reasonable attorneys' fees, and all costs and expenses incurred in connection therewith, including reasonable attorneys' fees and costs incurred on appeal.

16.2 CERTAIN REMEDIES. Lessor shall have all remedies and rights provided under this Lease and/or otherwise available at law and in equity as a result of an Event of Default or Lessee's other breach under this Lease, including, to the extent permitted by the laws of the State, the right to appoint a receiver as a matter of strict right without regard to the solvency of Lessee, for the purpose of procuring the Leased Property, preventing waste, protecting and otherwise enforcing the provisions of this Lease and for any and all other purposes for which a receiver is allowed under the laws of the State. Without limiting the foregoing, if an Event of Default occurs (and the event giving rise to such Event of Default has not been cured within the curative period, if any, relating thereto as set forth in this Lease) whether or not this Lease has been terminated pursuant to Paragraph 16.1, Lessee shall, to the extent permitted by law, and if required by Lessor to so do, immediately surrender to Lessor the Leased Property pursuant to the provisions of Paragraph 16.1 and quit the same and Lessor may enter upon and repossess the Leased Property, in person, by agent or by a court-appointed receiver, by reasonable force, summary proceedings, ejectment or otherwise, and may remove Lessee and

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all other persons and any and all personal property from the Leased Property subject to any requirements of law. Without limiting all other rights and remedies of

Lessor under this Lease and under law, Lessor shall have the right to accelerate all Rent (including Minimum Rent) and therefore, upon Lessee's default, at Lessor's option, all such Rent shall become immediately due and payable in accordance with Paragraph 16.3, below. Further, without limiting all other rights and remedies of Lessor under this Lease and under law, Lessor shall be entitled to recover from Lessee, and Lessee shall therefore be liable for, all costs of recovering possession (including without limitation all costs associated with any receiver) and renovating the Leased Property for new lessee and all other costs of re-leasing, including, but not limited to, broker's commissions and attorneys' fees, except as limited by Paragraph 16.3 below.

16.3 DAMAGES. Neither (i) the termination of this Lease pursuant to Section 16.1; (ii) the repossession of the Leased Property; (iii) the failure of Lessor, notwithstanding reasonable good faith efforts, to relet the Leased Property; nor (iv) the reletting of all or any portion thereof, shall relieve Lessee of its liability and obligations hereunder, all of which shall survive any such termination, repossession or reletting (except for proceeds received on subletting). In the event of any such termination, Lessee shall forthwith pay to Lessor all Rent due and payable with respect to the Leased Property to and including the date of such termination.

(a) Lessor shall not be deemed to have terminated this Lease unless Lessor delivers written Notice to Lessee of such election. If Lessee voluntarily elects to terminate this Lease upon an Event of Default, then in addition to all remedies available to Lessor, Lessor may recover the sum of:

(i) the worth at the time of award of the unpaid Rent which had been earned at the time of termination;

(ii) the worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Lessee proves could have been reasonably avoided;

(iii) the worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of such rental loss that Lessee proves could be reasonably avoided; and

(iv) any other amount necessary to compensate Lessor for all the detriment proximately caused by Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom.

The "worth at the time of award" of the amounts referred to in subparagraphs (i) and (ii) above is computed by allowing interest at the Overdue Rate. The worth at the time of award of the amount referred to in

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subparagraph (iii) is computed by discounting such amount at the discount rate of the Federal Reserve Bank of Kansas City at the time of award plus one percent (1%).

(b) Without limiting Lessor's other remedies provided herein and provided by law, Lessor may continue the Lease in effect after Lessee's breach and abandonment and recover Rent as it becomes due, provided that, in such event, Lessee has the right to sublet or assign

subject only to reasonable conditions imposed by Lessor. Accordingly, without termination of Lessee's right to possession of the Leased Property, Lessor may demand and recover each installment of Minimum Rent and other sums payable by Lessee to Lessor under the Lease as the same becomes due and payable, which Minimum Rent and other sums shall bear interest at the maximum interest rate permitted in accordance with the laws of the State (or the Overdue Rate, whichever is lower), from the date when due until paid, and Lessor may enforce, by action or otherwise, any other term or covenant of this Lease. If Lessor elects to recover each installment of Rent as it becomes due, then Lessor may file any number of lawsuits for the recovery of the amounts due hereunder.

16.4 WAIVER. If this Lease is terminated pursuant to Paragraph 16.1, Lessee waives, to the extent permitted by applicable law, the benefit of any laws now or hereafter in force exempting property from liability for rent or for debt.

16.5 APPLICATION OF FUNDS. Any payments received by Lessor under any of the provisions of this Lease during the existence or continuance of any Event of Default shall be applied to Lessee's obligations in the order which Lessor may determine or as may be prescribed by the laws of the State.

ARTICLE XVII

17. LESSOR'S RIGHT TO CURE LESSEE'S DEFAULT. If Lessee fails to make any payment or to perform any act required to be made or performed under this Lease, and to cure the same within the relevant time periods, if any, provided under this Lease, Lessor, after fifteen (15) days' Notice to and demand upon Lessee, and without waiving or releasing any obligation of Lessee or default, may (but shall be under no obligation to) at any time thereafter make such payment or perform such act for the account and at the expense of Lessee, and may, to the extent permitted by law, enter upon the Leased Property, in person, by agent or by court-appointed receiver, for such purpose and take all such action thereon as, in Lessor's opinion, may be necessary or appropriate therefor. Provided, however, that should Lessor reasonably determine that the giving of such Notice would risk loss to the Leased Property, or cause damage to Lessor, then Lessor shall give such written Notice as is practical under the circumstances. No such entry shall be deemed an eviction of Lessee. In exercising any remedy under this Article XVII, Lessor shall use its good faith efforts not to violate any rights of residents of the Building. All sums so paid by Lessor and all costs and expenses (including, without limitation, reasonable attorneys' fees and expenses, in each case) so incurred, together with a late charge thereon (to the extent permitted by law) at the Overdue Rate from the date on which sums or

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expenses are paid or incurred by Lessor, shall be paid by Lessee to Lessor on demand. The obligations of Lessee and rights of Lessor contained in this Article shall survive the expiration or earlier termination of this Lease.

ARTICLE XVIII

18.1 OPTIONS TO EXTEND. Provided there exists no uncured Event of Default under this Lease at the time Lessee exercises any option to extend (in accordance with this Article XVIII) and the option to extend the Ground Lease is timely made, Lessee will have the right to extend this Lease for two (2) periods of five (5) years each (each such additional term shall be referred to herein as an "Extended Term"), commencing immediately following the end of the Initial Term or the immediately preceding Extended Term, as the case may be. The Lease during any Extended Term shall be on the same terms and conditions as during the Initial Term, except that the Minimum Rent shall be determined as set forth in Paragraph 18.2 below. In the event Lessee desires to exercise any option to extend granted in this Article XVIII, Lessee shall give Landlord written notice ("Notice to Extend") not less than ninety (90) days prior to the expiration of the Initial Term or the immediately preceding Extended Term, as the case may be. If Lessee fails to give Landlord any such notice, then such option to extend and all future options to extend granted in this Article XVIII shall be null and void and of no further force or effect.

18.2 MINIMUM RENT DURING EXTENDED TERMS. The Minimum Rent at the commencement of each Extended Term shall be the annual sums as stated in Schedule 1 attached hereto and incorporated herein.

ARTICLE XIX

19. HOLDING OVER. If Lessee shall for any reason remain in possession of the Leased Property after the expiration of the Term or earlier termination of the Term hereof, such possession shall be as a month-to-month tenant during which time Lessee shall pay as rental each month, one and one-half times the aggregate of (i) one-twelfth of the aggregate Minimum Rent payable with respect to the last Lease Year of the Term; (ii) all Additional Charges accruing during the month; and (iii) all other sums payable by Lessee pursuant to the provisions of this Lease. During such period of month-to-month tenancy, Lessee shall be obligated to perform and observe all of the terms, covenants and conditions of this Lease, but shall have no rights hereunder other than the right, to the extent given by law to month-to-month tenancies, to continue its occupancy and use of the Leased Property. Nothing contained herein shall constitute the consent, express or implied, of Lessor to the holding over of Lessee after the expiration or earlier termination of this Lease.

ARTICLE XX

20. RISK OF LOSS. During the Term of this Lease, the risk of loss or of decrease in the enjoyment and beneficial use of the Leased Property in consequence of the damage or destruction thereof by fire, the elements, casualties, thefts, riots, wars or otherwise, or in consequence of

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foreclosures (to the extent caused by or through Lessee), attachments, levies or executions (other than those caused by or through Lessor) is assumed by Lessee, and Lessor shall in no event be answerable or accountable therefor, nor shall any of the events mentioned in this Paragraph entitle Lessee to any abatement of Rent except as specifically provided in this Lease, or any right to terminate this Lease, except as provided in Articles XIV or XV, above. Without limiting the foregoing, Lessor shall not be liable for injury or damage to the person or goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, invitees, customers, or any other person

in or about the Leased Property, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, air conditioning, or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Leased Property, or upon other portions of the Land, or any part thereof, or from other sources or places, and regardless of whether the cause of such damage or injury or the means of repairing the same is accessible or not. Lessor shall not be liable for any damages arising from any act or neglect of Lessee, or any other party named above. Lessor shall, however, remain liable for any damages arising from Lessor's own gross negligence or willful misconduct.

ARTICLE XXI

21. INDEMNIFICATION. Notwithstanding the existence of any insurance provided for in Article XIII, and without regard to the policy limits of any such insurance, Lessee will protect, indemnify, hold harmless and defend Lessor from and against all liabilities, obligations, claims, demands, damages, penalties, causes of action, costs, and expenses (including, without limitation, actual reasonable attorneys' fees and expenses), to the extent permitted by law, imposed upon or incurred by or asserted against Lessor by reason of any of the following: (a) any accident, injury to or death of persons or loss of or damage to property occurring on or about the Leased Property or adjoining sidewalks, whether occurring prior to or after the Commencement Date provided however, that if any such liability, obligation, demand, claim or cause of action is covered by liability insurance pursuant to Article XIII, and if the insurance carrier is providing a defense acceptable to Lessor in the reasonable exercise of Lessor's discretion, or has otherwise acknowledged coverage for same, then Lessee shall not be obligated to duplicate the defense, investigation, adjustment, or other steps being taken by the insurer; (b) any occupancy, use, misuse, non-use, condition, maintenance, or repair by Lessee of the Leased Property; (c) any Impositions (which are the obligations of Lessee to pay pursuant to the applicable provisions of this Lease, which include any Impositions arising prior to the Commencement Date); (d) any failure on the part of Lessee to perform or comply with any of the terms of this Lease; (e) the non-performance of any of the terms and provisions of any and all existing and future subleases of the Leased Property to be performed by the landlord (Lessee) thereunder; (f) any Hazardous Materials, as defined in Paragraph 10.2, above that now or hereafter during the Term may be located in, on or

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around, or may potentially affect, any part of the Land or Leased Improvements; and (g) any and all other matters pertaining to the Leased Property or the peration of the Building after the date of this Lease or otherwise during the Term. Any amounts which became payable by Lessee under this Paragraph shall be paid within ten (10) days of the date the same becomes due and if not timely paid, shall bear a late charge (to the extent permitted by law) at the Overdue Rate from the date of such determination to the date of payment. Lessee, at its expense, shall contest, resist and defend any such claim, action or proceeding asserted or instituted against Lessor or may compromise or otherwise dispose of the same as Lessee sees fit, at Lessee's sole cost, but after consultation with and approval by Lessor. Nothing herein shall be construed as indemnifying Lessor against its own gross negligence or willful misconduct. Lessee's liability for a breach of the provisions of this article arising during the Term hereof shall survive any termination of this Lease.

ARTICLE XXII

22.1 SUBLETTING AND ASSIGNMENT. Lessee may not assign, sublease or sublet, encumber, appropriate, pledge or otherwise transfer, the Lease or the leasehold or other interest in the Leased Property without the prior written consent of Lessor, which consent shall not be unreasonably withheld or delayed. Upon Lessor's consent, in the case of any assignment, any such assignee shall assume in writing and agree to keep and perform all of the terms of this Lease on the part of Lessee to be kept and performed and shall be, and become, jointly and severally liable with Lessee for the performance thereof. In the case of either an assignment or a subletting, (i) an original counterpart of each sublease and assignment and assumption, duly executed by Lessee and such sublessee or assignee, as the case may be, in form and substance satisfactory to Lessor, shall be delivered promptly to Lessor, and (ii) Lessee shall remain primarily liable, as principal rather than as surety, for the prompt payment of the Rent and for the performance and observance of all of the covenants and conditions to be performed by Lessee hereunder.

22.2 ATTORNMENT. Lessee shall insert in each sublease permitted under Paragraph 22 provisions to that effect that (i) such sublease is subject and subordinate to all of the terms and provisions of this Lease and the rights of Lessor hereunder; (ii) in the event this Lease shall terminate before the expiration of such sublease, the sublessee thereunder will, at Lessor's option, attorn to Lessor and waive any right the sublessee may have to terminate the sublease or to surrender possession thereunder, as a result of the termination of this Lease; and (iii) in the event the sublessee receives a written Notice from Lessor or Lessor's assignees, if any, stating that Lessee is in default under this Lease, the sublessee shall thereafter be obligated to pay all rentals accruing under said sublease directly to the party giving such Notice, or as such party may direct. All rents received from the sublessee by Lessor or Lessor's assignees, if any, as the case may be, shall be credited against amounts owing by Lessee under this Lease.

ARTICLE XXIII

23. OFFICERS' CERTIFICATES. At any time from time-to-time upon not less than twenty (20) days Notice by Lessor, Lessee will furnish to Lessor an

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Officers' Certificate certifying that this Lease unmodified and in full force and effect (or that this Lease is in full force and effect as modified and setting forth the modifications), the date to which the Rent has been paid and such other information concerning this Lease as may be reasonably requested by Lessor. Any such certificate furnished pursuant to this Paragraph may be relied upon by Lessor and any prospective purchaser or lender of the Leased Property.

ARTICLE XXIV

24. LESSOR'S RIGHT TO INSPECT. Lessee shall permit Lessor and its authorized representatives to inspect the Leased Property on at least one Business Day's prior notice during usual business hours subject to any security, health, safety, or confidentiality requirements of Lessee or any governmental agency or insurance requirement relating to the Leased Property, or imposed by law or applicable regulations.

ARTICLE XXV

25. NO WAIVER. The waiver by Lessor or Lessee of any term, covenant or condition in this Lease shall not be deemed to be a waiver of any other term, covenant or condition or any subsequent waiver of the same or any other term, covenant or condition contained in this Lease. The subsequent acceptance of rent hereunder by Lessor or any payment by Lessee shall not be deemed to be a waiver of any preceding default of any term, covenant or condition of this Lease, other than the failure to pay the particular amount so received and accepted, regardless of the knowledge of any preceding default at the time of the receipt or acceptance.

ARTICLE XXVI

26. REMEDIES CUMULATIVE. To the extent permitted by law, each legal, equitable or contractual right, power and remedy of each party now or hereafter provided either in this Lease or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power and remedy and the exercise or beginning of the exercise by each party of any one or more of such rights, powers and remedies shall not preclude the simultaneous or subsequent exercise by such party of any or all of such other rights, powers and remedies.

ARTICLE XXVII

27. ACCEPTANCE OF SURRENDER. No surrender to Lessor of this Lease or of the Leased Property or any part thereof, or of any interest therein, shall be valid or effective unless agreed to and accepted in writing by Lessor and no act by Lessor or any representative or agent of Lessor, other than such a written acceptance by Lessor, shall constitute an acceptance of any such surrender.

ARTICLE XXVIII

28. NO MERGER OF TITLE. There shall be no merger of this Lease or of

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the leasehold estate created hereby by reason of the fact that the same person, firm, corporation, or other entity may acquire, own or hold, directly or indirectly, (a) this Lease or the leasehold estate created hereby or any interest in this Lease or such leasehold estate; and (b) the fee estate in the Leased Property.

ARTICLE XXIX

29. CONVEYANCE BY LESSOR. If Lessor or any successor owner of the Leased Property shall transfer or assign Lessor's title or interest in the Leased Property or this Lease other than as security for a debt, then, subject to the provisions of this Article XXIX and provided the new owner has agreed in writing for the benefit of Lessee to recognize this Lease and be bound by all of the terms and conditions hereof, Lessor shall thereupon be released from all future liabilities and obligations of Lessor under this Lease arising or accruing from and after the date of such transfer or assignment and all such future liabilities and obligations shall thereupon be binding upon the new owner.

ARTICLE XXX

30. QUIET ENJOYMENT. So long as Lessee shall pay all Rent as the same becomes due and shall comply with all of the terms of this Lease and perform its obligations hereunder, and except for any claims, actions, liens or encumbrances arising from the acts or omissions of Lessee or otherwise from events occurring prior to the Commencement Date here under, Lessee shall peaceably and quietly have, hold and enjoy the Leased Property for the Term hereof, free of any claim or other action by Lessor or anyone claiming by, through or under Lessor, but subject to all liens and encumbrances of record as of the date hereof or hereafter consented to by Lessee. Except as otherwise provided in this Lease, no failure by Lessor to comply with the foregoing covenant or any covenant of this Lease shall give Lessee any right to cancel or terminate this Lease or abate, reduce or made a deduction from or offset against the Rent or any other sum payable under this Lease, or to fail to perform any other obligation of Lessee hereunder.

ARTICLE XXXI

31. NOTICES. All notices, demands, requests, consents, approvals, and other communications ("Notice" or "Notices") hereunder shall be in writing and personally served upon an Executive Officer of the party being served or mailed (by registered or certified mail, return receipt requested and postage prepaid), overnight delivery service addressed to the respective parties, as follows:

If to Lessee: New York Bagel Enterprises, Inc.
300 I.M.A. Plaza
250 North Water Street
Wichita, Kansas 67202-1213
Attention: Mr. Robert J. Geresi
CEO and President

with a copy to: Klenda, Mitchell, Austerman & Zuercher, L.L.C.

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1600 Epic Center
301 North Main Street
Wichita, Kansas 67202-4888
Attention: Mr. Gregory B. Klenda

If to Lessor: Commercial Equity, Inc.
300 I.M.A. Plaza
250 North Water Street
Wichita, Kansas 67202-1213
Attention: David L. Murfin, President

with a copy to: Foulston & Siefkin L.L.P.
700 NationsBank Financial Center
Wichita, Kansas 67202
Attention: William R. Wood II

or to such other address as either party may hereafter designate by a Notice pursuant to this Paragraph. Personally delivered Notice (including Notices sent by overnight delivery service) shall be effective upon receipt, and Notice given by mail shall be completed three (3) Business Days after the time of deposit in the U.S. Mail system. For the purposes hereof, the term "Executive Officer" shall mean the Chairman of the Board of Directors, the Chief Executive Officers, the President, any Vice President, or the Secretary of the corporation upon which service is to be made.

ARTICLE XXXII

32.1 LESSOR MAY GRANT LIENS. Lessor may, subject to the terms and conditions set forth below in this Paragraph 32.1 and the Ground Lease, from time-to-time, directly or indirectly, create or otherwise cause to exist any lien or encumbrance or any other change of title ("Encumbrance") upon the Leased Property, or any portion thereof or interest therein, whether to secure any borrowing or other means of financing or refinancing. Any such Encumbrance shall contain the right to prepay (whether or not subject to a prepayment penalty) and shall provide that it is subject to the rights of Lessee under this Lease, provided that any holder of an Encumbrance shall (a) give Lessee the same notice, if any, given to Lessor of any default or acceleration of any obligation underlying any such mortgage or any sale in foreclosure under such mortgage; (b) permit Lessee to cure any such default on Lessor's behalf within any applicable cure period, and Lessee shall be reimbursed by Lessor or shall be entitled to offset against Minimum Rent payments next accruing or coming due for any and all costs incurred in effecting such cure, including, without limitation, out-of-pocket costs incurred to effect any such cure (including reasonable attorneys' fees); (c) permit Lessee to appear and to bid at any sale in foreclosure made with respect to, and/or any sale by virtue of the exercise of the power of sale contained in, any such mortgage, and (d) provide that in the event of foreclosure or other possession of the Leased Property by the Mortgagee, that

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the Mortgagee (or other purchaser) shall be bound by the terms and provisions of this Lease. Upon the reasonable request of Lessor, Lessee shall execute an agreement to the effect that this Lease shall be subject and subordinate to the lien of a new mortgage on the Leased Property, and that in the event of any default or foreclosure under such mortgage, Lessee shall attorn to the new mortgagee, and as otherwise requested by Lessor on the condition that the mortgagee execute a non-disturbance agreement recognizing ths Lease and agreeing, for itself and its successor and assigns, to comply with the provisions of this Article XXXII.

32.2 LESSEE'S RIGHT TO CURE. Subject to the provisions of Paragraph 32.3, if Lessor breaches any covenant to be performed by it under this Lease, Lessee, after Notice to and demand upon Lessor, without waiving or releasing any obligation hereunder, and in addition to any other remedies available to Lessee, may (but shall be under no obligation at any time thereafter to) make such payment or perform such act for the account and at the expense of Lessor. All sums so paid by Lessee and all costs and expenses (including, without limitation, reasonable attorneys' fees) so incurred, together with interest thereon from the date on which such sums or expenses are paid or incurred by Lessee, shall be paid by Lessor to Lessee on demand, but may not be offset by Lessee against payments of Rent hereunder.

32.3 BREACH BY LESSOR. It shall be a breach of this Lease if Lessor fails to observe or perform any term, covenant or condition of this Lease on its part to be performed, and such failure shall continue for a period of thirty (30) days after Notice thereof from Lessee unless such failure

cannot with due diligence be cured within a period of thirty (30) days, in which case such failure shall not be deemed to continue if Lessor, within said thirty (30) day period, proceeds promptly, continuously and with due diligence to cure the failure and diligently completes the curing thereof. The time within which Lessor shall be obligated to cure any such failure shall also be subject to extension of time due to the occurrence of any Unavoidable Delay.

ARTICLE XXXIII

33.1 SURVIVAL OF OBLIGATIONS. Anything contained in this Lease to the contrary notwithstanding, all claims against, and liabilities of, Lessee or Lessor arising prior to, or in connection with any event occurring prior to, the date of any expiration or termination of this Lease or the date of Lessee's surrender of possession, whichever is later, shall survive such termination or surrender of possession.

33.2 LATE CHARGES; INTEREST. If any interest rate provided for in any provision of this Lease is based upon a rate in excess of the maximum rate permitted by applicable law, the parties agree that such charges shall be fixed at the maximum permissible rate.

33.3 LIMITS OF LESSOR'S LIABILITY. Lessee specifically agrees to look solely to the assets of Lessor for recovery of any judgment against Lessor, it being specifically agreed that no constituent shareholder, officer

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or director of Lessor shall ever be personally liable for any such judgment or the payment of any monetary obligation to Lessee. The provision contained in the foregoing sentence is not intended to, and shall not, limit any right that Lessee might otherwise have to obtain injunctive relief against Lessor or Lessor's successors in interest, or any action not involving the personal liability of Lessor (original or successor). Additionally, Lessor shall be exonerated from any further liability under this Lease upon Lessor's transfer or other divestiture of its ownership of the Leased Property, provided that the assignee or grantee shall expressly assume in writing the obligations of Lessor hereunder. Furthermore, in no event shall Lessor (original or successor) ever be liable to Lessee for any indirect or consequential damages suffered by Lessee from whatever cause.

33.4 ADDENDUM, AMENDMENTS AND EXHIBITS. Any addendum, amendments and exhibits attached to this Lease are hereby incorporated in this Lease and made a part of this Lease.

33.5 HEADINGS. The headings and paragraph titles in this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part of this Lease.

33.6 TIME. Time is of the essence of this Lease and each and all of its provisions.

33.7 DAYS. Unless otherwise expressly indicated herein, any reference to "days" in this Lease shall be deemed to refer to calendar days.

33.8 RENT. Each and every monetary obligation under this Lease shall be deemed to be "Rent" under this Lease and for all other purposes under law.

33.9 APPLICABLE LAW. This Lease shall be governed by and construed in accordance with the laws of the State, but not including its conflicts of laws rules; thus the law that will apply is the law applicable to a transaction solely within the State, including parties solely domiciled in the State.

33.10 SUCCESSORS AND ASSIGNS. The covenants and conditions contained in this Lease shall, subject to the provisions regarding assignment (Article XXII), apply to and bind the heirs, successors, executors, administrators, and assigns of Lessor and Lessee.

33.11 RECORDATION. Lessor and Lessee shall execute with appropriate acknowledgments and record in the Official Records of the applicable county, that certain Short Form Lease in the form and content of Exhibit "C" attached hereto. Lessor and Lessee shall equally share the cost of recording the Memorandum of Lease.

33.12 PRIOR AND FUTURE AGREEMENTS. This Lease contains all of the agreements of Lessor and Lessee with respect to any matter covered or mentioned in this Lease, and no prior agreements or understanding pertaining to any such matters shall be effective for any purpose. No provision of this

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Lease may be amended or supplemented except by an agreement in writing signed by both Lessor and Lessee or their respective successors in interest. This Lease shall not be effective or binding on any party until fully executed by both Lessor and Lessee.

33.13 PARTIAL INVALIDITY. Any provision of this Lease which shall be held by a court of competent jurisdiction to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision or term of this Lease, and such other provision or terms shall remain in full force and effect.

33.14 ATTORNEYS' FEES. In the event of any action or proceeding brought by one party against the other under this Lease, the prevailing party shall be entitled to recover its attorneys' fees in such action or proceeding from the other party, including all attorneys' fees incurred in connection with any appeals, and any post-judgment attorneys' fees incurred in efforts to collect on any judgment.

33.15 AUTHORITY OF LESSOR AND LESSEE. Lessor and Lessee each hereby represent and warrant that the individuals signing on its behalf are duly authorized to execute and deliver this Lease on behalf of the corporation, in accordance with the bylaws of the corporation, and that this Lease is binding upon the corporation.

33.16 RELATIONSHIP OF THE PARTIES. Nothing contained in this Lease shall be deemed or construed by Lessor or Lessee, nor by any third party, as creating the relationship of principal and agent or a partnership, or a joint venture by Lessor or Lessee, it being understood and agreed that no provision contained in this Lease nor any acts of Lessor and Lessee shall be deemed to create any relationship other than the relationship of landlord and tenant.

33.17 COUNTERPARTS. This Lease may be executed in one or more separate counterparts, each of which, once they are executed, shall be deemed to be an original. Such counterparts shall be and constitute one and the same instrument.

33.18 BROKERS. Lessor and Lessee each warrants that it has had no dealings with any real estate broker or agent in connection with the negotiation of this Lease and it knows of no real estate broker or agent who is entitled to a commission in connection with this Lease. Lessor and Lessee hereby agree to indemnify the other and to hold the other harmless from and against any and all costs, expenses, claims, damages, suits, including attorneys' fees, in any way resulting from claims or demands for commissions or other compensation from any real estate brokers claiming through such party with respect to this Lease.

33.19 COMPUTER DISC. In order to facilitate the electronic filing of this document with the United States Securities Exchange Commission and other governmental agencies, Lessor shall provide or cause to be provided to Lessee a computer disc containing all exhibits, schedules and ancillary documents related to this Lease, formatted in WordPerfect 5.1 Times New Roman

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Font 12, upon Lessee's one-time request for same.

WHEREFORE, each of the parties has accepted and agreed by affixing their respective authorized signatures below as of the date first above written.

"LESSEE" NEW YORK BAGEL ENTERPRISES, INC.,
a Kansas corporation

By: /s/ Richard R. Webb

Richard Randall Webb, Secretary

"LESSOR" COMMERCIAL EQUITY, INC.,
a Kansas corporation

By: /s/ Paul R. Hoover

Paul R. Hoover, Vice President

EXHIBIT "A"

LEGAL DESCRIPTION
8621 West 21st Street North, Wichita, Kansas

Lot 1, Westwind 5th Addition, to Wichita, Sedgwick County, Kansas, containing 18,864 square feet.

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Schedule 1

Lessor: Commercial Equity, Inc.
Lessee: New York Bagel Enterprises, Inc.
Date of Lease: January 20, 1999
Location: 8621 West 21st Street, Wichita, Kansas

1.1 TITLE COMPANY Security Abstract and Title Co., Inc.
434 North Main
Wichita, Kansas 67202

2. STATE. For purposes of the Lease, the term "State" shall mean the State of Kansas.

3.1 MINIMUM RENT DURING INITIAL TERM. The Minimum Rent during the Initial Term shall be the aggregate of the following annual rates:

A. Lease Rent

(i) Years 1-5	$1,900
(ii) Years 6 through end of term	$2,090

B. Ground Lease Rent

(i) Commencement of Lease through March 31, 2002	$1,800
(ii) April 1, 2002 through end of term	$1,950

13.2 REPLACEMENT COST. $180,000

18.2 MINIMUM RENT DURING EXTENDED TERMS. The Minimum Rent during each of the following Extended Terms shall be at the following annual rates:

1st Extended Term	$4,603(1)
2nd Extended Term	$5,135(1)

----

(1) The Minimum Rent during the Extended Terms may be higher if the rent under the Ground Lease for the Extend Terms determined by the Consumer Price Index exceeds the minimum rent increase.

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EXHIBIT 10.21

FIRST AMENDMENT TO JOINT VENTURE AGREEMENT

THIS FIRST AMENDMENT TO JOINT VENTURE AGREEMENT (this "Amendment") is made and entered into as of the 15th day of December, 1998,

BY AND BETWEEN NEW YORK BAGEL ENTERPRISES, INC., a Kansas corporation, hereinafter referred to as

"NYBE"

AND WESTERN COUNTRY CLUBS, INC., a Colorado corporation, hereinafter referred to as

"WCCI"

WHEREAS, NYBE and WCCI entered into that certain Joint Venture Agreement dated October 27, 1998 (the "Agreement");

WHEREAS, the parties hereto acknowledge and agree that the Project Entity shall assume the real property rental payments concerning the Facility (as such term is defined in the Agreement) located at 310 North Rock Road, Wichita, Kansas ("The Kansas Facility") beginning January 15, 1999;

WHEREAS, the parties hereto acknowledge and agree that WCCI shall own sixty percent (60%) and NYBE shall own forty percent (40%) of the equity of the Project Entity which owns the Kansas Facility; and

WHEREAS, the parties hereto desire to amend certain terms and conditions of the Agreement as set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. INCORPORATION OF RECITALS. The parties agree that the Agreement is hereby modified, altered and amended to incorporate the whereas clause recitals set forth above.

2. AMENDMENT TO SECTION 3.5. The footnote designated with an asterisk

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("*") to Section 3.5 "Facility Development" of the Agreement is hereby modified, altered and amended with respect to the Kansas Facility only. The footnote is hereby amended and replaced as follows:

> Prior to the commencement of construction on the Kansas Facility, WCCI shall obtain a bid for the costs and expenses associated with the conversion and opening of that Facility and shall deliver such bid to NYBE. It is understood and agreed by the parties hereto that WCCI shall finance the conversion costs with respect to the Kansas Facility as follows: WCCI shall pay in cash the first Eighty-seven Thousand Dollars ($87,000) as paid-in capital, Ten Thousand Dollars ($10,000) of which shall be paid by the Project Entity to WCCI as a development/license fee, and WCCI shall finance the next Seventy-five Thousand Dollars ($75,000) through the procurement of a loan with an interest rate of seven percent (7%) and a duration of three (3) years. The Project Entity shall then be responsible for any and all conversion costs with respect to the Kansas Facility over the One Hundred Sixty-two Thousand Dollars ($162,000) of combined equity and debt through an infusion of additional equity.

3. AMENDMENT TO EXHIBIT 3.4(A). With regards to the Kansas Facility only, the second sentence of Exhibit 3.4(A) entitled "NYBE Responsibilities Schedule" is hereby amended by deleting the sentence and substituting in place thereof the following:

> In consideration for performing these services, the Project Entity shall pay a fee of one percent (1%) of Net Sales to NYBE each month.

4. AMENDMENT TO EXHIBIT 3.4(B). With regards to the Kansas Facility only, the second sentence of Exhibit 3.4(B) entitled "WCCI's Responsibilities Schedule" is hereby amended by deleting the sentence and substituting in place thereof the following:

> Hire, supervise, manage and oversee the day to day operations of the Atomic Burrito restaurants developed pursuant to the Agreement for a management fee equal to three percent (3%) of the "Gross Receipts." Gross Receipts as defined in this paragraph shall mean all gross revenue during each month of every kind or nature related to the Kansas Facility, including without limitation all restaurant revenue posted whether it is collected or remains uncollected, all charges for other products, services, and facilities and vending machine receipts, but excluding sales taxes or other taxes collected from customers for transmittal to appropriate taxing authorities.

5. OTHER TERMS. All other terms and conditions in the Agreement shall remain unchanged and nothing herein shall affect the rights and obligations of the parties hereto under the Agreement except as modified herein.

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IN WITNESS WHEREOF, the parties hereto have executed and delivered this First Amendment to Joint Venture Agreement as of the day and year first above written.

NEW YORK BAGEL ENTERPRISES, INC.

By: /s/ Robert J. Geresi

(Name) Robert J. Geresi
(Title) Chief Executive Officer

"NYBE"

WESTERN COUNTRY CLUBS, INC.

By: /s/ James E. Blacketer

(Name) James E. Blacketer
(Title) Chief Executive Officer

"WCCI"

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EXHIBIT 10.22

PROMISSORY NOTE

Borrower: New York Bagel Enterprises, Inc.
115 East 8th Street
Stillwater, Oklahoma 74074

Lender: ______________________
____
____

Principal Amount: $50,000.00 Interest Rate: 12.750%
Date of Note: January __, 1999

PROMISE TO PAY. New York Bagel Enterprises, Inc. ("Borrower") promises to pay to _________________ ("Lender"), or order, in lawful money of the United States of America, the principal amount of Fifty Thousand & 00/100 Dollars ($50,000.00), together with interest at the rate of 12.750% per annum on the unpaid principal balance from January __, 1999, until paid in full.

PAYMENT. Borrower will pay this loan in one principal payment of $50,000.00 plus interest on December 31, 1999. This payment due December 31, 1999, will be for all principal and accrued interest not yet paid. In addition, Borrower will pay regular quarterly payments of all accrued unpaid interest due as of each payment date, beginning March 31, 1999, with all subsequent interest payments to be due on the last day of each quarter after that. The annual interest rate for this Note is computed on a 365/360 basis; that is, by applying the ratio of the annual interest rate over a year of 360 days, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. Borrower will pay Lender at Lender's address shown above or at such other place as Lender may designate in writing. Unless otherwise agreed or required by applicable law, payments will be applied first to any unpaid collection costs and any late charges, then to any unpaid interest, and any remaining amount to principal.

PREPAYMENT. Borrower may pay without penalty all or a portion of the amount owed earlier than it is due. Early payments will not, unless agreed to by Lender in writing, relieve Borrower of Borrower's obligation to continue to make payments under the payment schedule. Rather, they will reduce the principal balance due.

DEFAULT. Borrower will be in default if any of the following happens: (a) Borrower fails to make any payment when due. (b) Borrower breaks any promise Borrower has made to Lender, or Borrower fails to comply with or to perform when due any other term, obligation, covenant, or condition contained in this Note or any agreement related to this Note, or in any other agreement or loan Borrower has with Lender. (c) Borrower defaults under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially

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affect any of Borrower's property or Borrower's ability to repay this Note or perform Borrower's obligations under this Note or any related document. (d) Any representation or statement made or furnished to Lender by Borrower or on Borrower's behalf is false or misleading in any material respect either now or at the time made or furnished. (e) Borrower becomes insolvent, a receiver is appointed for any part of Borrower's property, Borrower makes an assignment for the benefit of creditors, or any proceeding is commenced either by Borrower or against Borrower under any bankruptcy or insolvency laws. (f) Any creditor tries to take any of Borrower's property on or in which Lender has a lien or security interest. This includes a garnishment of any of Borrower's accounts with Lender. (g) Any of the events described in this default section occurs with respect to any guarantor of this Note. (h) A material adverse change occurs in Borrower's financial condition, or Lender believes the prospect of payment or performance of the indebtedness is impaired. (i) Lender in good faith deems itself insecure.

LENDER'S RIGHTS. Upon default, Lender may declare the entire unpaid balance on this Note and all accrued unpaid interest immediately due, without notice, and then Borrower will pay that amount. Upon default, including failure to pay upon final maturity, Lender, at its option, may also, if permitted under applicable law, increase the interest rate on this Note to 25.000% per annum. The interest rate will not exceed the maximum rate permitted by applicable law. Lender may hire or pay someone else who is not a salaried employee of Lender to help collect this Note if Borrower does not pay. Borrower will be liable for all reasonable costs incurred in the collection of this Note, including, without limitation, court costs, attorneys' fees, and collection agency fees, except that such costs of collection shall not include the recovery of both attorneys' fees and collection agency fees. This Note has been delivered to Lender and accepted by Lender in the State of Kansas. If there is a lawsuit, Borrower agrees upon Lender's request to submit to the jurisdiction of the courts of Sedgwick County, the State of Kansas. Lender and Borrower hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by either Lender or Borrower against the other. Subject to the provisions on arbitration, this Note shall be governed by and construed in accordance with the laws of the State of Kansas.

RIGHT OF SETOFF. Borrower grants to Lender a contractual security interest in, and hereby assigns, conveys, delivers, pledges, and transfers to Lender all Borrower's right, title and interest in and to, Borrower's accounts with Lender (whether checking, savings, or some other account), including, without limitation, all accounts held jointly with someone else and all accounts Borrower may open in the future, and all trust accounts for which the grant of a security interest would be prohibited by law. Borrower authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums owing on this Note against any and all such accounts, and, at Lender's option, to administratively freeze all such accounts to allow Lender to protect Lender's charge and setoff rights provided in this paragraph.

ARBITRATION: Lender and Borrower agree that all disputes, claims and

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controversies between them, whether individual, joint, or class in nature, arising from this Note or otherwise, including, without limitation, contract and tort disputes, shall be arbitrated pursuant to the Rules of the American Arbitration Association, upon request of either party. No act to take or dispose of any collateral securing this Note shall constitute a waiver of this arbitration agreement or be prohibited by this arbitration agreement. This includes, without limitation, obtaining injunctive relief or a temporary restraining order; invoking a power of sale under any deed of trust or mortgage; obtaining a writ of attachment or imposition of a receiver; or exercising any rights relating to personal property, including taking or disposing of such property with or without judicial process pursuant to Article 9 of the Uniform Commercial Code. Any disputes, claims, or controversies concerning the lawfulness or reasonableness of any act, or exercise of any right, concerning any collateral securing this Note, including any claim to rescind, reform, or otherwise modify any agreement relating to the collateral securing this Note, shall also be arbitrated; provided, however, that no arbitrator shall have the right or the power to enjoin or restrain any act of any party. Judgment upon any award rendered by any arbitrator may be entered in any court having jurisdiction. Nothing in this Note shall preclude any party from seeking equitable relief from a court of competent jurisdiction. The statute of limitations, estoppel, waiver, laches, and similar doctrines which would otherwise be applicable in an action brought by a party shall be applicable in any arbitration proceeding, and the commencement of an arbitration proceeding shall be deemed the commencement of an action for these purposes. The Federal Arbitration Act shall apply to the construction, interpretation, and enforcement of this arbitration provision.

YEAR 2000 REPRESENTATIONS AND WARRANTIES. (1) Borrower has (i) begun analyzing the operations of Borrower and its subsidiaries that could be adversely affected by failure to become Year 2000 compliant (that is, that computer applications, embedded microchips and other systems will be able to

perform date-sensitive functions prior to and after December 31, 1999) and (ii) developed a plan for becoming Year 2000 compliant in a timely manner, the implementation of which is on schedule in all material respects. Borrower reasonably believes that it will become Year 2000 compliant for its operations and those of its subsidiaries on a timely basis except to the extent that a failure to do so could not reasonably be expected to have a material adverse effect upon the financial condition of Borrower.
(2) Borrower reasonably believes any suppliers and vendors that are material to the operations of Borrower or its subsidiaries and affiliates will be Year 2000 compliant for their own computer applications except to the extent that a failure to do so could not reasonably be expected to have a material adverse effect upon the financial condition of Borrower.

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(3) Borrower will promptly notify Lender in the event Borrower determines that any computer application which is material to the operations of Borrower, its subsidiaries, or any of its material vendors or suppliers will not be fully Year 2000 compliant on a timely basis, except to the extent that such failure could not reasonably be expected to have a material effect upon the financial condition of Borrower.

GENERAL PROVISIONS. Lender may delay or forgo enforcing any of its rights or remedies under this Note without losing them. Borrower and any other person who signs, guarantees or endorses this Note, to the extent allowed by law, waive presentment, demand for payment, protest and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, no party who signs this Note, whether as maker, guarantor, accommodation maker or endorser, shall be released from liability. All such parties agree that Lender may renew or extend (repeatedly and for any length of time) this loan, or release any party or guarantor or collateral, or impair, fail to realize upon or perfect Lender's security interest in the collateral; and take any other action deemed necessary by Lender without the consent of or notice to anyone. All such parties also agree that the Lender may modify this loan without the consent of or notice to anyone other than the party with whom the modification is made.

PRIOR TO SIGNING THIS NOTE, BORROWER READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS NOTE. BORROWER AGREES TO THE TERMS OF THE NOTE AND ACKNOWLEDGES RECEIPT OF A COMPLETED COPY OF THE NOTE.

BORROWER:

NEW YORK BAGEL ENTERPRISES, INC.

By____

Richard Randall Webb, Chief Financial Officer

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EXHIBIT 10.23

Schedule of January 1999 Promissory Notes of New York Bagel Enterprises, Inc. payable to the order of certain stockholders.

Lender

1. Robert J. Geresi
2. Paul T. Sorrentino
3. Vincent J. Vrana
4. David L. Murfin

Promissory Note Date

1. January 15, 1999
2. January 18, 1999
3. January 18, 1999
4. January 15, 1999

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THIS SCHEDULE CONTAINS SUMMARY FINACIAL INFORMATION EXTRACTED FROM THE AUDITED CONSOLIDATED BALANCE SHEET AND STATEMENT OF OPERATIONS AS OF AND FOR THE FIFTY-TWO WEEK PERIOD ENDED DECEMBER 27, 1998 AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO SUCH FINANCIAL STATEMENTS.
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